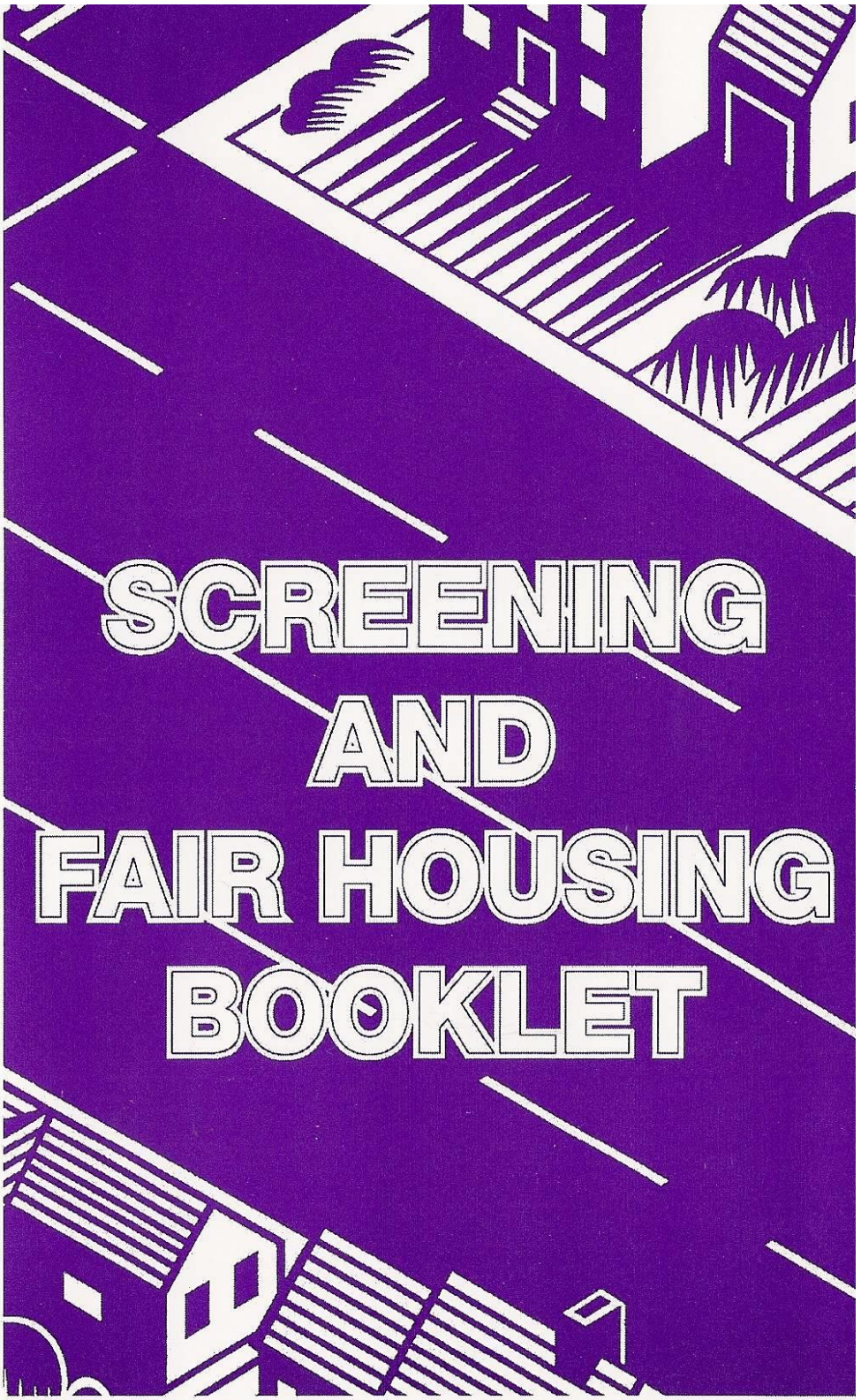
SCREENING
AND
FAIR HOUSING
BOOKLET

# Screening And Fair Housing Booklet

Written and Produced by
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## I. PURPOSE OF BOOKLET

This *Screening and Fair Housing Booklet* has been compiled for your convenience with information that coincides with the HCCI model rental application. Its purpose is to answer landlord questions that commonly arise before renting out property. Its aim is to provide guidelines that will enable landlords to select prospective tenants and ensure they have not violated the fair housing laws. Housing and Credit Counseling, Inc. seeks to provide all possible information regarding screening procedures and fair housing guidelines which will contribute to safeguarding your rental housing as one of your, and our state's, most important assets.

## II. OCCUPANCY STANDARDS

### A. <u>A Need for</u>

A landlord is entitled to assurances that a prospective tenant will be a desirable resident. The key to avoiding problems with civil rights claims is to have routine standards that are not discriminatory. If an applicant does not meet your standards, you may deny admission while showing that you have applied the same standard to all your tenants.

Make sure policies are clearly spelled out in written form. Be willing to discuss these terms or have copies available. Be sure that situations which will warrant an exception to your policies are also noted.

## B. Fair Housing Detail

The federal Fair Housing Act, most recently amended in 1988, prohibits discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities because of race, sex, religion, national origin or ancestry, color, familial status, and disability.

**"Familial status"** or **"Families with children"** means that limiting your tenants to adults only is not allowed unless you operate an **elderly complex**. Elderly complex means either one intended for, and solely occupied by, persons 62 years of age or older, or one which is intended and operated for occupancy by at least one person 55 years of age or older per unit in at least 80% of the units and with special facilities, services, policies, and procedures for seniors.

**"Disability"** or **"Handicap"** refers to a person with a physical or mental impairment which substantially limits one or more of a person's major life activities, who has a record of having had such an impairment, or who is regarded as having such an impairment. The law provides that if tenants need physical modifications to a unit and can pay for them, prospective disabled tenants cannot be denied as long as they meet other screening requirements. Generic alterations such as widening of doors are to stay when the tenant leaves; other items such as removal of base cabinets may be returned to their original condition at the tenant's expense.

When considering a tenant, it is important to make decisions based on performance, not presumptions. Penalties for violating federal fair housing law can go as high as $100,000 per violation.

## C. Sample Policy

**1. Equal Opportunity Statement** – No person(s) shall be denied the opportunity to apply for available housing nor be denied the opportunity to lease or rent any suitable dwelling if they have been determined eligible.

_____

(Owner, Manager, or Name of Complex)

shall not discriminate because of race, sex, religion, national origin or ancestry, color, familial status, and disability in leasing or other disposition of housing or related facilities included in any developments under its jurisdiction.

**2. Occupancy Standards** – The following are standards that prospective tenants must meet to rent in my/our properties. Applicants whose screening or reference information indicates they do not meet these standards should expect to be denied 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. Any falsification of application information will result in rejection; additionally it is a criminal offense.

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

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

**Good Housekeeping** – "Clean" will be defined to mean free of dirt, grease, impurities, or extraneous matter. Establishment that the prospective tenants were responsible for any condition that seriously affected neighbors by causing infestations or foul odors, accumulation of trash/garbage, and/or serious neglect of premises (including but not limited to the creation of fire hazards 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, 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.
- Threats or behavior indicating an intent to assault other tenants, neighbors, a landlord, or representatives of a landlord.
- Neglect of children which endangers their health, safety, or welfare
- History of objectionable conduct resulting from alcohol or substance abuse or frequent loud parties
- 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 other criminal activity (includes property loss or damage and physical violence or sexual crimes). Involvement in some activities may not be grounds for denial if activity or crime occurred more than five years prior to the application and there is no evidence this behavior has continued.

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

**3. Occupancy/Unit Size** – To comply with the Fair Housing Act, any reasonable local, state, or federal code will apply 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 codes – not family based – with a maximum acceptable number of occupants per unit.

**4. Leasing of Dwelling Unit**

a. **Rental Term** – Choose weekly, monthly, 6 mo., 1 yr.

b. **Lease Type** – a written lease shall be agreed to and/or signed by a responsible adult member of the family who has been accepted as a resident and the landlord or landlord's designated agent.

c. **Rules and Special Conditions** – Any rules and regulations must, by Kansas law, be disclosed to tenants before they move in. Other special conditions such as a basement that leaks, or common area lighting that is connected to an electric or gas meter for which the tenant will pay the bill must also be disclosed.

d. **Lease Change** – If at any time during the term 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 or lease addendum will be signed.

**5. Application Fee** – A non-refundable application fee may be required when the application is accepted.

**6. Security Deposit** – If a deposit is collected and the landlord denies an applicant, the landlord must return the full deposit. If a deposit is collected and an applicant withdraws after the screening process has begun, the landlord has the right to recover his/her damages. The landlord is responsible for providing the applicant a written accounting for the deposit if all or part is withheld.

## III. ADVERTISING AND SCREENING PROCEDURES

Determine how you will **advertise**. You can advertise any way you want: word-of-mouth, sign in the window, sign in the yard, newspaper ad, whatever. Be careful to be accurate. Misrepresentation can come back to haunt you.

Under federal law it is unlawful to advertise in a way that would indicate any preference, limitation, or discrimination because of race, sex, religion, national origin or ancestry, color, familial status, and disability.

**Wrong Way to Advertise:**

Adult Living, Condo, 2 BR, 2 bath, W/D hookup, private balcony, storage and parking, clubhouse, pool, $540 mo. + elec. avail. now

**Right Way to Advertise:**

Condo, 2 BR, 2 bath, W/D hookup, private balcony, storage and parking, clubhouse, pool, $540 + elec. avail. now

When prospective tenants begin to call or come by, **make a practice of noting 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 without having to advertise again.

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

Make sure you **screen** prospective tenants and remember to treat everyone who contacts you the same. **"Screening" means to evaluate each applicant based on your particular set of criteria.**

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 a few references and make a phone call or two. Others have tenants fill out application forms, make phone calls, and/or pay for credit checks. The 1988 Fair Housing Amendments established new administrative and judicial enforcement mechanisms that provide for monetary penalties for acts of discrimination. Therefore, it is more important than ever for landlords to document how they accept or reject an applicant.

Copies of written agreements and lists of rules or regulations should be available for prospective 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 polices, having them complete a thorough application form, actually confirming a selected number of references, and comparing both written and verbal reference information to your set of occupancy standards.

For a charge, private investigative companies can screen your applicants for you. Check your local directory.

## IV. APPLICATIONS AND REFERENCES

Before you start the application process, review fair housing considerations and your occupancy policies. Once you have thought these things through, you can ask more specific questions.

The following application and reference procedure follows the sections of the HCCI Rental Application form. As you ask these questions, remember 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.

**1. Applicant Information**

a. Who will be listed as leaseholders or responsible parties?
b. Who will be listed as authorized occupants?
c. What are the exact names of all adults and children who will live full-time in the household?
d. What are the household members' birth dates and ages?
e. What is the gender of each member?
f. What are their social security numbers?
g. 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 the members of the household, or where there might be unsolicited creditor problems related to a recent separation. Get social security numbers and do a background check on all listed occupants 16 years old and over.

**2. Residence History**

a. Where are the last three places they have resided? If they didn't live together, get separate references.

b. Have they lived there longer than one year? If not, why?
c. Question former landlords about the tenant's rental history, housekeeping habits, amount of company, pets, neighborliness, and if proper notice to terminate was given.

Double-check residence history as well as each item from the Occupancy Standards list with each prior landlord. You may want to cross-check other categories from the application form itself as well. Remember, the current landlord may really want these folks out, so your second and third landlords back could be your better references.

**3. <u>Employment and Income</u>**

a. How long have they worked for their current employers? (If less than one year find out why, and if the work is seasonal, is the income also seasonal?)
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 income is fairly steady.

**4. <u>Bank History and Credit References</u>**

a. Does the applicant have a checking or savings account?
b. Is the information given correct?
c. Have they paid their credit obligations on time?

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

**5. Character References**

a. How long has the reference known the applicant? In what capacity (socially, work, church)?
b. Ask the reference about the prospective tenant's housekeeping and how well they take care of other people's property.
c. Ask how many people are in the household, and how many vehicles are there. Do they have pets?
d. How much company do the tenants usually have, and for how long of a period do the visitors stay?
e. Are there things I should be aware of that the applicant and I might have to work on?
f. Ask the reference to tell you why they think this person would make a good tenant. (End interview positively.)

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 occupant 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 service animals, or to limit type and size.

**8. Cars – How Many**

a. What are their drivers license numbers?
b. What is the make, year, and license number of each vehicle.

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.

**9. Physical Modifications Requested**

People with disabilities have the right to reasonable accommodations and modifications to rental housing in order to allow full access to and use of the dwelling. If the tenant has requested modifications for which he or she is responsible:

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

In private housing the landlord does not have to pay for accessibility modifications, but must allow them upon request and at the tenant's expense.

The landlord may require, when physical changes to the dwelling are needed, that the work is done in a professional manner.

**10. Emergencies**

a. Who is a close relative or friend who lives outside the home and could respond to an emergency?
b. What is the contact information for that person?

It is very important for landlords to have someone to contact who can respond to a personal emergency that involves a tenant (i.e. illness/injury of a tenant that requires hospitalization).

### 11. Reference Checks

It is critical that you have a broad release such as the one in the application, and that you have all adults sign it. You have the right to check with both listed and unlisted references. If you deny an applicant, you are not required by law to tell the applicant 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 applicant 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 and do not discriminate, will support your acceptance or rejection of an applicant. Remember, keep the information you gather to yourself. The Fair Credit Reporting Act says you have the right to use this information only for your own use.

## V. BUSINESS PRACTICES

Developing good business practices is a must if you are going to have a business relationship with your tenants. After you have completed a thorough screening, it is important to follow through with these business practices:

- Put agreements in writing.
- Keep copies of agreements and correspondence. Verify that you have sent copies to the tenant.
- Keep a file on each tenant that will contain all agreements and other correspondence that applies to the tenant or unit.
- Conduct a beginning inventory with the tenant. Both of you should sign it agreeing to the condition at move-in. Provide a copy to the tenant and keep a copy in the tenant's file.

## VI. NOTES

**<u>One Final Note</u>!** Detailed publications on fair housing law, the Kansas Landlords Handbook, a Model Lease and Move-in Inventory, copies of the Kansas Residential Landlord and Tenant Act, model notices, and other publications are available individually or a complete packet of information, the Landlord Collection, is available from Housing and Credit Counseling, Inc. See back cover for ordering information or visit our website www.hcci-ks.org.

# Housing and Credit Counseling, Inc.

## Publications available:

Landlord Collection

Notices For Tenants

Notices For Landlords

Kansas Tenants Handbook

Kansas Landlords Handbook

Model Lease and Move-In Inventory

Kansas Residential Landlord and Tenant Act

Relevant Court Cases and Local Ordinances

Screening and Fair Housing Booklet with Application

Mobile Home Parks Residential Landlord and Tenant Act

HCCI

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# KANSAS LANDLORDS HANDBOOK

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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;

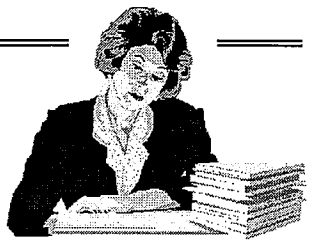
(e) Occupancy by an **EMPLOYEE** of a landlord whose right to occupancy is conditional upon employment in and about the premises;

(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: (l) 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.

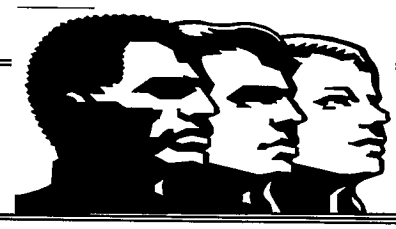
Another way to handle this, if you regularly use an application form and incur expenses in checking references, is to charge a non-refundable application fee ($15 to $30 is customary), then ask for the security deposit only after the applicant is accepted. You should be as speedy as possible in your 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 advertise 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.

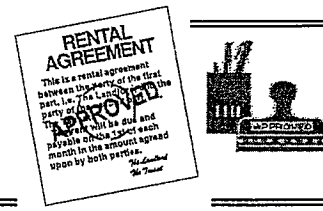
"Itemized list" means list each item and how much it cost to repair or pay for that item, detailing cost of labor and materials where you can. (Of course, it is important to keep all of your receipts.) Without regard to the amount of the security deposit, you need to then total this list. Next on your 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:

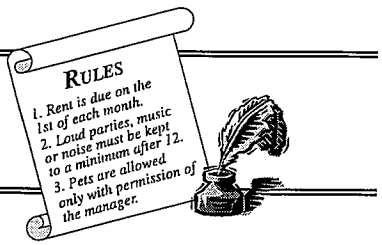
- Provide tenants at least 7 days' prior written notice.
- Provide a federally approved lead hazard information pamphlet again.
- Provide a disclosure form about the planned work.

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/leadpdfe.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.

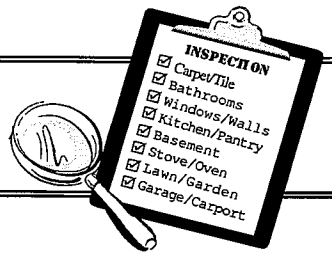
A Kansas landlord cannot change or add any rules or regulations during the term of the rental agreement unless the tenant voluntarily agrees in writing to accept the new or changed rules.

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 "checklist."

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.

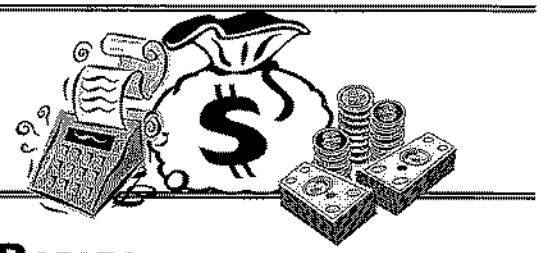
**References:** K.S.A. 58-2548; 1982 Kansas Court of Appeals case **Buettner v. Unruh**, re: when move-in inventory was not done; Model Move-In Inspection forms can be ordered from Housing and Credit Counseling, Inc.

## 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:

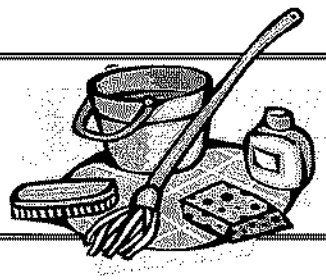
- if a tenant has maintained one or more of the above "nuisances," or allowed someone else to do so and a court hearing affirms that, the rental agreement (written or verbal) becomes null and void and the landlord may then start eviction proceedings immediately

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.

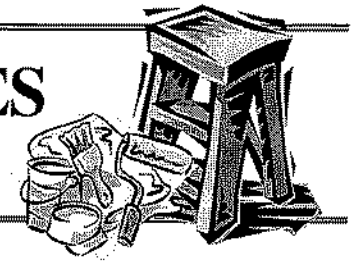
**References:** K.S.A. 58-2555, 58-2558, 58-2564, 58-2570.

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

# 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 down-stairs 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.

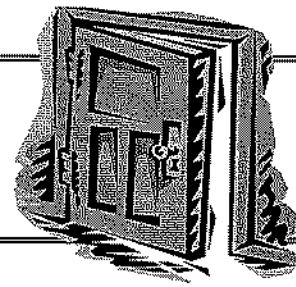
## Making Repairs And Improvements

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 triplicate "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.

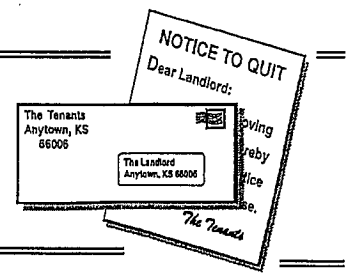
The law also allows you to get court orders to gain access and allows you to evict tenants who unreasonably refuse you entry.

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!

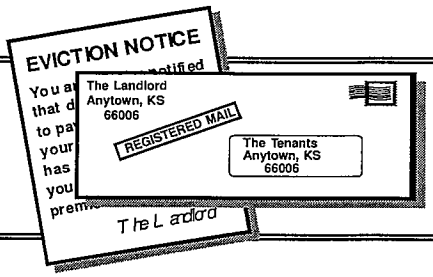
- **Estimated Fees.** Get a written estimate of what this process should cost you. Some attorneys have basic flat rates on routine processes such as evictions. Most will charge by the hour but can still estimate what the total should be.

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.

# EVICTIONS




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 statues, 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 defendable, 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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# KANSAS

# TENANTS

# HANDBOOK

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# FOREWORD

As we commence Housing and Credit Counseling, Inc's. 35th year, we are proud to bring you the 4th Edition 6th Revision of our **Kansas Tenants Handbook**. In addition to making a few clarifications and updates in the text, we have also included new information in response to frequently asked questions and changes in local, state and federal laws.

Many people assisted with our revisions to this **Kansas Tenants Handbook** as well as our **Kansas Landlords Handbook**. This time, kudos especially go to Louise Kirkpatrick, who carefully examined and reconsidered every word, wrote and kept, wrote and discarded…and who patiently, and without complaint, answered my questions, defended proposed changes, did more research… and overall took the lead to hammer and rework this book. Louise also spent the two years leading up to this handbook revision updating 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 Kansas Bar Association, Topeka, Kansas, for contributing the printing of this handbook. In particular, thanks to Meg Wickham, Public Services Director, for handling all of the arrangements.

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.
May 2007

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Material in this book is dated. If this Kansas Tenants Handbook is more than a couple of years old, you may want to double-check your information with an attorney, local housing counseling center, or contact Housing and Credit Counseling, Inc. for information and/or the newest edition.

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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.

This handbook was produced in accordance with Kansas Residential Landlord and Tenant Act (KRLTA)

## THIS HANDBOOK AND THE KRLTA COVER THE FOLLOWING:

**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.

**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.

**PERSON** includes an individual or organization.

**ORGANIZATION** includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

## THIS HANDBOOK AND THE KRLTA DO NOT COVER:

- **COMMERCIAL** rental agreements.
- The following Residential rental agreements:

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.

# BEFORE YOU RENT

So, you've decided to rent. **LOOK BEFORE YOU LEAP!** What you do ***before*** you put any money down or sign any paper could be more valuable than anything you do after you enter into a new rental relationship. **TAKE YOUR TIME AND BE THOROUGH!**

**START YOUR RENTAL FILE NOW!**

A rental agreement is a business contract, so KEEP RECORDS! Remember, these forms have your personal information on them, so they should be kept together and in a secure place. You may use a large envelope, a file folder, or a more formal system. You will want to have a copy of any lease agreement, move-in checklist, inspections, maintenance requests, notices, special agreements, and/or forms you sign. You should request and keep receipts for all payments you make whether you pay by money order, cashier's check, personal check, cash, credit, debit, or online.

**WHAT DO YOU NEED?**

It goes without saying that people have to balance what they need vs. what's available. Before you start looking for a place, hopefully you've asked yourself (and answered) the following questions:

**A. Where?** Is the place quiet enough? Is it too quiet? Will I be close enough to work? Church? Is it near a bus line? Stores? Do I feel safe there? If I have a family, is it close to schools? Play space and recreation?

**B. Does it match who I am?** If I'm elderly, does it have too many steps? If I am young and entertain a lot, will I be able to do it? Can I plant a garden? If I like to work on my car, can I? Is there a garage or off-street parking? Can I have a pet? Take the time to think about your needs and wants before you start looking.

**C. How much does it cost?** It's generally recommended that you should not spend more than 30 – 40% of your monthly income on total housing cost, which means rent plus utilities. For people on limited incomes, this is often very hard to do. Things that are important to consider include what utilities you will be responsible for and whether there are other costs you'll need to figure in. Your landlord or your local utility companies should be able to tell you what utility usage and costs have been for the past couple of years. Are you responsible for cutting the lawn? If you are, and the landlord won't provide the mower, maybe you'll have to pay somebody to do it. You may have move-in expenses such as utility deposits, truck rental, and furniture and drapery purchases. Sometimes two people decide to rent a place together. You both should be sure of what happens if one of you decides to move out! You may be stuck paying everything if your roommate moves and you can't find someone else to share the cost.

**D. How long do I want to live there?** This question comes up when it's time to decide on a lease. If you think you might be moving, getting married or getting divorced, or if there is any uncertainty in your life which might make for a questionable length of stay, think twice about signing a long-term lease. You may want a written agreement but on a month-to-month basis. Everyone should check to see what provision there is for breaking a lease, if the need arises. Don't just accept a verbal promise of, "We can work it out if something happens." Know what it is, and have it in writing. If the terms aren't right, don't move in!

**FINDING A PLACE**

Once you've answered all these questions, it's time to find a place. The most common way is to check the newspaper or on the internet. Sometimes people post notices on public bulletin

boards in stores and laundromats or on websites. Real estate companies manage rental properties; you can call or check the websites of the ones listed in your phone book and ask them. If there's a neighborhood you particularly want to live in, it may be worthwhile to drive through it and see if there are any "For Rent" signs. If you see a place that looks vacant, but there's no sign, you can call or check with the County Clerk or County Appraiser's website to see who pays the taxes at that address and then contact them directly.

Housing is often rented by word of mouth. Plan ahead and let people know you're looking well in advance.

You could contact the local Landlord organization or association. These exist in many Kansas communities as both formal and informal groups. Some organizations may consist largely of the "Mom and Pop" landlords, persons who own and manage their own rental properties. For some, the rental business provides retirement income, for some it is a full-time job, and for many, it is a part-time activity in addition to a full-time job. Conversely, many large complexes are owned by corporations and the rental business is run by hired management. This can be important information for you when you are looking for a place to rent.

If you have anything in your rental or credit history that might keep you from qualifying to rent, the Mom and Pop landlords may represent your best chance for securing housing. The property owner can choose to be more flexible with his screening standards whereas a hired manager may not have that freedom. You can meet the landlord or property owner and present your case. If he or she accepts you as a tenant, you should be sure to live up to your promises.

Be wary if a place is for sale. Check out whether it is likely to remain a rental after sale. Be extra careful by having arrangements for showing the property to potential buyers in writing. If someone promises to take a property off the market because you have moved in, get that in writing too.

**Don't accept a substandard place with promises that "it will be fixed." Get it in writing: what will be done? How soon? The Landlord is supposed to deliver a rental unit in compliance with your lease agreement, state law, and local codes. However, some judges have said that the Tenant is responsible to look out for himself and should not move into a place he can see is not ready to be lived in and that may be unsafe or unhealthy.**

Look around and try to find what you want. Don't just settle on a place because you're out of time. You may regret it later.

**CHECKING IT OUT**

**(1) Check the hallways and stairs.** Are they lit at night? Are stairs wobbly or broken? Will you feel secure passing through the halls at night? Are they reasonably clean and in good repair?

**(2) Check the locks on the doors.** If there are no dead-bolt locks, you might want to request they be installed. What about fire exits? Does the building have security doors? Do they close and lock properly?

**(3) Check the plumbing, including pipes around radiators.** Are there any leaks? Test everything. Run the hot and cold water in all sinks, bathtubs, and showers. Flush the toilet. Examine all fixtures in the bathroom for leaks. Does the water drain freely? Is the hot water hot? How long did it take to get hot? Open cabinet doors and look under sinks. Are there drips, standing water, musty smell, and/or water stains? (Doing this might make you feel kind of silly, but when do you want to find out, now or later?)

**(4) Check the electrical wiring.** Look for exposed wires and frayed wiring. Are there outlets and are they where you will need them? Be sure there is enough electricity coming into the rental unit to run all the appliances you will want to use. If you have a 220 volt air conditioner, dryer,

or stove, check to see if there are outlets available. If not, you will want a written agreement with the landlord about whether appropriate outlets can be installed and who will pay.

**(5) Check the floor, walls, and ceilings.** Make sure there are no holes, cracks, or broken plaster. Look for spots or streaks on the ceilings and walls. They may mean rain water or water from pipes above is leaking through. Carefully examine basement apartments. They are more prone to bugs, water leakage, and mold.

**(6) Look for signs of rodents and insects.** Check for droppings in cupboards and corners of the kitchen and bathrooms. Go to the place at night and flip the lights on to see if bugs go scurrying. Ask the landlord if he or she sprays regularly. Shredded paper often means rats or mice are nesting nearby.

**(7) Check the heat.** It is advisable to have a way to control the heat within each dwelling unit (thermostat or controls on radiators or heating vents). Find out if circulation is adequate to heat all rooms. If you are worried about whether the heater is safe, you can get a professional to come out and inspect the unit. (There may be a fee.) If you are renting during the summer, you might ask other tenants in the building about the heat in the winter.

**(8) Ask about utilities.** Who pays for water? Gas? Electricity? You may find apartments where some or all utilities are included in the rent. If they are not included, be sure to figure these expenses into the monthly total that you will be paying. The local gas and electric companies can tell you how much the bills have been for the previous twelve months. This will give you an idea of what to expect if you move in. You will probably have to pay deposits to utility companies, including the phone company, before they will connect your services.

Occasionally, and most often in older, single-family dwellings which have been converted to apartments, there is only one utility connection. Beware of such an arrangement if you are required to have the utilities in your name. When you rent the apartment and get the utilities turned on, you do not want to find yourself billed for the whole house!

Sometimes the landlord contracts for the utilities and then bills the tenants for their share in addition to rent. Kansas law addresses situations in which the landlord pays for water supplied through a master meter, then bills tenants based on usage to individual meters. If you will pay the landlord for water or other utilities, be sure to ask how the bill will be figured and when you will be expected to pay. This information should be in writing.

**(9) Check for garbage or trash containers.** Where are they? Is the area well kept? Is the landlord responsible for maintaining the containers and seeing that the trash is picked up?

**(10) Do the appliances work?** Check those that are provided (for example, stove or refrigerator). Do they possess all their parts (broiler pans, oven racks, shelves, drawers, etc.)?

**(11) Check the windows and screens.** Are they broken? Do they open? Do they lock? Are there storm windows?

**(12) Check for lead paint.** If the building was built before 1978, chances are good that there is lead-based paint. If the paint is peeling or flaking, there is a danger to young children. The taste of lead paint is sweet and children will eat it like candy. It can get into the air when repair work or sanding is done. If you have young children, do not move into a place that has exposed lead paint.

**(13) If a rental unit is furnished,** check exactly what is there and what condition it is in.

**14) Exactly what are you renting?** Is there any part of the rental property that you cannot use (for example: storage shed, garage, basement, etc.)? If an advertising brochure shows a pool and playground but you don't see them, ask, don't assume!

**(15) Find out who is expected to take care of the yard, halls, and sidewalks** (mowing, scooping snow, cleaning, etc.).

**(16) Is parking available and/or guaranteed?** Is the number of vehicles limited to one? Two?

**(17) Is there a lease?** If so, get a copy. Take it home and look it over. Ask someone to help you if you don't understand it. If the landlord doesn't have one and you want one, now is the time to mention it and suggest a model.

**(18) Ask about "house rules."** Rules and regulations are enforceable by the landlord as long as they are reasonable, applicable to all tenants equally, and disclosed to the tenant before he or she enters the agreement. If the landlord wants to change or add a rule or regulation, the tenant must consent, preferably in writing, or the landlord will have to wait until lease renewal time. Are pets allowed? What is the policy on guests? Look around and check with neighbors about noise and other living conditions.

**(19) If possible, check with former tenants about any defects they know of in the rental unit.** You might also talk with neighbors to get an idea of what kind of service you can expect from the landlord.

**(20) Check anything else relevant to the dwelling you are renting.** Take your time and look carefully. You should make notes of concerns or questions you have and go over all of them with the landlord before you decide whether or not you want to rent a particular place. Kansas law says that, if a place is not in compliance with Kansas law and/or your rental agreement on the day you are supposed to move in, you have the right to get all your money back and go elsewhere. Having promises in writing can make it easier to prove whether or not they've been kept.

## GETTING ACCEPTED

Some landlords may decide whether or not to rent to you by just looking you in the eye; some may ask you a few questions about where you work and who your current landlord is; and some may ask you to fill out very long, detailed application forms. All are acceptable ways of screening tenants.

At this time, there are almost no laws limiting what landlords may ask for on application forms, though Fair Credit Reporting laws require that the landlord not pass the information gathered on to anyone else and Fair Housing laws require that you cannot be turned down because of a need for accessibility modifications.

If you are asked to give information that seems unnecessarily personal, you may want to ask why that information is needed and possibly leave it out. Some landlords know exactly why they want certain information; some simply got the forms from someone else and only use a fraction of what you tell them. Obviously, the most important information a future landlord needs to know is whether you'll pay your rent, whether you'll take good care of the place, and if you'll keep from disturbing your neighbors.

Make sure what you write down is factual. Credit reports, court records, evictions, criminal history, newspaper reports, etc. are all available online; therefore, you can be rejected when application information does not agree with information found in public records. You can even end up losing a rental unit and having to move out if fraud is discovered later.

Many landlords charge a **nonrefundable application fee** when the application is turned in. You will NOT get this money back whether you move in or not. Some landlords pay a screening company to check the application information. If you are turned down because of a screening company's report, ask what information caused the landlord to deny you and what company was used. Before applying with another landlord, ask if he or she uses a screening service. You do not want to end up paying the screening fee several times only to get the same result.

Just as you can be rejected if you lie or fail to provide complete information, truthfulness could

make all the difference. If you know a landlord might discover negative information about you, you can address the issue with a landlord before applying and find out how much flexibility the landlord has. Many times landlords are not concerned about information you have given them, but they are troubled if you have not been upfront and honest.

A landlord has the right to select tenants on pretty much any basis as long as he or she does not illegally discriminate. (See Discrimination chapter.) If you are rejected, ask why. If the reasons don't seem good enough to you and you really want the place, make your case to the landlord. Maybe there are other references or additional information you can offer to convince the landlord that you (and your family or roommates) are a good risk.

Some landlords ask for the security deposit with the application, others require that the full deposit be paid when the tenant is accepted, regardless of when the lease begins. You should be VERY SURE you want to live in a place before you pay the security deposit. If the landlord turns you down, he is normally responsible to return the full deposit amount; however, you may not get your money back for 30 days. If you pay the deposit and change your mind, you can be charged if you cause the landlord to lose money, even if you have not signed a lease. (See Security Deposit section in Rights and Responsibilities chapter.)

## YES, WE'LL TAKE IT

So, it's a place you want, you're satisfied that anything that's not quite right will be, and the landlord has accepted you. You have probably paid a security deposit, you may have signed a lease, and you have a move-in date.

You can relax now, but you need to stay aware of what's happening and continue communication, preferably in writing, with your landlord. Remember, no matter how friendly you are with your landlord (and hopefully you are), you have a **business relationship** with him or her. Your landlord will treat it as such, and so should you.

## IF YOUR PLACE ISN'T READY WHEN PROMISED

Kansas law is very clear that if your place is not ready for move-in on the date promised in your verbal or written rental agreement, you have the right to get all of your money back and go somewhere else. If you want to (or have to) stay, the law says you don't owe rent until it's right.

Specifically, the law expects that whoever was in there before you will be out, that the place will meet minimum standards according to Kansas law and any local housing code (see Landlord Responsibilities section in Rights and Responsibilities chapter), and that any promises made to you by the landlord (your rental agreement) will have been fulfilled. If any of these things are not right, the law says that you don't owe rent (rent "abates") until they are. Then, you have two choices.

1) If you decide you don't want to live there, you can give a 5-day written notice to the landlord stating that you will not be living there, why, and that you want all of your money back. The law does not specify exactly when the five days are to start and end, so give the notice as soon as possible. If you have to use this provision, the law says you are entitled to any rent you paid and your security deposit back (less any deductions for physical damage you caused), and the landlord owes you for any cash losses you suffer.

2) If you decide to stay, you still don't owe rent until the place is available to move in and/or until things are as promised, and the landlord owes you for any cash losses you suffer. You can take legal action to force the landlord to make repairs or keep promises if you like. If the situation is willful and not in good faith on the part of a landlord or on the part of a tenant who did not get out on time, you can sue for 1½ times a month's rent or 1½ times your cash losses, whichever is greater. (Keep in mind… if you ever hold over, someone could also sue you!)

## 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.

# LOW RENT HOUSING

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). There are special rules for government assisted housing programs; however, the laws of the state of Kansas and local communities also apply. 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 contact 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.

**Other** - Local nonprofits and others have also developed local low-rent programs. Check with your City, your housing authority, or the State (see contact information in box in this chapter) to see if there is anything near you.

## WHO IS ELIGIBLE (HUD PROGRAMS)

For "elderly" housing programs, a person must be low income, 62 years of age or older, or qualify as disabled (regardless of age). The age limit can go down to 55 if certain amenities such as activities or transportation are available.

To get into "family" programs, families with children and, in most cases, people who qualify for the elderly programs are eligible.

"Disabled" means anyone with a qualifying mental or physical disability.

Single people who are neither elderly nor handicapped are sometimes eligible. Check with the manager.

Unmarried adults who are living together with children are usually considered “families.”

Some programs are limited to people who are homeless or have other special circumstances.

Owners and managers have the right to check into the background of you and your family to decide whether or not to offer you housing or a place on a waiting list. If you are rejected, you have the right to be told why. In both Section 8 and public housing, federal law says the landlord must offer you at least an informal conference. Many programs provide unsuccessful applicants access to a “grievance procedure,” described later in this chapter.

Some programs have priorities, called preferences, for who gets housed first from their waiting lists. Sometimes, for instance, it’s higher-income people first, sometimes lower, sometimes persons with earned income, or people who are in substandard conditions. These priorities change from time to time due to changes in government rules and/or local choices. This policy cannot discriminate against you because you just moved to town. You have the right to see a copy of the written priority policy and to know what number you are on the waiting list. When you are on a waiting list, you are responsible to keep the rental office updated if your contact information changes. If you don’t and they can’t reach you when your name comes up, you can be removed from the list and have to reapply and start all over at the bottom.

In all situations, you must furnish accurate information about the employment and income of each family member and how many people are living with you so the agency can determine whether you are eligible for subsidized housing, the size of dwelling unit you should be in, and how much your rent should be. This is called “income certification.”

In most programs, you will be asked to turn in this information once a year and whenever income or family size changes. This is called “recertification.” If anything has changed, the amount of rent you pay may be raised or lowered or you may be asked to move to a different size unit.

## SECURITY DEPOSITS

Expect to pay a security deposit. Kansas law requires that your security deposit cannot be more than your monthly rent unless pets are allowed, in which case the security deposit can be as much as one and one-half times your monthly rent.

Some programs will set your security deposit based on your rent, others will have a flat rate. Some housing authorities have security deposit schedules that are based on the number of bedrooms. Some have a set amount for the pet deposit. In these cases, the housing authority must allow tenants to pay the security deposit in payments rather than all at once. (See Security Deposit section in Rights and Responsibilities chapter for more on Security Deposits.)

## MAINTENANCE

Landlords with subsidized housing are required to meet at least the same maintenance standards that are expected of private landlords in the state of Kansas.

Some programs have their own specific maintenance standards and their own inspectors; however, all properties must comply with local codes and ordinances.

## EVICTIONS

Public housing tenants must be given 14 days’ written notice for nonpayment of rent. (This is more than Kansas law requires.) Otherwise, minimum notice in all of the programs is the same as state law and/or as set in the lease. In government assisted housing, the landlord must

## WORKSHEET FOR COMPUTING PUBLIC HOUSING AND SECTION 8 RENTS AT 30% OF INCOME

(This is a simplified form which should give you a general idea of how much your rent might be.)

| FAMILIES | | ELDERLY / HANDICAPPED | |
|---|---|---|---|
| Gross Monthly Income X 12 (months) | _____ | Gross Monthly Income X 12 (months) | _____ |
| **Deductions** | | **Deductions** | |
| $480 per Dependent | - _____ | $400 per Household | - _____ |
| Child Care | - _____ | Medical (Over 3% Gross Income) | - _____ |
| Adjusted Gross Income | _____ | Adjusted Gross Income | _____ |
| ÷ 12 (months) X .30 (30% of Adjusted Gross Income) | _____ | ÷ 12 (months) X .30 (30% of Adjusted Gross Income) | _____ |
| Monthly Gross Rent | _____ | Monthly Gross Rent | _____ |
| Utility Allowance (if tenant pays gas, electricity or water) | - _____ | Utility Allowance (if tenant pays gas, electricity or water) | - _____ |
| Monthly Net Rent | _____ | Monthly Net Rent | _____ |

Gross Monthly Income is defined as the income (before taxes) of all members of the household who are over 18, including students. One-time only income does not have to be counted. Foster-care payments do not have to be counted either.

Dependent is defined as anyone in the household (except the head of the household, his or her spouse, and foster children) who is under 18 years of age, a full-time student, or disabled.

### EVICTIONS (con't)

have a "good cause" to evict someone. "Good cause" may include, but not be limited to:

- Failure to pay rent or other amounts owed
- Failure to fulfill tenant obligations
- Providing false information
- Serious or repeated interference with the rights of others.
- Serious or repeated damage to the premises.
- Criminal activity

### GRIEVANCE PROCEDURE (PUBLIC HOUSING AND RURAL DEVELOPMENT ASSISTED PROJECTS ONLY)

In public housing, the tenant may have the right to a hearing before an impartial person or panel if the tenant disagrees with a proposed action of the management. In the case of eviction disputes, federal law allows Kansas housing authorities to skip the grievance procedure and insist on going to court, but most will allow you to file the grievance anyway.

If you disagree with an action taken against you, either as a tenant or an applicant for public housing, you may file a grievance against the management stating the source of the disagreement and what you think should be done to correct it. If you wish to file a grievance, both you and the management must follow the specific grievance procedure adopted for that complex. Ask for a copy if you don't have one. It should be very similar to the procedure outlined below:

**(I)** You must personally deliver the written grievance to the housing authority, usually to the director, within the time stated in the notice. In this way, the grievance may be informally discussed and possibly settled without a hearing.

**(2)** Within 5 business days, you should receive a response with the following items included:

- A suggested settlement.
- Signature of a member of the management.
- The date.
- A statement informing you of your right to a hearing before an impartial person or panel and how to obtain it.

**(3)** If you are not satisfied with the response, you can send a dated, written request for a formal hearing to the director or project manager's office, usually within 5 business days.

If you do not request a hearing within this time, you will probably forfeit your right to appeal this particular case.

**(4)** If you request a formal hearing, you will be mailed information with the date and time of the hearing.

**(5)** You have the right to see any documents the management plans to use against you in advance.

**(6)** At the hearing, you will have the opportunity to:

- Be represented by an attorney or another person of your choice.
- Present your evidence.
- Question the management's evidence.

**(7)** If you find the person or panel's decision unsatisfactory, you may appeal it in court. Likewise, management must take court action to proceed further against you. Remember, if you ever receive an eviction or any notice that you feel is unfair, appeal it immediately, don't wait.

### ADMINISTRATIVE REVIEW PROCEDURES (SECTION 8 AND HOUSING VOUCHERS)

Federal law requires anyone who runs a Section 8 program to adopt an "administrative plan" that contains a review procedure to be used when a tenant has a grievance or wants to appeal a decision.

## TO FIND OUT IF THERE IS AFFORDABLE HOUSING IN YOUR TOWN…

Kansas Regional HUD Office
400 State Ave., Room 200
Kansas City, Kansas 66101-2406
(913) 551-5462
www.hud.gov

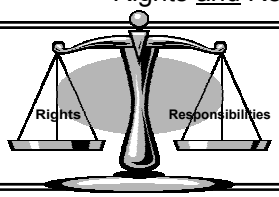
Kansas Rural Development State Office
1303 First American Place, Suite 100
Topeka, Kansas 66604
(785) 271-2700
www.rurdev.usda.gov/ks/

Kansas Housing Resources Corporation
611 S. Kansas Ave., Suite 300
Topeka, Kansas 66603-3803
(785) 296-5865
www.kshousingcorp.org

There are volumes available on each kind of government assisted program, the regulations are constantly changing. Ask these sources or your manager to give you a copy of the regulation(s) you want to see.

If you can't get the information you need from these sources, contact Housing and Credit Counseling, Inc. at (785) 234-0217 or (800) 383-0217.

# RIGHTS AND RESPONSIBILITIES




The Kansas Residential Landlord and Tenant Act specifies rights and responsibilities for Kansas landlords and tenants. It has 33 sections and covers landlords and tenants who don't have written agreements as well as those who do.

Just like the Landlord-Tenant Act, any city or county codes or laws in your area that have to do with housing will affect both you and your landlord. **You should find out what they are and know what they say.**

## SECURITY DEPOSITS

Before you are able to move into a rental property, your landlord may ask for a security deposit. The security deposit is generally used by landlords to hold the rental unit for the tenant until the lease begins. If you leave the money with a landlord, but then decide not to rent, the landlord may try to keep the entire deposit and even sue for additional damages, depending on the situation.

After you move into the place, the money is held by your landlord as insurance against the risk that you will damage the rental unit, leave owing rent, or cause the landlord expenses because you have not followed the law or your rental agreement.

If you agree to clean the premises or perform maintenance and/or repairs instead of paying a security deposit, **be sure to get it in writing or included in the lease.** This must be carefully agreed to: How many hours? At what rate? Exactly what is to be done? Who pays for supplies and materials? When must the work be done?

If agreed, you need to make sure your lease shows an amount of money credited for your security deposit that will be returned to you when you move out and leave the place in good condition. A better option may be to pay the deposit and perform maintenance and/or repairs in exchange for rent. The same questions should be asked, agreed to, and plainly stated in a written agreement.

Kansas law clearly defines how security deposits can be used and how to get them back. You can protect your security deposit by remembering a few important things:

- Landlords do not have to collect security deposits. They may, but they don't have to.
- Landlords do not have to pay interest on the security deposit. If your landlord agrees to pay interest, you should get it in writing.
- There are limits on how much a landlord may charge for a deposit:
  **unfurnished** – 1 month's rent
  **furnished** – 1½ month's rent
  **pets** – additional ½ month's rent

**So, if the rent on your apartment is $400 per month and the apartment is unfurnished, your deposit can be no more than $400. If it is furnished, the deposit can be no more than $600. You could be charged an extra $200 if you have a pet or pets (total of ½ month's rent). With pets and furniture, then, it could go as high as $800. These rules are especially important to watch if you are renting with roommates and the landlord is collecting a deposit from each of you. The total cannot legally go over the limits.**

- Ask that the amount of the deposit be written into your lease.
- Get a receipt for payment of the security deposit.
- Normal wear and tear on your apartment could be misrepresented as damage. To prevent this, be sure to fill out a checklist or inventory when you move in. (See Move-In Inventory section in this chapter.)

- Do not try to use your security deposit for rent while you live there and do not try to use it for the last month's rent. The Landlord-Tenant Act says if you do, you could lose your security deposit and still owe the rent you were trying to use it for.
- If possible, get your landlord to inspect your place with you before your move-out date. This way, you can agree on what is dirty or damaged and how much it will cost to repair. If there is cleaning or repair work to be done, you would have the chance to do it yourself so it won't be paid for with your security deposit.

The law allows your landlord to keep all or part of your security deposit for three reasons:

**(1) Physical damage** beyond normal wear and tear caused by you, your family, your guests, and/or your pets.
**(2) Rent** that is past due.
**(3) Other expenses** your landlord has suffered because you have not complied with the law or your rental agreement. This could include the cost of running an ad to get new tenants if your landlord normally runs ads and you break a lease before its term expires, or all or part of the next month's rent if you are renting month-to-month and do not give a proper 30-day notice and the landlord is unable to get another tenant to move in immediately after you move out.

If the total amount of itemized damages is more than the security deposit, the landlord can compile the itemized list of deductions, credit the deposit, and send you a bill for the amount still due. If you do not pay, the landlord may file in Small Claims Court or higher court to collect the money owed when damages are more than the security deposit.

Judges vary on their interpretation of the law, but if your landlord tries to keep your security deposit for anything other than the reasons listed above (such as "liquidated damages" or for breaking the lease), you should argue that Kansas law does not allow this and that the landlord should return everything except what can be specifically itemized.

Judges generally allow landlords to bill you for their time at reasonable rates if they do certain cleaning or repairs that were your responsibility, but not for showing the place, screening new tenants, and other costs of doing business.

When a landlord is charging you for **replacement of an item**, the charge should only be for actual value. In other words, if the charge is for a repair, it should only be for the actual cost of parts and labor or based on a reasonable bid the landlord got for the repair. As long as you were responsible for the damage, a repair does not actually have to be made for you to be charged. Replacement charges should be figured on the value of an item that day. For instance, if you ruined a new rug, you could be charged full replacement value; if you ruined a rug that was five years old, you should only be charged the depreciated value of what the rug was worth that day. Again, the landlord does not actually have to replace the item to have the right to charge you.

If the landlord withholds any portion of the deposit for any reason, he or she must give you a written list of itemized deductions. The deposit and/or the itemized list of deductions are required by law to be sent to you within 30 days after you give up possession (typically when the keys are returned).

If your landlord doesn't return your money, doesn't send the list of damages, or you disagree with the deductions and the amount of money you got, you should take steps to settle the matter. First, you should write your landlord, explain what you want or where you disagree, and give the landlord a chance to write back and/or send more money. If you can't settle with the landlord, you may file in Small Claims Court for whatever you think is fair. If the landlord did not even attempt to return your money or send you the written list of deductions within the 30 days, you can sue for 1½ times the amount wrongfully withheld in addition to

what you feel you is due. (See Small Claims Court chapter.)

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**Example: $400 security deposit is wrongfully withheld. In a court action, you could ask for the $400 plus $600 damages (1½ times the amount wrongfully withheld) a total of $1000 plus the filing fee for the court action.**

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When you move out, be sure to leave the landlord a forwarding address where your deposit may be sent. If for some reason you don't want to give your new address, you can always give that of a relative or friend. (If you forget about the deposit and do not make a demand for it, the landlord is still required, by law, to attempt to return it to you at your last known address.)

**If the place you rent is sold**, the old owner is required, by law, to account for your deposit. Make sure you either get your money or a signed paper saying your money (specifying exact amount) has been transferred to the new owner. The new owner can ask for additional money for the deposit but the total cannot go over the legal limits and you should get at least a full rent-period's written notice before you have to pay. If you are in a long-term lease, the new owner must wait until the end of the lease to adjust the security deposit as well as the rent or any other lease provision. After the sale and the new owner takes possession of the property, the new owner becomes responsible for the return of the security deposit or the itemized list just as the original owner was.

**NOTE:** Before you file for a security deposit return in Small Claims Court, think about whether you have a good case and whether your landlord would have a claim against you. Did you give proper written notice as required by the law or your lease? Was your rent paid up? Did you leave everything in just as good or better condition than you found it? If the answer to any of these questions is "No," then you'd better think carefully about whether you really have a case and how much money you can reasonably expect to win. Don't waste your time, the court's, or the landlord's if you are in the wrong.

## ROOMMATES

Choose carefully! When two or more people decide to share a place and enter into a lease together, they take on certain legal responsibilities. When roommates are parties to a rental agreement, they are usually legally obligated both individually and as a group, to fully perform the terms of the lease. This means if roommates leave during lease terms, they are still liable for their share of expenses. However, the remaining roommates may well be expected to pay the entire rent and keep the utilities on or face eviction.

Roommates have legal responsibilities to each other. They usually agree, preferably in writing, on what bills will be shared, in what way they will be shared, and what rights each has regarding use of the place. Although roommates usually agree to share utility costs, utility companies typically require the account be in one person's name; that person must then collect from the remaining roommates for their shares of the bill.

Does the lease have a provision for the replacement of tenants if problems arise among roommates and someone moves out? Permission from the landlord is typically requested or required before a new person can be moved in, and a prospective tenant should expect to apply and be screened as the original tenant was. If accepted, the new roommate should be added to the lease.

Financial disputes between roommates can be settled in Small Claims Court.

## LEASES / RENTAL AGREEMENTS

A **rental agreement** is a ***legally binding contract*** between you and your landlord. It should state the rights and responsibilities of both parties. Although it may be either written or verbal, it is best to have your agreement in writing. With things in writing, there is less confusion over the details of the original agreement if a problem occurs. Just because your agreement is in writing, it doesn't automatically have to be for six months or a year. It can be from month-to-month or for any term. A verbal agreement cannot be for more than a year. In all cases, whether there is a written agreement or not, the landlord and the tenant are subject to the laws of the state of Kansas and its governmental subdivisions.

To protect yourself and your rights, consider the following suggestions ***before*** signing a **lease**:

**(1)** Get a copy of the lease, take it home, and ***read it carefully!*** Do not be discouraged by technical language or fine print. If you have a question about any part of the lease, ask the landlord to explain it or take it to a qualified person or agency. If the landlord won't give you a copy of the lease to read, be wary.

**(2)** Do not move in and start paying rent before you have agreed to the lease terms. Leases with only the landlord's signature can be enforceable when the tenant has a copy and has paid rent "without reservation." If your landlord sends you a signed lease with instructions for you to sign it, don't sign unless you agree to the terms. However, if you don't sign, write the landlord a letter immediately saying that you didn't sign the lease and explaining what you want changed. You can even send a lease of your own and ask your landlord to sign it instead. If you do this, you won't be bound by the landlord's lease until you and the landlord agree on a lease and you sign it.

**(3)** Make certain all the blanks are filled in and the information is correct before you sign anything. The correct date should be noted.

**(4)** The name and address of the manager and the owner or a person authorized to receive notices and demands from the tenant should be in writing. This information must be kept current. If not already provided, ask for emergency contact information (i.e. after hours, weekend, and holiday contact information).

**(5)** If the lease is longer than month-to-month, be sure to find out what the consequences will be if you break the lease and move out early.

**(6)** Watch for language about **the end or the renewal of the lease**. Read carefully for notice requirements. Leases can require less than the normal 30-day notice; they can also require more, some require 60, 90, and even 120 days or longer for written notice from either party or the lease automatically renews for another full term.

**(7)** There are a number of inequitable clauses which are very undesirable and often illegal. Clauses which are prohibited by Kansas law are not only unenforceable, but if a landlord deliberately uses a prohibited clause, the tenant can receive money damages. Some of these clauses are:

- "exculpatory" clauses which say the landlord will never be liable for damage or personal injury to you or your guests.
- "confession" clauses in which you admit guilt in advance to any charge for damages.
- "as is" or "disclaimer of duty to repair" clauses which allow the landlord to disregard responsibility for making repairs.
- clauses which permit the landlord to enter the rental unit at any time without notice.
- clauses which give the landlord the right to evict you without proper notice.
- clauses which allow the landlord to take your personal possessions if you don't pay your rent.

- clauses that forfeit your security deposit automatically.
- any other clauses where you agree to give up rights you have according to the Kansas Residential Landlord and Tenant Act.

**(8)** It is possible to make changes in a lease. If you and your landlord agree, cross out what you don't want, write in what you do want, and initial and date in the margin right next to the change on both copies. If any part of the rental property (for example: storage shed, garage, basement) will not be available for you to use, the restriction should be clearly noted in the lease. If you want to add something, write or type it in on the lease somewhere above the signatures, then both of you need to date and initial the addition.

If there is not enough room, add another page (you will need two copies). Write Addendum to the Lease (or Rental Agreement, whatever you're calling it) For the Property at (your address) and the date at the top of the page. Then write whatever you have to write. You and your landlord can write these things yourselves. Take your time and make sure your words say what you mean them to say. A statement should be included in the lease, above the signatures, such as, "see addendum" or "see attachment." Signatures should be the last thing to appear on a legal document.

**(9)** 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.

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**Many tenants feel they are in a poor position to argue over provisions in a lease. If they do, they fear they stand the chance of losing the place to a less "uppity" renter. Unfortunately, this does still happen. However, this will not change until the unwilling landlords learn that to get and keep good tenants, they must not fear negotiated agreements when requests are reasonable. DO be assertive about proposing your own lease or asking to add or change clauses. NEVER sign a lease that contains clauses you cannot live with and that could be used against you. There ARE other places.**

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**(10)** Notary publics are not required to observe the signing of leases. Having a witness is a good idea, but is not required.

**(11)** Make sure you get a copy of your lease and any amendments – anything you sign.

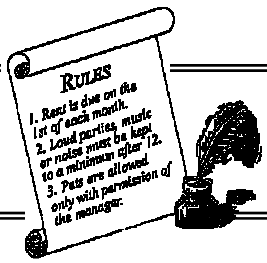
Keep your copy of the lease with your other rental information papers in a secure place where you can find them and read them. If you have any questions or problems in the future, you will need to go back to them and go by what they say.

## RENTERS INSURANCE

Renters insurance may be the most overlooked by consumers. Landlords have insurance, but ONLY for the building; they are not responsible for protecting the renter's property.

Renters insurance, to insure your household contents and personal belongings, is available to anyone living in rented housing. Rates vary depending on the amount of insurance, the area in which the apartment or house is located, and the type of structure. You should check several companies to determine which is cheapest and provides the best coverage. Check especially whether the policy covers things stolen (for example, a bicycle or items stolen from your car). Make sure that items stored in a locked storage unit (either provided by the landlord or elsewhere) are covered in your policy. Also check what the deductible amount is, and whether the insurance company will pay replacement value for possessions which are stolen or destroyed by fire. The Kansas Insurance Commissioner's office has information about companies doing business in Kansas and comparable insurance rates.
Phone: (800) 432-2484  Website: www.ksinsurance.org

## RULES AND REGULATIONS




In addition to the lease or rental agreement, a landlord may have a list of rules and regulations. The landlord is required to notify you of them before your rental agreement begins. Examine all rules carefully and decide if they are compatible with your lifestyle. If the rules don't suit you, don't move in. While there is no limit to the number of rules you may be forced to live with, Kansas law does limit their purpose. All rules must be designed either to benefit the tenants or protect the landlord's property. They must be clear and they cannot be for the purpose of allowing the landlord to avoid his legal responsibilities. Rules must apply equally to all tenants.

If the landlord wants to change or add any rules during the course of your rental agreement, you and the other tenants will be bound by them only if you voluntarily agree to them in writing. Otherwise, the most the landlord can do is give notice of what the new rules will be when rental agreements renew. This would mean that as long as the landlord followed notice requirements in a long-term lease, the rules would take effect when the lease renewed or went month-to-month. With a month-to-month arrangement, each new month is like a new lease; therefore, the new rules would take effect after a 30-day written notice in advance of a rent date (just like an eviction) whether you agree or not.

## SALES AND FORECLOSURES

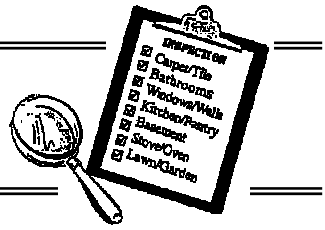
**SALES** – In Kansas, when a rental agreement is in place and the property is sold, the rental agreement continues with the same terms and conditions as with the original landlord. If you have a month-to-month agreement, written notice of any changes – rent increase, termination notice, change in rules and regulations, etc. – must be given to the tenant one full rent period in advance of the change taking place. If you have a term lease (i.e. 6 months, 12 months, etc.), proper notice must be given in accordance with the lease requirements.

When tenants have a term lease and rented property is sold, if the new owner does not wish to continue the rental relationship, a "buy out" may be an option. The new owner and the tenant may be able to come to an agreement to terminate the lease in a way that is fair to both parties. For instance, the new owner may agree to cover the reasonable expenses of the tenant's move and the increase in rent the tenant will be paying at the new residence. Any agreements should be in writing and all parties should have a copy. If an agreement cannot be reached, the tenant does not have to move.

**FORECLOSURES** – If a rental property is foreclosed on while you are living there, your lease may continue or it may not. There are several legal steps involved in a foreclosure action and a significant amount of time typically passes during this process. Specific legal conditions and requirements may affect your right to remain in the dwelling.

At the end of the process, if ownership of the property is transferred to the mortgage holder, a local realtor is often hired to show and sell the property. Sometimes a visit from the realtor is the first the tenant knows about the foreclosure action, so it is important to remember that you may have the right to stay in the property under the same terms and conditions as your rental agreement. If you are in a property that is being foreclosed on, it is strongly advised that you contact an attorney familiar with foreclosure actions and repossessions to help you know your rights.

## MOVE-IN INVENTORY




Within 5 days after you move in, Kansas law requires that you and your landlord go through the property together and make a detailed, written list describing the condition of the premises. This is commonly known as a move-in "inventory" or "checklist."

This list can be done on a printed form or a plain piece of paper. What is important is that, when it is signed, it contains all the details of what condition your place was in and what was in it when you moved in. Either by writing two copies exactly the same, by using carbon paper, or photocopying the list when you get done, both you and the landlord must, by law, have copies of the list signed by both of you.

Check the property from top to bottom. Are there cigarette burns in the carpet? If so, where? How many? How big are they? Are there nail holes in the walls? Is the carpet stained or dirty or has it been cleaned? Is the oven clean? The stovetop? Do the burners work? Note furnishings and appliances provided by the landlord and their condition. If there is a basement, you should inspect there. Walk around the outside of the place and note the condition. If a garage or storage building is part of your rental, check it as well. If you will be responsible to take care of the yard, note the condition. A move-in inspection should cover all of the property included in your rental agreement.

Don't sign your name to a list the landlord has filled out before you check for yourself! The law says you and the landlord are to do the inspection together. Don't sign a list that just says "Okay" or "Clean." "Okay" or "Clean" isn't going to do much good at move-out time when you need to prove that a window was already cracked or a door handle was already broken when you moved in.

Now is a good time to ask the landlord if he has a check-out list or a list of things he or she will expect to be done and will inspect when you leave. These are things you want to look at closely when moving in. You are to return the unit in as good a condition as when received except for normal wear and tear.

As you inspect, if you discover things that need repairs, put the landlord's promises down in writing right on your checklist. If the landlord says he or she will replace that sagging closet rod within two weeks write down, "Bedroom closet rod bent. Landlord will replace in two weeks." When you and your landlord sign the inspection sheet, you will have signed promises from your landlord for hopefully all of the repairs that are needed.

If you can't get the landlord to do an inspection with you, do one yourself anyway. Get someone reliable to be a witness and inspect with you. Make the written list, you and your witness sign it, then send a copy to your landlord. If you later discover something you missed on your list (like the bathtub drains slowly or the towel bar has been pulled from the wall and not fixed correctly), send the information to your landlord in writing right away, ask that it be added to your original checklist. Make a copy of what you wrote and keep it in your Rental File.

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**Take pictures or a video if you can. Have someone with you to verify when you took the pictures. Don't rely on the date the camera prints on the pictures. When taking pictures, be sure to use something to show the size of whatever you are photographing. If you don't have a measuring tape or ruler, use your hand or a book or something to show the size of the damaged area.**

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When you move out, you can request your landlord re-inspect the home with you and sign a move-out checklist or a statement that the rental unit is in satisfactory condition. Although this is desirable, Kansas law does not require the landlord to complete a move-out inspection with you, only the move-in inspection is required. (See Security Deposit section in this chapter for return of deposits.)

## RENT AND LATE FEES

Rent is due, in full, on or before the rent-paying date. In Kansas, in a month-to-month tenancy, if a rent-paying date has not been specified, the law says it is assumed to be the first of the month. If your rent date is to be other than the first, it's best to have it in writing!

The law also says that if the landlord has not specified that you should deliver or mail the rent, the landlord is expected to pick it up at the dwelling. The landlord can require you to pay the rent in a specific way; he may not accept personal checks or cash, he may want only money orders or cashier's checks, etc. However you pay, a dated receipt signed by the landlord proves you paid and when. NEVER pay cash unless you get a receipt when you hand over the money.

Your landlord can charge a "late fee" if you pay your rent late as long as it was included in your rental agreement. Whatever you have should clearly state when the fee will be assessed and how much will be charged. If your landlord wants to add the ability to charge late fees, a 30-day written notice in advance of a rent date would be required in a month-to-month tenancy. The landlord would have to wait until renewal time to start charging late fees when a term lease is in place.

## RENT RAISES

Kansas law does not limit how much your rent can be raised or how often.

Because a rent raise is similar to an eviction, there is one rule. If you have a month-to-month lease, your landlord must inform you, IN WRITING, of a rent raise at least 30 days before the rent date when it is supposed to go into effect. Having utilities transferred to your name is the same thing as a rent raise, so the same rule applies.

It is preferable to get at least 45 days' notice so you can decide whether to stay or give a 30-day notice and move, but 30 days is all that is commonly required.

If you get a notice of a rent raise, check your lease, if you have one. One reason people sign long-term leases is to protect against rent raises for periods of 6 months or a year or whatever period your lease covers. If your lease doesn't allow for a rent raise, don't pay. Or if your lease allows for rent raises only to cover costs of increased taxes and utilities (an "escalator" clause), insist on seeing the last year or two's receipts to prove that the increase is fair and necessary. You may be surprised at the costs, but maybe the increase will be dropped.

If you live in a complex where rents are raised and you and the other tenants think it's unfair, about the only way you can deal with it is by organizing and negotiating with management as a group (see Tenant Organizations chapter). You may at least be able to get the landlord to make repairs or do other things that have been promised.

## GUESTS, GUESTS WHO STAY

Tenants have the right to have guests in their homes for reasonable periods of time unless the rental agreement specifically prohibits company.

If your rental agreement specifies who or how many people can live in your property, as most do, and you let someone move in, you could be at risk. Because you are not complying with your rental agreement, your landlord could insist on new lease terms (maybe more rent), could require the new person to apply and be screened as a tenant, or could ask you to move out.

If you want to let someone stay with you more than 30 days or longer than your lease allows, it is best to get your landlord's written permission.

## LANDLORD RESPONSIBILITIES

Kansas law says the Landlord is required to:

- Keep the apartment, mobile home, or house where you live in compliance with state law and city or county building or housing codes affecting health and safety.
- Maintain the common areas of the building and the grounds outside; these are areas open to all tenants such as hallways, parking lots, and laundry rooms.
- Make sure you have an adequate supply of hot and cold running water.
- Supply a reliable amount of heat during the winter months. A normal standard is that it should be possible to keep the temperature at 65 degrees between October and May. (The landlord doesn't have to pay for the water, electricity, or gas but must provide the equipment and it must work.)
- Maintain all electrical, plumbing, sanitary, heating, ventilating, and air conditioning systems in good and safe working order.
- Maintain all appliances that are provided with the property. This would include such things as stoves, refrigerators, and air conditioners.
- Make sure trash removal is available.
- Allow tenants to contract for service with telephone and cable companies that are authorized to do business in the area.

### HOUSING CODES

Many cities and towns in Kansas have housing codes. As opposed to a building code, which is for new construction, a "housing code" or "property maintenance code" is for buildings that already exist. They set basic standards for how buildings and property ought to be maintained. Housing codes are usually more specific than the general requirements outlined in the Landlord Tenant Act and, of course, they apply only to housing within the particular city or county that passed the code.

To give you an idea of what codes often require, a box containing some of the requirements from the Property Maintenance Code for the City of Topeka can be found later in this section.

Unless a code specifically says the tenant or the "occupant" is responsible for particular things, or unless you, the tenant, caused the problem, landlords are responsible to make sure their rental units comply with laws and codes. If you like to do home repairs and volunteer to do things for your landlord, in many cases, that's fine; however, some codes require that certain repairs be done by a person "certified" in a specific area, for instance, a licensed plumber or electrician. It is strictly ILLEGAL for your landlord to refuse to make required repairs or to force you to do them. If this happens, you can terminate your lease and/or the law allows you to sue for actual damages. (See 14/30-Day Notice of Landlord Noncompliance section in this chapter.)

Right now, neither state law nor local housing codes require insulation, storm windows, or other specific weatherization on rental property anywhere in the state of Kansas. There are also no requirements for efficiency of heating and cooling appliances or rules limiting the cost of tenants' utility expenses. But most local codes have some language requiring that property be "reasonably weather-tight, water-tight, and damp-proof" and have minimum heating temperature standards.

In some cities and towns, although a code exists, there is no steady effort to enforce it. You should be able to get a copy of your local housing code from your housing inspector or city or county clerk or check their websites.

## 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. If you live in a single-family house and there were no pests when you 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.

If you ever need to call and request an inspection, make an appointment so you can be there to let the inspector in and go through the house with him or her. You should make sure you point out all things you think are code violations. Ask that the code office send a copy of the inspector's report and the letter to the landlord to you also. You can call and visit your housing inspector regularly until action has been taken to your satisfaction.

Most codes provide some sort of penalty (fines… or even jail) to property owners who do not comply after a certain period of time. Check your code to see what the time limits and penalties are and insist that your city or town take action if your place is not getting fixed.

**FIRE CODES**

The Kansas Fire Safety and Prevention Act of 1998 (also the Smoke Detector Act of 1998) requires all dwelling units to have smoke detectors, does not require fire extinguishers, and generally requires two safe exists to ground level from any floor.

Specifically, the Act requires every single-family residence to have at least one working smoke detector on each floor and apartment buildings must have working detectors at the top of each stairwell and on each floor in every dwelling unit.

In apartment buildings and multiple-family dwellings, the owner must supply and install smoke detectors in all dwelling units and common areas. The owner must test and maintain all smoke detectors, except inside rental units; the tenant is responsible to test and maintain all smoke detectors after taking possession of the dwelling unit.

Local governments may adopt their own fire codes and make them stricter, but not more permissive, than the state's. Check with your fire department to see if you have a local code. If not, you may direct questions to the State Fire Marshal in Topeka at (785) 368-4026.

## 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/leadpdfe.pdf or www.unleadedks.com. HCCI's Model Lease includes an approved disclosure form.

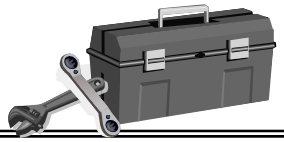
**References**: 40 CFR Part 745 and 24 CFR Part 35 published on March 6, 1996, in the Federal Register; Pre-Renovation Lead Information Rule, effective June 1, 1999.

## 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

## TENANT REMEDIES



Make it a habit to **REQUEST MAINTENANCE IN WRITING**. Not only is this good business in a legal sense, but it is also good business in a practical sense. You can say what needs to be said the way you want to say it. You don't have to be there when the landlord gets the news that something has gone wrong. And, written notes tend to keep turning up and reminding people of things, whereas mental notes are easily forgotten. On your copy, note how, when, and to whom the notice is delivered. Example: "Handed to Sue in the manager's office, 9:00 a.m. on May 1, 2006."

Depending on the landlord and your lease, phone calls can be OK for the first contact about a problem or in an emergency; but after that, calls should only be to say, "Did you get my note?" Some leases require maintenance requests be made in writing. Sometimes, as we know, phone messages do not get to the intended person. Finally, you want to be sure you can prove the landlord was notified about every problem so that if problems worsen or something is damaged or someone is hurt, the landlord can't say he or she didn't know.

### 14/30-DAY NOTICE OF LANDLORD NONCOMPLIANCE

If the landlord continually fails to meet maintenance or contract agreements, the Kansas Residential Landlord and Tenant Act gives you the right to eventually break your lease. To do this, you must give the landlord a written notice at least 30 days before a rent due date. In your notice, tell the landlord exactly what repairs or other actions are needed and that you will be terminating your rental agreement and moving out before the next rent date UNLESS the repairs or actions are adequately taken care of within 14 days after receipt of the notice.

If the problem is not fixed, or at least a "good faith effort" started, within the time you allow, then you can terminate your lease and move out at the end of the rent period. Assuming you were a good tenant (paid the rent, didn't tear up the place, etc.), the landlord should not pursue you for future rent and should return your security deposit. If you give the notice and decide not to move, make your plans well known to the landlord in writing. (See Terminating the Tenancy and Security Deposit Returns in this chapter.)

Kansas law also provides the tenant the right to collect "damages" from a landlord if the landlord does not comply with the laws. This means you have the right to ask your landlord to compensate you for your actual losses (repair bills you had to pay, costs to stay somewhere else or eat out when all or part of your place was unusable, damage to your furniture or other belongings due to the landlord's negligence, medical bills that you allege are the fault of the landlord, utility bills you had to pay which were high because the landlord failed to repair something that was the landlord's responsibility, and so on). This applies whether you decide to break your lease or to stay.

If you and the landlord cannot settle on a dollar amount and payment plan which satisfies you, you can go to Small Claims Court or have an attorney take your case to a higher court and get a judgment there.

Kansas law does not allow the tenant to hold back ("withhold" or "escrow") rent or to take expenses out of the rent ("repair and deduct"). Though neither action is specifically illegal, they are not specifically legal either, and the landlord does have the right to give an eviction notice in any case where the rent is not paid in full and on time. Both of these actions, though they sometimes work, are risky. Neither is advisable without the support of an attorney. If you try either, you should be prepared to pay the rent in full if you get an eviction notice or have your attorney take over. You should also have documentation showing your attempts to get the landlord to make the repairs or provide the maintenance requested.

The cities of Atchison and Manhattan have ordinances that allow for escrow of rent in certain

situations. If you rent in either of these cities and think your situation might fit the escrow ordinance, contact the city clerk's office to find out the process and follow it exactly. (See Escrow Ordinances information in Legal Reference section.)

## WARRANTY OF HABITABILITY

**Steele v. Latimer**, a 1974 Kansas Supreme Court case, established the principle of an **"implied warranty of habitability."** This decision says that when a landlord rents out a place, the landlord is giving an implied guarantee that the rental unit is basically decent, safe, and sound. So, if your landlord won't repair your home and the problem is a violation of the local housing code, you can sue for damages and back rent, as long as you continue to pay rent. (Interpretations of this case say it applies to all problems "materially affecting" health and safety, whether or not there is a housing code.)

In Steele v. Latimer, a Wichita woman and her five children ended up getting $800 back from a landlord who had negligently refused to make repairs. Since then, citing this case and the Kansas Landlord Tenant Act, 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.

## DAMAGE OR DESTRUCTION BY FIRE OR CASUALTY

If a fire, a flood, or some other disaster strikes so that you can't live in all or part of your place, Kansas law provides some options.

You can give a written 5-Day Notice to Terminate and move out immediately if your place can't be lived in at all. The law says any prepaid rent after the move-out date should be refunded to you. Your security deposit is to be returned as in a normal move out.

If part of your place is livable and part is not, the law says that the rent is to be reduced proportionally until the whole dwelling is repaired and usable again.

Assuming the landlord has insurance, it should cover most of the repair expenses. The tenant can be charged with at least an insurance deductible amount if the fire or casualty was the tenant's fault.

The landlord's insurance may provide temporary housing expenses for you. If you cannot stay in your rental unit, ***ask*** the landlord to check what his insurance will pay for. If you are in an apartment complex, perhaps you can move temporarily or permanently to another unit.

## LANDLORD ENTRY

Tenants occasionally face another problem during tenancy – landlord entry. Tenants wonder, "Can the landlord enter my home whenever he wants?" The answer is "NO," not legally. Only in cases of hazard involving the possible loss of life or severe property damage may the landlord enter your home without permission.

Kansas law allows the landlord, after giving "reasonable notice" and arranging a "reasonable time," to enter your home for almost any reason – to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; or to show the place to possible purchasers, lenders, tenants, workmen, or contractors.

**"Reasonable notice"** is something you and your landlord have to decide together. If you don't mind if your landlord comes over without calling first, that's fine. But you can insist that your landlord let you know as much as 48 hours in advance. One to 24 hours is common. You should select your normal standard, preferably put it in writing, and be consistent.

**"Reasonable time"** is also something you and your landlord need to work out. Because you are paying rent on your place, you have a right to privacy and to decide who comes in and out. If it

is important to you, you have the right, within limits, to insist that you be at home when your landlord comes over. So, if you work days, you have the right to ask that your landlord come over after you get home or on the weekend. If you work 3 to 11, you have the right to ask your landlord to come before 2:30. And so on. If it is impossible for you to arrange a time when you can be at home and your landlord can reasonably arrange to come over, then you may need to arrange to leave your key with a friend or relative or let the landlord make repairs when you are gone.

Remember, if your time schedule forces your landlord to pay more for repairs, for instance having to pay time-and-a-half or double-time to a plumber who could have come during normal working hours, that cost could reasonably be passed on to you.

If your landlord is selling your place, real estate people are subject to the same rules and regulations about entering your property as your landlord.

If you are having problems with landlord entry, write a letter to your landlord and explain exactly when people can and cannot come over to your house and how much advance notice you must have. Give phone numbers for reaching you.

You should not refuse “reasonable entry,” neither should your landlord use the right of entry to harass you.

If a tenant continues to have trouble with illegal entry by the landlord, the tenant has the right to get a court order to stop the landlord or to give notice and move. The tenant also has the right to recover actual money losses.

Likewise, if a tenant continues to illegally refuse entry to a landlord, the landlord can get a court order to enter or can evict the tenant, recovering actual money losses from the tenant.

## TENANT RESPONSIBILITIES

A tenancy is a two-way street, and you as a tenant should do all you can to meet your responsibilities. Just because you know your rights, you should not unnecessarily agitate your landlord.

Always try to work out your problems first. It’s never wise to start off as adversaries. Outside people (courts, inspectors) should only be used when you can’t work things out with a stubborn landlord.

**You are responsible to:**

**Pay your rent on time and in full.** This should seem obvious, but it is more important than you might realize. When tenants are not paid up on their rent, they lose a number of rights otherwise guaranteed by law. In addition, you take the chance of receiving an eviction notice for non-payment of rent. Landlords also claim that time spent trying to collect rent is time they can’t spend on repairs, maintenance, etc.

**Keep the parts of the building you rent (including appliances) as clean as the building’s condition allows.** Your landlord may not do anything to improve your conditions if you don’t try yourself.

**Be a good neighbor.** Try to get along with other tenants. You are, in addition to your own actions, responsible for those of your family, your friends, your friends’ friends – any person or animal at your home with your express or implied consent. Any damage or trouble caused by these other parties can be held against you. Remember, everyone has a right to the peaceful enjoyment of the property.

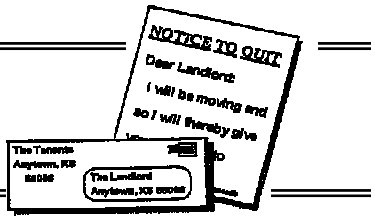
**Check with your landlord before you make any modifications or improvements,** such as shelves or carpet. Unless you make some other

arrangement, anything attached to the property stays with the property by law or the landlord can require that the place be returned to its original condition. The time to ask is before the carpet you bought is tacked to the floor, not after. Again, be sure it's in writing.

**Check before having a roommate move in or before getting a pet** since both would be changes in your original agreement.

**Notify your landlord if you plan to be away from your house or apartment for more than a few days.** Many leases require this and it's a good idea for security reasons.

## TERMINATING THE TENANCY




The state of Kansas has established specific procedures for terminating a tenancy and does not recognize any others. **GIVE OR GET PROPER WRITTEN NOTICE EVEN IF YOU HAVE NOTHING ELSE IN WRITING WITH THE LANDLORD!**

You are required to pay for all the time you live in the home, whether you are evicted or not. Tenants are not protected from eviction because of illness or pregnancy in the household.

**Leases** vary. If you have a lease, read it carefully for notice and renewal requirements. Leases can require less than the normal 30 days notice (some do!), they can also require more. As long as the notice requirement seems basically fair and equitable (not "unconscionable"), a court would likely uphold it.

**Delivery of Notices** Kansas law generally recognizes delivery of notices when they are:

1) hand delivered to the person or to someone over 12 years of age who lives at the person's address,
2) posted in a conspicuous place at the person's address, or
3) mailed to the person's address.

It is always good to have a witness or other proof (verified photo, certificate of mailing, etc.) of whatever method you choose.

## NOTICE TO THE LANDLORD

**30 days notice in writing in advance of a rent due date** is required in all month-to-month tenancies. Your planned move-out date should be specified. You do not have to state a reason.

**30 days written notice** from any date must be given when a written lease with a term longer than month-to-month requires 30 days notice but does not specify that notice must be from rent date to rent date.

**Week-to-week** tenancies require at least 7 days' written notice in advance of a move-out date specified in the notice. If your rent period is two weeks-to-two weeks, 2 weeks written notice is required.

**Military personnel with month-to-month** written or verbal agreements are required to give only 15 days written notice if termination is necessary because of orders to relocate (per Kansas law).

**Military personnel with a long term lease** who receive relocation or activation orders, under the Servicemembers' Civil Relief Act (a federal law), are responsible to give written notice, pay rent for the month in which written notice is given, and pay one additional month's rent. Dependents living in the residence with the servicemember are also covered by the Act.

**14/30-Day Notice of Landlord Noncompliance** is given when there is a problem the landlord must resolve to ensure the tenant will stay. These notices must be for at least 30 days and end on a rent due date (See Tenant Remedies section in this chapter.)

## NEW TERMS AT TERMINATION

If you give notice of termination and the landlord asks you to sign paperwork that contains additional terms not included in the rental agreement, Kansas law requires that the paperwork include the following statement in 10-point bold face type:

**'YOUR SIGNATURE ON THIS DOCUMENT MAY BIND YOU TO ADDITIONAL TERMS NOT IN YOUR ORIGINAL LEASE AGREEMENT. IF YOUR LEASE REQUIRES YOU TO GIVE WRITTEN NOTICE OF YOUR INTENT TO VACATE, YOU HAVE THE RIGHT TO DECLINE TO SIGN THIS DOCUMENT AND TO PROVIDE WRITTEN NOTICE IN ANOTHER FORM.'**

If the above statement does not appear in the landlord's paperwork, a tenant's signature will not bind the tenant to any additional terms that are not contained in the original rental agreement.

## NOTICE FROM THE LANDLORD

**30-day notices, week-to-week notices, and lease notice requirements** from landlord to tenant are the same as they are from tenant to landlord. (See Notice to the Landlord section earlier in this chapter.)

**14/30-Day Notice of Tenant Noncompliance** can be given to the tenant as long as the landlord clearly states the specific reason or reasons why a tenant might be evicted and allows 14 days to fix the problem/s (if the problem/s can be fixed) to prevent the eviction. Unlike the similar notice from tenant to landlord, Kansas law does not tie the Notice of Tenant Noncompliance to rent-paying dates; they can be for any 30 day period.

**3-Day Notice for Nonpayment of Rent** If you are behind in your rent, you may be served with a **3-Day (72-hour) Notice**. This notice must state in writing that you have 3 days, 5 days if the notice was mailed, to either pay your rent (it should say how much rent is due) or move out. If you do neither, your landlord can bring suit against you in court both for the money owed and to order you to move out. Check your lease, if you have one, to see if it requires more notice than this in such situations. The landlord is free to give more time, but 3 days/72 hours is the least amount of time Kansas law allows.

The landlord is legally required to accept the money if you offer the **full amount within the notice period**. The landlord does not have to accept partial payments or payments offered after the notice period has ended. Get a dated receipt for whatever you pay. If you have all the money in time but you think the landlord may try to refuse it, take a witness with you so, if necessary, that person can testify that you tried to pay.

If you are going to try to work out a payment plan with your landlord, think through your budget carefully and honestly and don't offer more than you reasonably can expect to pay. If the landlord agrees to a payment plan and agrees to drop or extend the time on an eviction action, it would be best to get the agreement in writing for the protection of both of you. Once again, it might be a good idea for you to have a witness along in case promises are made but you can't get them in writing.

**EXCEPTIONS** to the rules include situations where the landlord never rented to the person in the first place, where life-threatening circumstances require that a property be vacated immediately, and where a lease simply ends.

**REASONS** In Kansas, a landlord is generally not required to give a reason for asking a tenant to move out. However, if your lease says the landlord has to give a reason, you can insist. Government subsidized housing requires "good cause" (a reason or reasons) to be stated in writing for an eviction. Also, retaliatory evictions are illegal whether a reason is stated or not. (See Retaliatory Evictions section in this chapter.)

## ILLEGAL ACTIVITY

Due to increased concerns about **crime-free and drug-free housing**, many rental

agreements now contain provisions or addendums that make any criminal activity, including drug-related criminal activity, a lease violation (see 14/30-Day Notice of Tenant Noncompliance in this chapter) and grounds for termination of the tenancy. These generally refer to the tenant, any member of the tenant's household, guests, or other persons the tenant has allowed around the property.

These lease provisions usually apply whether the activity occurs on or near the property. They sometimes also apply when someone who lives in or frequents the property gets caught committing a crime or drug activity elsewhere. The addendums apply to arrests as well as convictions. These evictions have been upheld by courts.

## EARLY TERMINATION

Peoples' circumstances do change from time to time. Suddenly and without warning, a better job may open up for you out of town or you may find that your mother has fallen and is no longer able to take care of herself. Maybe your landlord sold his house sooner than he expected and now he needs to move into yours. In situations like this, you and your landlord should try to work something out.

Possible compromises if you are going to move out early might be that you would run an ad and do everything you could to re-rent the place so that your leaving would cost the landlord as little time as possible and no money. Or, if the landlord wants you out early, he or she could give you the month's rent free or pay your moving expenses. If you can work out a compromise that satisfies both of you, the law will respect your "good faith" agreement. If not, then the "letter of the law" will still bind both of you.

It is commonly accepted that a landlord cannot collect double rent. So, even if you couldn't work out a compromise and you left early, if the landlord gets the place re-rented, he or she must refund the rent you paid in advance for the time the new people are there.

Also, a landlord has a responsibility to lessen or "mitigate his damages" which means once a landlord receives notice that you are leaving, he or she must make reasonable efforts to re-rent the property. So, as soon as you know you are going to leave a place, give the landlord a written notice immediately saying what day you are moving and keep a copy. That way, a landlord can't say he or she didn't know you were moving and can't just leave the place empty on purpose and try to collect rent from you.

You may want to keep track of who applies and what happens. If you find a good applicant, you could personally take him or her to meet the landlord. In apartment buildings, you want to know if the landlord is showing or making available your place along with the other available units. An applicant should be free to choose from all available units.

If the landlord is making reasonable efforts to re-rent at a fair rental value, you still owe rent until a new tenant is found, for another month or two, for several months, or possibly even until the end of your lease. Rent is owed as it comes due, not the full remainder of the lease in advance.

If the landlord fails to try to re-rent the dwelling, or the place is in really bad condition or overpriced, or the market is simply bad, it is not uncommon for a court to award a landlord only a month or two of rent even if there was a lease.

## ILLEGAL EVICTIONS

There is only one kind of "forcible" eviction which is legal. The landlord must give the tenant a proper eviction notice, take the case before a proper court, get a judgment against the tenant, and then, if the tenant still doesn't move, wait for the sheriff to evict the tenant. All other methods are illegal.

Illegal methods (also called "constructive evictions," "unlawful removal") include such self-help measures as locking the tenant out, taking the tenant's belongings and putting them in storage or throwing them away, and shutting off the electricity, gas, water, or other essential services. If

a landlord resorts to such measures, the tenant may recover possession or end the rental agreement. If you decide to move out, the landlord must return whatever amount of the security deposit you are entitled to collect. In either case, Kansas law provides that the tenant may also recover an amount equal to 1½ times the monthly rent or actual damages, whichever is greater. In a Kansas Supreme Court case, the tenants were awarded $1000 in "punitive" damages in a similar situation.

If the landlord illegally locks you out, you may get back into the rental unit if you can do so without damaging the property. You can call a locksmith to get back in. If you have to stay someplace else, eat out and/or have to replace personal items until you can get back in, keep track of all the expenses the landlord's action costs you. Personal safety should always be the primary consideration.

The Landlord-Tenant Act is civil law. However when a landlord acts to force you out without following the proper process, you can call the police, file a report, and file charges under criminal law. A landlord can be charged with Criminal Deprivation of Property if you have been barred from entering or Theft if your personal property has been removed.

## RETALIATORY EVICTIONS

No tenant should be afraid to demand that the house he or she rents be maintained in a livable condition. Many tenants, however, do hesitate to confront their landlords. They say, "Landlords know how to get rid of tenants who complain."

This is not right and both the state of Kansas and at least one city (Topeka) have laws to prevent this. Kansas law says it is unlawful for any landlord to force you to move out by raising your rent or decreasing your services (e.g., stop paying some of the utilities, stop doing some regular maintenance) after you have:

- complained to the landlord because needed repairs are not being made;
- asked a governmental agency to inspect and/or complained to a governmental agency who can force the landlord to make repairs; or
- become active in a tenant organization.

Interpretations of this law, as well as common law, say that landlords can't evict you for these reasons either.

Topeka's ordinance specifically says that landlords can't evict, raise rent, or cut services within six months after tenants do any of the three things listed above. The ordinance is enforced by the City Attorney's office and provides a "cooling off period" for tenants and landlords.

An important thing to remember is that, for the law to protect you, you need to be paid up in your rent, continue paying rent during the time of your complaints, and otherwise be a "good tenant" (keep the place clean, don't bother the neighbors, etc.). Also, if the house can't be repaired with you in it, you may have to move, at least temporarily.

Both state and city laws that provide protection from retaliation can be used as a defense by the tenant. In court, your landlord would be asked to justify his or her action. You would need to be prepared to prove that:

- you always paid the rent on time.
- if the landlord claims that you were sometimes late with the rent, the landlord accepted this late rent without comment (if true).
- you truly did ask a number of times for repairs; hopefully you will be able to show copies of the notes and letters you sent to your landlord.
- your complaints were valid and the problems were not caused by you.
- you have been a good tenant and the landlord has no good reason to evict you, raise your rent, or decrease services.

## ABANDONMENT

Under Kansas law, a rental unit may be considered abandoned if the tenant:

**(1)** is at least 10 days late with rent,
**(2)** appears to have removed a substantial portion of the tenant's belongings, and
**(3)** did not tell the landlord that he or she intended to stay.

## DISPOSAL OF PERSONAL PROPERTY

Where there has been an abandonment, or where the tenant has been removed as a result of an eviction action, or where a tenant has moved out but has left items of personal property at the rental unit, Kansas law says that the landlord may sell or dispose of the tenant's property if he or she does the following things:

**(1)** Holds the property for at least 30 days, giving the tenant the right to redeem if outstanding debts are settled.

**(2)** Puts an ad in the paper at least 15 days before the sale or other disposition of the property. No later than 7 days after the ad is published, the landlord must send a copy of the ad to the tenant at the tenant's last known address (an important reason for a tenant to file a change of address with the post office).

So, if your landlord is legally holding your personal property, you have a chance to claim the items by contacting the landlord before the 30 days are up and paying what you owe. This amount may include the cost of packing and storing your property, plus court costs, plus rent or other amounts you owed when you moved out.

**NOTE:** Though landlords can refuse to release possessions if the tenant cannot pay, some landlords prefer to let tenants have their property simply so they are gone and there is no further hassle with them. It's up to the landlord; but if you left things you really want, you should at least talk with him or her.

## IF YOU DON'T MOVE OUT

If you aren't out at the end of a notice, you become a "holdover tenant" and are probably in trouble if you didn't work out something with your landlord. Under Kansas law, the landlord cannot personally put you out on the streets or cut off your utilities, but there are some legal steps that can be taken which can be pretty bad for you.

First, your landlord has the right to collect rent from you for every day you are in the property as well as up to 1½ times a month's rent or 1½ times actual damages, whichever is higher, because you remained in the property when you were supposed to be out. This is especially bad when new tenants are waiting to move in. If they can't get in, they can sue your landlord for failure to deliver the unit as promised, then the landlord can sue you for their damages plus his or hers.

Second, you will probably end up going to court with the landlord trying to get both possession of the property and money from you.

## EVICTION – COURT

Your landlord begins the eviction process by serving a proper notice. (See Notice from the Landlord section earlier in this chapter.) If you do not comply with the notice, your landlord may start the court process to remove you from the rental property and to collect any money that is due.

You will be notified that your landlord has filed suit against you by receiving a summons from the court stating the charges against you and what day you and/or your attorney must appear. It is important that you or your attorney appear in court on that day. State law does not require you to be represented by an attorney; however, it is advisable. If neither of you appear and the hearing has not been postponed, you lose your case by default and a judgment is immediately made against you.

Where the landlord is suing you for nonpayment of rent, Kansas law says that you must bring up any counterclaims you have the first

time you go to court or you can never claim those damages later. **MAKE SURE YOU OR YOUR ATTORNEY FILES YOUR "ANSWER" IN WRITING, FOLLOWING THE INSTRUCTIONS PROVIDED WITH THE SUMMONS.** Otherwise, the judge may not be willing to listen to your defense or counterclaims. A well-presented and well-documented defense and appropriate counterclaims may enable you to win your case on some or all points.

Sometimes there is more to an eviction suit than simply determining who should be in possession of the property. For instance, if you feel the landlord is retaliating against you (see Retaliatory Evictions section earlier in this chapter), you should bring that up. That could cause the judge to throw out the eviction suit altogether. You may also want to present counterclaims for damages and back rent because of health hazards on the property, such as cockroaches, water damages, no heat, etc. (See Warranty of Habitability section earlier in this chapter.)

The first court date, docket call, is basically to see if the tenant is still in the place and if there is still a dispute. You will be asked if you agree, disagree, or plead no contest to the charges. If you disagree or propose counterclaims, a date will be set for trial. The trial date must be set within 8 days of your first court appearance.

If you work out an agreement with the landlord before or at your court date, be sure to get a written statement with the landlord's agreement to stop the eviction. The court will not stop an action unless the party that filed tells them to. To be safe, you should check with the court before the court date or appear on the court date with proof of your written agreement.

**EVICTION – GETTING OUT**

If you lose the case, or even if you win on some points but the judge says that the landlord can have possession of the place back, you will need to move. Judges may award "immediate possession" to the landlord, may give you a certain amount of time to be out, and can order the sheriff to assist the landlord if you don't move. The sheriff's department, by law, has up to 10 days to get you out, but it can happen sooner. If your situation ever gets that far, you really should try to move out yourself.

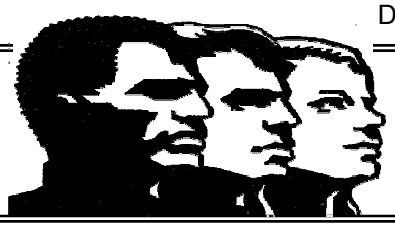
If you do not move out, what typically happens is the sheriff shows up and makes whoever is in the dwelling leave the property, bars them from coming back, and allows the landlord to change the locks – leaving your possessions in the rental unit. Personal property still in the rental after an eviction action is to be treated the same as when the tenant abandons the rental leaving property behind.

To get your things, you may have to pay the moving and storage expenses, probably the court costs, and maybe all of the money (if any) the judge decided you owed your landlord.

It may be asked, "Why bother going to court if you will probably lose anyway?" First, there is always the possibility you may win on some or all points. For instance, you might win a partial reduction in money owed for back rent. The judge could accept your "Warranty of Habitability" claim. You can defend yourself from false amounts being charged against you. Another, and perhaps more important, reason is that, if you need it, valuable time is won through the court process. If yours is a valid defense, you can come out ahead and use this time to search for another home.

If judgment for money is given to the landlord, he or she can collect by garnishing your bank accounts and/or wages. (See Collecting a Court Judgment section in Small Claims Court chapter.)

# DISCRIMINATION



Basically, all prospective and current tenants must be treated equally. Federal fair housing laws extend protection to persons in all of the United States. **Federal laws extend protection from discrimination on the basis of race, sex, religion, national origin, ancestry, color, familial status, and disability.**

**Familial status** refers to families with children under the age of 18 and women who are pregnant. Under fair housing law, landlords cannot refuse to rent to families with children. However, a landlord may limit household size to his or her standard limits and is protected by the occupancy limits in any local housing code. Buildings or complexes which meet certain guidelines for operating exclusively for senior citizens are the only ones which can exclude families.

**Disability** 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.) All new rental construction with 4 or more units must be “accessible” or “adaptable” for disabled persons.

Fair housing laws cover the specific decision to sell or rent to certain persons or classes of people, as well as issues such as charging higher rent or establishing different requirements, conditions, or services. They cover the individuals involved as well as situations involving families or guests. They also say that legally landlords cannot threaten you, intimidate you, or otherwise retaliate against you if you stand up for your rights.

Kansas state discrimination laws are in compliance with federal laws. Some local governments provide protection for additional groups such as marital status, age, and sexual orientation.

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 for fair housing complaints handled through administrative or federal court procedures.

If you think you have been discriminated against, you should definitely check out your rights and consider pursuit of a complaint either directly with your landlord or through the appropriate authority. If it’s too late to make the situation better for yourself, you may be able to make it better for the next person. The following details the various levels at which fair housing complaints may be filed, along with the powers and procedures for each.

## LOCAL GOVERNMENT

**GROUPS COVERED:** Race, sex, religion, national origin, ancestry, color, disability, and families with children, some local ordinances add marital status, sexual orientation, age, and welfare income.

**WHO INVESTIGATES:** Volunteer board members or paid staff.

**LIMIT TO FILE:** Varies. Generally 180 days.

**POWERS: (1)** Voluntary conciliation agreements.

**(2)** Public hearings before volunteer boards, legal counsel often available. Ability to order injunctions. Limits on awards will vary.

Enforcement assistance from and appeals to District Court should be applicable, but may vary based on specific local ordinance.

**HOW TO CONTACT:** 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, Dodge City, Independence, and Wichita, who travel the entire state.

**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.

**(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 and “pain and suffering” damages, no limit, fines up to $25,000.

Decisions are enforced by or appealed to Kansas District Court.

**HOW TO CONTACT:** Kansas Human Rights Commission has four offices in Kansas. Education specialists are available to answer questions. You can obtain a copy of the Kansas Act Against Discrimination upon request or at www.khrc.net along with an online complaint form. Complaints may be filed at any office. Contact information:

**Topeka Office:**
900 SW Jackson, Suite 568 South
Topeka, KS 66612
Phone: (785) 296-3206, Toll Free: (888) 793-6874
FAX (785) 296-0589

**Dodge City Office:**
100 Military Plaza, Suite 220
Dodge City, KS 67801
Phone: (620) 225-4804
FAX (620) 225-4986

**Independence Office:**
200 ARCO Place, Suite 311
Independence, KS 67301
Phone: (620) 331-7083
FAX (620) 331-7135

**Wichita Office:**
130 South Market, Suite 7050
Wichita, KS 67202
Phone: (316) 337-6270
FAX (316) 337-7376

## FEDERAL GOVERNMENT

**GROUPS COVERED:** Race, sex, religion, national origin, ancestry, color, disability, and families with children.

**WHO INVESTIGATES:** Paid Department of Housing and Urban Development (HUD) staff who are based in area or regional offices and travel as needed.

**COST:** None for investigation; might be some for witness fees or court costs, can be waived if complainant cannot afford.

**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.

**(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. Justice Department represents 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 CONTACT:** Call (800) 669-9777 for national information, or

Great Plains Regional HUD Office
Gateway Tower II
400 State Avenue, Room 200
Kansas City, Kansas 66101-2406
(913) 551-6958, Toll Free: (800) 743-5323
TTY (913) 551-6972

**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 CONTACT:** Check with local, state, and federal courts for names of attorneys who have been involved in discrimination cases; check with local and state bar association "lawyer referral" programs; check the internet; contact libraries or human relations boards for names of attorneys nationally who have been successful in fair housing lawsuits.

**THE RULE OF THUMB:** If you have a complaint check with local, state, and federal levels of government or private attorneys to see:

**(1)** whether your particular complaint is covered,

**(2)** how quickly they are required to act on and settle complaints,

**(3)** how close the administrative or court hearing would be to where you live, and

**(4)** what powers and authority they have to get money or other judgments.

Another wise move can be to file your complaint with all levels of government. Generally, government agencies will defer down to the most local agency that has authority in your area. However, by filing in a timely manner with everyone, if you are not satisfied with the investigation at one level, you can ask the next to assist you. Because all government levels have time limits that you must meet for filing, if you waited for one investigation to finish and were dissatisfied, it might be too late to file with the next.

## 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.

# 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 a security deposit from a landlord, a decision on who would pay a disputed repair bill, settling money disputes between roommates, or getting your personal property returned. 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 landlord represents himself or herself. No one can be represented by an attorney during a small claims hearing. Exception: The court will allow an attorney to represent himself or herself or a corporation. In such cases, the other party (you) may, but is not required to, have an attorney.

**(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)** Collection agencies cannot use the Small Claims Court to secure payments for their clients.

**(5)** No person or entity may file more than 20 small claims in any calendar year in any one county.

## HOW DO YOU FILE A SMALL CLAIMS SUIT?

A small claims suit should be filed in the county where the landlord 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 and the county you are filing in. The judge may waive this fee if you submit a Poverty Affidavit form showing that you cannot afford it. You must sign the form in front of the clerk, or, if you file by mail, you must have it notarized.

If your landlord is a corporation, list any name you think is legally involved. Often, this will include the name of the corporation (include owner and management company, whatever names you have been given), the name of the complex, and the name of the current manager or agent. For the address, list the one(s) in the county where you are filing.

If you want to find the person who will accept legal papers for a corporation, search at www.accesskansas.org/srv-corporations/compressed.do. Enter the name of the corporation. The Secretary of State's records will show a name and address for the Resident Agent. Service of papers on that person gets the corporation into your lawsuit.

The clerk will assign a date and time for your claim to be heard. The sheriff or some other person authorized by the court will serve a summons on the defendant to notify him or her of the court proceedings. Individual counties establish the process they will use for delivery of notice.

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 the defendant truly can't be found.

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 SOMEONE FILES AGAINST YOU?

You will receive a summons stating that the landlord or someone claims you owe an amount of money up to $4000 for back rent, damages, or whatever. You can defend yourself if you feel you do not owe the money or countersue if you feel that person owes you money. It costs nothing to countersue unless your claim is over $4000 and/or you choose to get an attorney and take it to a higher court.

## WHAT IF YOUR OPPONENT OFFERS TO SETTLE?

Generally, to "settle" means to make some sort of deal and drop the case from court.

It is advisable to settle only if you have been paid or your items returned in full. (A settlement may include any court costs and interest desired.) If you aren't totally satisfied, you may choose to go to court and get your hearing and official judgment on the entire claim. If a settlement is reached, be sure to get the agreement in writing, stating clearly what has been agreed to. The agreement should be dated, signed by both parties, and both parties should have a copy.

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. 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 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.

## WHAT HAPPENS IN COURT?

Be sure 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. 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 you, your witnesses, 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 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.

You might consider going and sitting in on Small Claims Court before your hearing date. Every Small Claims Court hearing is 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 ABOUT THE RULING?

The judge considers the arguments 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 A COURT JUDGMENT

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 receipts if you pay or get paid directly.

Your judgment is good almost forever as long as you keep checking in with the court and officially renewing it at least every 5 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 the court "aid" you in "execution" of the judgment. Most courts will provide the necessary form. There should be no cost to you.

The court will send the sheriff or other court-appointed person out with 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, fill out a garnishment request form with the court clerk, and then the court will contact the business and arrange the garnishment. 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."

The law permits garnishment of 25% of the disposable earnings from each paycheck, though a certain amount must be left in each check garnished. Welfare, social security, and disability checks can't be garnished. Garnishments continue until the judgment is paid off or the garnishment is released.

A checking or savings account can be garnished in one lump sum. When filing for this type of garnishment, you must enter 1½ 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 on to you.

## WHAT IF YOUR CLAIM DOES NOT FIT SMALL CLAIMS COURT?

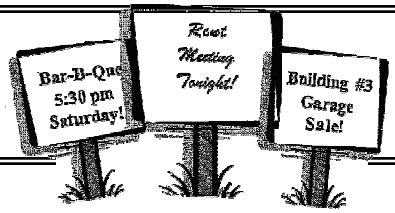
You or a judge may decide that your claim is too complicated for Small Claims Court. You then have three options.
**(1)** You can drop the claim. Your filing fee will not be returned.
**(2)** You can reduce your claim to fit the limits of Small Claims Court, thereby waiving the right to pursue what you left out. A claim cannot be split into two suits.
**(3)** You can go to the next higher court level. There you will probably need an attorney and the fee will be higher if the money requested is over $4000.

## 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 10 days. This will give you a trial "de novo" – completely new. 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.

If you have any questions on how to file a small claim, contact the appropriate court for your county. Small Claims Court is an excellent channel for those who have small claims and cannot afford an attorney. It was created for you to use, so utilize it!

# TENANT ORGANIZATIONS




A tenant association is a group of residents who band together for any of a number of reasons. It may be formed by the tenants of a single apartment house, the tenants of a single landlord in many houses, or on a neighborhood basis. Sometimes associations form on a social basis to organize adult or children's activities or just to visit. Sometimes they begin as organizations to make specific complaints against rent raises, evictions, or a landlord's refusal to make repairs. Sometimes they form for security.

Some tenants' associations last for short periods of time while certain people or certain issues are present. Others last over many years and can develop into strong positive bases for neighborhood activities or even community-wide activities such as housing code enforcement or neighborhood improvement.

There is no right way to organize and run a tenant organization because each situation is different. Still, tenant groups should keep a number of things in mind when planning and running an organization.

**Information:** Information on community resources, landlords, local issues, and politicians means strength for a tenant organization. Information can be used to educate your members and the public. It is essential in decision-making on issues and planning events. It can also aid in obtaining public support and providing better defense in legal situations.

**Recruiting:** Try and get people who are known by a lot of tenants to help get people out to the meetings. One-on-one personal or telephone invitations are the best. Offer people rides. Organize first on small problems which have solutions or limited activities so that your group has early successes.

**Social/Security:** 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, social activities and interactions among tenants can make for a more secure complex and better living arrangement for everyone.

**Meetings:** People come to meetings for a variety of reasons – issues, fun, social. Potluck dinners or other ideas can increase attendance. Set meeting times carefully to avoid conflicts with work, social events, school events, popular TV shows, etc. Meeting places should be close and easy to get to. Sitting in a circle for informal meetings allows everyone to see each other. A sign-up list allows individual tenants to list their problems and/or interests and also serves as a future reference and volunteer list.

The point of the meeting is to get something done, build interest, and build commitment; people should want to come back. Agendas should be prepared in writing and followed. Avoid "What do you want to do?" statements, but have suggestions for how to proceed on problems or activities. Encourage participation by many. Share all information so that people feel like they know what's going on. Open discussion of issues that are not central to the work that needs to be done should have a limited time allotted and should come at the end of the meeting.

Everyone should leave the meeting with something to do. Form working committees for future activities. This reinforces commitment and will give members an opportunity to brag at the next meeting (if they have done what they said they would) or feel group pressure (if they have not).

**Roleplaying:** Take the part of each of the characters in a situation, either in your head or with the group. It can be a lot of fun, and, taken seriously, very instructive. Whether you are just trying to get more people in your building or

neighborhood out to events that you have planned or whether you are trying to plan arguments, tactics, and overall strategy in a major issue, understanding the point of view from the other side can be helpful.

**Tactics:** Tenant group tactics can include letters, negotiation, events in public places, meetings, and, in extreme cases, such methods as picketing or rent strikes. All activities should be carefully and sensitively selected, timed, and directed to meet the specific needs, goals, and objectives established by the tenants' association.

**Legal Help:** Lawyers are a necessary aid to any tenant group that is pursuing tenants' rights issues. They can buy time, give advice, and even win key cases. They may also serve as advocates in seeking changes in the law in legislatures and city councils. However, the lawyer's role should be no more than that of a technical advisor who gives members legal information about what might happen to them if they try certain specific tactics. It is imperative that the tenants decide whether their action in a controversy will be moderate or militant.

**Publicity:** Leaflets, posters, and newsletters are basic methods of keeping tenants informed about the group's activities and accomplishments. Telephone "trees" are also very effective.

TV, radio, and newspaper coverage will also be helpful, but the media cannot substitute for the basic methods listed above.

**Community Support:** Every community group should be aware of the benefit which comes from exchanging advice, support, and resources with other groups. However, do not try to pattern your tactics or activities to be exactly like others. No two organizations are the same; you must look inward for your own direction.

## LEGAL REFERENCES

The term "K.S.A." refers to the **Kansas Statutes Annotated**. In book form, these Kansas laws are available at most libraries and often can be found at business and government offices. They are also available at www.kslegislature.org. Do a statute search using the numbers listed here. Copies of the Kansas Residential Landlord and Tenant Act (K.S.A. 58-2540 through 58-2573), Mobile Home Parks Residential Landlord and Tenant Act (K.S.A. 58-25,100 through 58-25,126) and other items noted below can be ordered from Housing and Credit Counseling, Inc. Listed by order of appearance in this handbook:

**Definitions** – K.S.A. 58-2543, 58-25,103

**Before You Rent** – **Fraud on Applications**, Landlord remedies, K.S.A. 36-206 and 36-207; **Kansas Fair Credit Reporting Act**, 50-701 through 50-722; **Fair Credit Reporting Act**, 15 U.S.C. § 1681; **Possession**, 58-2552, 58-2560; **Metering**, 58-25,127.

**Security Deposits** – K.S.A. 58-2543, 58-2550, 58-2554, 58-2562, 58-2563; 1979 Kansas Supreme Court case Clark v. Walker, Forfeiture provisions; 1982 Kansas Court of Appeals case Buettner v. Unruh, When move-in inventory was not done; 2001 Kansas Court of Appeals case Wurtz v. Cedar Ridge, Landlord can't keep security deposit as liquidated damages.

**Leases/Rental Agreements** – K.S.A. 58-2543 through 58-2547, 58-2549, 58-2551, 58-2556, 58-2558, 58-2565; **Subleasing** 58-2511, 58-2512, 58-2515; **Disclosure of Ownership**, 58-2551, 58-2554; Kansas Contract Law (not detailed here) also applies; 1975 Kansas Supreme Court case Chelsea Plaza Homes, Inc. v. Moore, Kansas Residential Landlord and Tenant Act applies instead of Kansas Consumer Protection Act in Landlord/Tenant issues; Model Leases may be ordered from Housing and Credit Counseling, Inc.

**Rules and Regulations** – K.S.A. 58-2556

**Move-In Inventory** – K.S.A. 58-2548; 1982 Kansas Court of Appeals case Buettner v. Unruh, When move-in inventory was not done; Move-in Inspection Forms can be obtained from Housing and Credit Counseling, Inc.

*(Legal References continued on following page)*

**Rent and Late Fees** – K.S.A. 58-2543, 58-2545, 58-2564, 58-2566, 58-2572

**Landlord Responsibilities** – K.S.A. 58-2549, 58-2552, 58-2553, 58-2559; Maintenance Request Form can be ordered from Housing and Credit Counseling, Inc.

**Housing Codes** – Check at your City Hall. Ask for Housing Code or, if that doesn't work, try for something with "Property" or "Maintenance" or "Occupancy" in the title

**Fire Codes** – Check with your Fire Department or City Hall for local codes. Call the Kansas Fire Marshal at (785) 368-4026 or visit www.state.ks.us./firemarshal/stats and regs for a lengthy list of fire protection statutes and regulations; **Kansas Fire Prevention Code**, K.S.A. 31-134 through 31-171

**Tenant Remedies** – K.S.A. 58-2559, 58-2570; 1974 Kansas Supreme Court case Steele v. Latimer, Implied Warranty of Habitability

**Escrow Ordinances** – City of Atchison Housing Code, Article II, Sec. 34-19 and City of Manhattan Housing Code, Article VIII, Sec. 8-178 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.

**Damage or Destruction by Fire or Casualty** – K.S.A. 58-2562

**Landlord Entry** – K.S.A. 58-2557, 58-2565, 58-2571

**Tenant Responsibilities** – K.S.A. 58-2555, 58-2558, 58-2564, 58-2570

**Notice to Terminate from the Tenant –14/30-Day Notice of Landlord Noncompliance,** K.S.A. 58-2559; **Failure to Deliver**, 58-2560; **Damage or Destruction by Fire or Casualty**, 58-2562; **Unlawful Removal**, 58-2563; **30-Day Notice**, 58-2570; **Military Personnel 15-Day Notice**, 58-2570; **Servicemembers' Civil Relief Act,** 50 U.S.C. App. §§ 501-596; **Delivery of Notice,** 58-2564; **New Terms at Termination,** 58-2570; Sample Notices are available from Housing and Credit Counseling, Inc.

**Notice to Terminate from the Landlord** – K.S.A. 58-2564 through 58-2572; **Court Jurisdiction**, 58-2542; **Tenant's Counterclaim**, 58-2561; **Housing as a Condition of Employment**, 58-2504; **Notice to Terminate Not Required**, 58-2509; **Liens**, 58-2565, 58-2567; **Lock-Outs**, 58-2563, 58-2567, 58-2569; **14/30-Day Notice of Tenant Noncompliance**, 58-2564**; 3-Day Notice for Nonpayment of Rent,** 58-2564**; 30-Day Notice,** 58-2570; **Abandonment,** 58-2565; **Illegal Evictions/Unlawful Removal**, 58-2563, 58-2569, 58-2572; **Retaliatory Acts Prohibited**, 58-2572, City of Topeka Code 82-272; **Service of Notices**, 58-2510, 58-2550, 58-2554, 58-2562, 58-2563, 61-2907, 61-3003 through 61-3006, 61-3803; **Court process (Forcible Detainer)**, 61-3801 through 61-3808; **Squatters**, 58-2509, 58-2511; **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, Wrongful removal, tenant's right to collect damages; 3-Day, 30-Day, and 14/30-Day Notices can be ordered from Housing and Credit Counseling, Inc.

**Abandonment, Disposal of tenant's personal property** – K.S.A. 58-2565; **Criminal Deprivation of Property**, 21-3705; **Theft,** 21-3701; Kansas Appeals Court cases 1986 Davis v. Odell, Landlord's right to dispose of tenant's personal property and 2003 Statewide Agencies, Inc. v. Diggs, Landlords right to dispose of personal property acquired through eviction action

**Holdover Tenants** – K.S.A. 58-2552, 58-2560, 58-2570

**Discrimination** – Kansas Act Against Discrimination, K.S.A. 44-1001 through 44-1044; local ordinances; federal **Civil Rights Act,** 42 U.S.C. 2000; federal **Fair Housing Act and Fair Housing Amendments Act**, 42 U.S.C. 3601; **Americans With Disabilities Act**, 42 U.S.C. 12101

**Small Claims Court** – Kansas Small Claims Procedure Act, K.S.A. 61-2701 through 61-2714

**Collecting a Court Judgment – Aid in Execution**, K.S.A. 61-3604 through 61-3611; **Garnishment**, K.S.A. 60-729 through 60-744

**Tenant Organizations** – K.S.A. 58-2572; Tenants Right to Organize, 24 CFR (Code of Federal Regulations) Part 245; National Alliance of HUD Tenants link for tenant organization, www.saveourhomes.org; National Housing Law Project, www.nhlp.org

This handbook was produced in accordance with the Kansas Residential Landlord and Tenant Act (KRLTA) which provides basic terms and conditions that apply to most residential rental agreements. The legal rights, obligations, and remedies of landlords and tenants are determined by the Residential Landlord and Tenant Act and court decisions interpreting the Act.

## Kansas Residential Landlord and Tenant Act

Statutes are listed as they appear in the law:

58-2540 Title
58-2541 Situations not subject to the Act
58-2542 Court jurisdiction
58-2543 Definitions
58-2544 Unconscionable agreements
58-2545 Terms in rental agreements, presumptions if no written agreement
58-2546 Delivered agreement not signed may be enforceable
58-2547 Prohibited terms in agreements
58-2548 Inventory of rental unit
58-2549 Landlord's obligations pursuant to receipt of rent
58-2550 Security deposits
58-2551 Landlord's disclosures
58-2552 Landlord's delivery of possession of rental unit to tenant
58-2553 Landlord's duties
58-2554 Sale of rental unit by landlord
58-2555 Tenant's duties
58-2556 Landlord's rules and regulations
58-2557 Limits on landlord's right to enter rental unit
58-2558 Tenant's absence
58-2559 Landlord's failure to fulfill duties, notice, termination
58-2560 Landlord's failure to deliver rental unit, tenant's remedies
58-2561 Landlord's claim for unpaid rent, tenant's claim waived if not filed as counterclaim
58-2562 Rental unit damaged by fire or casualty
58-2563 Landlord illegally excludes tenant from rental unit, remedies
58-2564 Tenant's failure to fulfill duties, notice, termination
58-2565 Tenant's long absence, abandonment
58-2566 Landlord's acceptance of late rent
58-2567 Lien on tenant's personal property unenforceable
58-2568 Landlord's remedies on tenant's termination
58-2569 No self help by landlord permitted for recovery of premises
58-2570 Termination of tenancy
58-2571 Remedies for landlord's unlawful entry of premises and tenant's denial of lawful access
58-2572 Landlord's retaliatory acts prohibited, remedies
58-2573 Act not applicable

The **Kansas Mobile Home Parks Residential Landlord and Tenant Act**, Kansas Statutes Annotated 58-25,100 through 58-25,126, applies to mobile home tenancies when the tenant owns the mobile home and rents the lot.

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# Know Your Rights

## Fair Housing Facts

**Race**

**Color**

**Religion**

**Sex**

**National Origin**

- **STEERING**

You have the right to choose where you live. Any real estate salesperson, broker or leasing agent who discourages you from seeing or being interested in certain properties, or certain areas of town could be considered steering.

For example: If a property agent indicates, "This isn't your kind of neighborhood"…"You wouldn't feel comfortable living here"... "None of your kind of people live in this area"..."It will cost too much to make this unit accessible"..."This complex does not permit children"...the agent is violating laws that prohibit steering.

- **RENTAL DISCRIMINATION**

The terms of rental agreements must apply to all renters. The law prohibits the changing of such terms to deny or discourage your access to rental properties.

For example: If you feel that your lease agreement is different than other persons in a similar situation, the property agent or owner may be violating Fair Housing Laws.

The following types of situations may also be in violation of the law: 1) Raising the price of the property you're interested in for the purpose of keeping you out; 2) Requiring a higher down payment or security deposit from you but not from others on an equal basis.

- **FALSE DENIALS OF AVAILABILITY**

Federal, state and local laws prohibit real estate salespersons, brokers and property agents from telling you the property you are interested in is unavailable...when it is in fact available for rent or purchase.

- **ADVERTISING DISCRIMINATION**

Ads or commercials for houses or apartments cannot, by law, show any preference for renters or buyers based on race, color, religion, sex, disability, national origin, ancestry or families with children.

- **COMPLAINTS CAN BE FILED WITH:**

Local "Human Relations", "Human Resources" or "Civil Rights" board or staff. Check with City Hall. Statewide, in Kansas, contact

**The Kansas Human Rights Commission**
**1-888-793-6874**

**U.S. Department of Housing and Urban Development**
**1-800-743-5323**

This poster was prepared by Housing and Credit Counseling, Inc. of Topeka and developed under a grant from the Kansas Housing Resources Corporation. To obtain copies, please contact HCCI at 785-234-0217 or 800-383-0217 or email hcci@hcci-ks.org.

**Ancestry**

**Disability**

**Families with Children**
**(*Except complexes which are designated***

**Help "Stop" Discrimination.**

**It's The Law!**

# ¡ENTERESE Y CONOZCA SUS DERECHOS!

***Raza***

***Color***

***Religión***

***Sexo***

***País de Origen***

- **DISCRIMINACIÓN CUANDO LE ESTÉN OFRECIENDO VIVIENDAS PARA LA COMPRA**

Usted tiene el derecho de escoger el sitio donde quiere vivir. Cualquier corredor de bienes raíces (o agencia de alquiler o agente vendedor de una inmobiliaria o arrendador de viviendas) que le insinúa o trata de disuadirlo de que vea ciertos tipos de viviendas o ciertas zonas de la ciudad puede estar quebrantando la ley.

Por ejemplo: Si un agente vendedor de una inmobiliaria o arrendador le hace comentarios como… "este no es el tipo de vecindario para usted"… "Usted no se sentiría bien viviendo en este vecindario"… "Costaría mucho dinero hacer accesible esta unidad para usted"… "En este complejo de edificios no se permiten niños"...ese agente o arrendador está violando la ley que prohibe la discrimación cuando se ofrecen viviendas para alquilar o comprar.

- **DISCRIMINACIÓN EN EL ALQUILER O ARRENDAMIENTO DE VIVIENDAS**

Los términos de los contratos de alquiler o renta deben ser iguales para todos los inquilinos o arrendatarios. La ley prohibe cambiar los términos de un contrato para negarle a un inquilino o arrendatario el acceso a una determinada propiedad que se ofrece en venta o en alquiler.

Por ejemplo: Si usted cree que su contrato de arrendamiento es diferente al de los otros inquilinos o arrendatarios que están en una situación similar a la suya, el arrendador o agente vendedor puede estar violando de ley de igualdad en la adquisición o alquiler de vivienda.

Los siguientes tipos de situaciones también pueden estar en violación de la ley: 1) Aumentarle el precio a una vivienda para evitar que usted la compre; 2) Solicitarle una cuota inicial más alta que a los demaś, o solicitarle un depósito que no se le solicita a los otros compradores o arrendatarios que están en una situación similar a la suya.

- **NEGACIÓN DE LA DISPONIBILIDAD DE UN INMUEBLE**

Las leyes federales, estatales y locales prohiben a los corredores de bienes raíces o agentes vendedores de una inmobiliaria o arrendadores de viviendas decirle a una persona que una propiedad no está disponible cuando en realidad si lo está.

- **DISCRIMINACIÓN EN LA PUBLICIDAD**

Los avisos publicitarios o comerciales para viviendas o apartamentos no pueden mostrar preferencia por un tipo específico de arrendatario o comprador en base a raza, color, religión, sexo, incapacidad, país de origen o familias con niños.

- **LAS QUEJAS Y RECLAMOS SE DEBEN PRESENTAR A LOS COMITÉS DE:**

"Human Relations", "Human Resources", o "Civil Rights" de su localidad. También puede ir al "City Hall" de su ciudad. Para presentar un reclamo o queja desde cualquier parte del estado de Kansas póngase en contacto con:

**The Kansas Human Rights Commission**
**1-888-793-6874**

**U.S. Department of Housing and Urban Development**
**1-800-743-5323**

La siguiente traducción fue hecha por Edmée Fernández, Profesora Asistente de Español de Pittsburg State University. El documento original es un cartel preparado por "Housing and Credit Counseling, Inc." de Topeka y financiado por el "Kansas Housing Resources Corporation." Para obtener más copias, por favor póngase en contacto con HCCI al teléfono 785-234-0217 o al 1-800-383-0217 o por correo electrónico hcci@hcci-ks.org.

***Incapacidad***

***Ascendencia***

***Familias con Niños***

***(Excepción: Complejos de apartamentos destinados a***

**¡AYUDENOS A COMBATIR LA DISCRIMINACIÓN.**

**¡LO ORDENO LA LEY!**

# LEASE

**WHO** Tenant/s (List all)_____

Written permission must be obtained from Landlord for anyone other than Tenant/s named above to live in the premises.

Landlord (Name)_____ (Phone)_____

(Address)_____

Landlord Emergency Contact Info:_____

**WHERE** (Address of rental unit)_____

**TERM** (choose applicable term, enter lease information as indicated)

☐ The term of this agreement shall be **month-to-month**, beginning _____.

☐ The term of this agreement shall be for _____(e.g. 3 months, 6 months, 1 year) beginning on _____, 20_____ and ending on _____, 20_____.

When the above rental term ends, this agreement **shall renew and continue for another equal term** under the same conditions set forth in this rental agreement. Changes will be allowed only if both Landlord and Tenant/s agree to them in writing at least 30 days before the termination date. To prevent lease from renewing, at least thirty (30) days before lease termination date, written notice to terminate must be given by Landlord or Tenant/s.

☐ The term of this agreement shall be for _____(e.g. 3 months, 6 months, 1 year) beginning on _____, 20_____ and ending on _____, 20_____.

When the above rental term ends, this agreement **shall change to month-to-month** tenancy under the same conditions set forth under this agreement. To prevent lease from renewing, at least thirty (30) days before lease termination date, written notice to terminate must be given by Landlord or Tenant/s.

**RENT**

Rent shall be $_____ per month, due by the _____ day of the month. Rent is considered paid when received by Landlord.
Rent is payable at _____
Checks / money orders payable to _____
Initial rent payment of $_____ is due on the _____day of _____, 20_____.

**LATE FEES –** Reasonable fees are allowed by law, but not required. If late fees will be assessed, method is indicated below.

❑ Flat rate of $_____ each month rent is received after the _____day of the month, or

❑ $_____per day beginning the_____day of the month, maximum of_____days or $_____

**UTILITIES -** Utilities shall be paid as indicated:

| | Landlord | Tenant | | Landlord | Tenant |
|---|---|---|---|---|---|
| Electricity | | | Water | | |
| Gas/Propane | | | Sewer | | |
| | | | Trash | | |

**SECURITY DEPOSIT (KSA 58-2550)**

Tenant shall pay Landlord a security deposit of $_____, which shall be held by Landlord throughout the tenancy. At termination of the tenancy, Landlord may deduct from the security deposit amounts to cover payment of past-due rent, damages to the property above and beyond normal wear and tear, and/or other expenses Landlord has suffered due to Tenant noncompliance with the terms of this lease. Landlord shall send the security deposit or shall send an itemized list of deductions, together with balance of the security deposit (if any), to Tenant within 14 days after determination of the amount of the deductions, but not to exceed 30 days after Tenant has vacated the property and returned the keys. Landlord shall mail the above to Tenant's last known address.

**Security deposit cannot be used at any time during tenancy for rent or other charges which Tenant owes to Landlord. If Tenant attempts to pay rent from the security deposit, deposit may be forfeited and Tenant will still owe the rent.**

**INSPECTION (KSA 58-2548)**

Within 5 days of move-in or delivery of possession, Landlord or Landlord's agent and Tenant shall inspect the property together. A detailed record of the condition of the premises and any furnishings or appliances provided shall be completed. Duplicate copies of the record shall be signed by Landlord and Tenant, both Landlord and Tenant shall receive a copy.

**LEAD-BASED PAINT DISCLOSURE**

Federal regulations require that both Landlord and Tenant/s MUST sign a Disclosure recognizing any known presence of lead-based paint and/or lead-based paint hazards in the rental unit. Federal EPA approved form is located on the back of the signature page of this Lease.

**LANDLORD WARRANTS (KSA 58-2553)**

a) Landlord warrants at the signing of this agreement that premises are in compliance with KSA 58-2553 which requires compliance with local housing and building codes and delivery of all systems and appliances in good and safe working order.
b) Landlord agrees to maintain premises in accordance with those laws.
c) Landlord shall make all necessary repairs, alterations, and improvements to the dwelling unit, appliances, and furnishings with reasonable promptness at Landlord's expense, except as otherwise provided in this lease.
d) Landlord shall provide intervention, as necessary, to ensure Tenant's quiet and peaceful enjoyment of the premises.

**TENANT WARRANTS (KSA 58-2555)**

a) Tenant shall maintain the premises in a clean and habitable condition and shall notify Landlord of repairs as needed.
b) Tenant is not liable for repairs or damage caused by normal wear and tear or negligence of Landlord. Tenant is liable for damage, and related repair, which results from Tenant's intentional or negligent conduct, or the intentional or negligent conduct of Tenant's family, guests, or pets.
c) No substantial alteration, addition, improvement, or redecoration shall be made by Tenant in or to the dwelling unit without prior written consent of Landlord or Landlord's agent.
d) Tenant shall not keep anything on the premises which will affect the validity of standard fire insurance policies or violate applicable building, zoning, or health codes.
e) The property shall not be used in any manner which interferes with the quiet and peaceful enjoyment of premises by neighbors. **Illegal drug activity and/or any other illegal activity is not acceptable.**

**PETS**

With respect to the keeping of any animal on the premises by Tenant, the following conditions shall apply:_____

_____

L**ANDLORD ENTRY (KSA 58-2557, KSA 58-2571)**

Landlord may, after reasonable notice and with Tenant's consent, enter the dwelling unit at reasonable times in order to inspect the premises; make necessary repairs, decorations, alterations, or improvements; supply necessary or agreed services; or exhibit dwelling to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

a) Landlord may enter without the consent of Tenant only in case of extreme hazard involving possible loss of life or severe property damage.
b) Landlord shall not abuse the right of access or use it to harass Tenant.
c) Tenant shall not unreasonably withhold consent to Landlord's entry.

**SUBSTANTIAL DAMAGE TO PROPERTY (KSA 58-2562)**

If the dwelling unit or premises is damaged or destroyed by fire or casualty to an extent that the use and habitability of the dwelling unit is substantially impaired, Tenant

a) May vacate the premises immediately and shall notify Landlord in writing within 5 days of such Tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating, or
b) If continued occupancy is lawful, may vacate that part of the dwelling unit rendered unusable by fire or casualty, in which case the rent shall be reduced in proportion to the reduced rental value of the unit.

If the rental agreement is terminated using this section, Landlord shall return the security deposit in accordance with the Security Deposit section of this lease and shall refund any rent that was prepaid as of the date of vacating. Not withstanding the above, if the damage is caused by Tenant, Tenant may be held liable for the costs of repair.

**SUBLEASING**

Tenant **shall not** assign this agreement or sublet the dwelling unit without written consent of Landlord or Landlord's agent.

**NOTICE OF RENT INCREASE OR OTHER LEASE CHANGE/S**

Written notice of a rent increase or other lease change(s) must be given to Tenant by Landlord at least **forty-five** (**45)** days before the end of a term or, if month-to-month tenancy, before periodic rent due date. This allows Tenant time to decide whether to accept the rent increase or lease change(s) or give a timely 30-day written notice to terminate.

**TERMINATION**

**At the End of Lease Term**

At least **thirty (30) days** before lease termination date, written notice to terminate must be given by Landlord or Tenant to prevent the lease from renewing.

**For Month-to-Month Lease (KSA 58-2570)**

Landlord or Tenant shall have the right to terminate a month-to-month tenancy by giving written notice to the other party at least **thirty (30) days** before a periodic rent due date.

**For Noncompliance (Landlord Noncompliance KSA 58-2559 / Tenant Noncompliance KSA 58-2564) - 14/30 Day Notice**

If either Landlord or Tenant breaches any condition of this lease, the aggrieved party may terminate the lease by giving the other party written notice, clearly describing the violation or violations, and stating that the rental agreement will terminate in not less than **thirty (30) days**. However, if the violations are remediable, the notice must provide that if the violations are remedied within **fourteen (14) days**, the lease will not terminate. If the violations are remedied, then happen again later, the aggrieved party may immediately give the other an irrevocable 30-day notice to terminate. (Note: Termination date for notice delivered by Tenant to Landlord will be a periodic rent due date not less than thirty days after delivery of notice.)

**For Non-payment of Rent (KSA 58-2564)**

If Tenant's rent is not paid on or before the rent due date, Landlord may give Tenant a written notice, stating that Tenant must either pay all rent due or vacate the premises within **3 days (72 hours)** or Landlord may pursue legal action for the money and/or possession of the unit.

**Irregular Termination - If Tenant breaks the lease without just cause**, the security deposit, or a portion thereof, may be used by Landlord to compensate for the extraordinary expenses incurred. The deductions shall be itemized and submitted to Tenant as are other deductions (see section on Security Deposit).

**OTHER AGREEMENTS**

**In case of emergency, notify:**

| Name | Address | Phone |
|---|---|---|

| | **SIGNATURES** | **DATE** |
|---|---|---|
| Landlord | | |
| Tenant | | |
| Tenant | | |

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**1195 SW Buchanan, Topeka, KS 66604 (785) 234-0217 (800) 383-0217 www.hcci-ks.org**

HCCI counselors are not attorneys and do not provide legal advice.
HCCI forms provide a format which may be followed when drafting notices. Forms are created in accordance with Kansas law.

# Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

## Lead Warning Statement

*Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.*

## Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

_____

_____

(ii) _____ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) _____ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

_____

_____

(ii) _____ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

## Lessee's Acknowledgment (initial)

(c) _____ Lessee has received copies of all information listed above.

(d) _____ Lessee has received the pamphlet *Protect Your Family from Lead in Your Home.*

## Agent's Acknowledgment (initial)

(e) _____ Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

## Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

| | | | | | |
|---|---|---|---|---|---|
| Lessor | (Sign and PRINT name) | Date | Lessor | (Sign and PRINT name) | Date |
| Lessee | (Sign and PRINT name) | Date | Lessee | (Sign and PRINT name) | Date |
| Agent | (Sign and PRINT name) | Date | Agent | (Sign and PRINT name) | Date |

Lessor = Landlord; Lessor's Agent = Person authorized to act on Landlord's behalf; Lessee = Tenant

Lessor's Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards (official EPA form)

Disclosure form available in Spanish on EPA website - www.epa.gov - or from HCCI

# INSPECTION & INVENTORY RECORD

**SIDE 1**

## ROOM CONDITION

| AREA | CONDITION BEFORE OCCUPANCY (if dirty or damaged, explain) | CONDITION AFTER OCCUPANCY (if changed, explain) |
|---|---|---|
| OUTSIDE | | |
| ENTRY | | |
| LIVING ROOM | | |
| DINING AREA | | |
| KITCHEN | | |
| HALLS AND STAIRWAYS | | |
| BEDROOM #1 | | |
| BEDROOM #2 | | |
| BEDROOM #3 | | |
| BATHROOM #1 | | |
| BATHROOM #2 | | |
| OTHER AREAS | | |
| KEYS (what for, how many) | | KEYS RETURNED: |

**SIDE 2**

# FURNITURE & APPLIANCES

| ITEMS (can group by room) | CONDITION BEFORE OCCUPANCY (if dirty or damaged, explain) | CONDITION AFTER OCCUPANCY (if changed, explain) |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

**Landlord and Tenant acknowledge that they together have inventoried the dwelling at _____ and agree that the information on sides 1 and 2 of this sheet accurately and completely explains the condition of the dwelling unit.**

**MOVE-IN** _____ _____ **MOVE-OUT**_____ _____

Tenant Date Tenant Date

_____ _____ _____ _____

Landlord Date Landlord Date

_____ _____ _____ _____

Witness Date Witness Date

4-30-03

# Kansas Residential Landlord & Tenant Act

*– Reprinted by Housing & Credit Counseling, Inc. from Kansas Statutes, Updated 2005*

1195 SW Buchanan, Suite 101 • Topeka, Kansas 66604 • Phone: 785-234-0217 • Email: hcci@hcci-ks.org • Website: www.hcci-ks.org

**58-2540. Title of act.** This act shall be known and may be cited as the "residential landlord and tenant act."

**History:** L. 1975, ch. 290, § 1; July 1.

**58-2541. Arrangements not subject to act.** Unless created to avoid the application of this act, the following arrangements 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 a 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.

**History: L.** 1975**,** ch**.** 290**, §2,** July **1.**

**58-2542. Jurisdiction of courts; procedure.** The district court shall have jurisdiction over any landlord or tenant with respect to any conduct in this state governed by
this act or with respect to any claim arising from a transaction subject to this act, and notwithstanding the provisions of subsection (b) of K.S.A. 2003 Supp. 61-2802, and any amendments thereto, such actions may be commenced pursuant to the code of civil procedure for limited actions. Unless otherwise specifically provided in this act, the code of civil procedure for limited actions shall govern any action commenced pursuant to this act.

**History:** L. 1975, ch. 290, § 3; L. 1976, ch. 240, § 1; L. 1976, ch. 151, § 7; L. 2000, ch. 161, § 106; Jan. 1, 2001.

**58-2543. Definitions.** As used in this act:

(a) "Action" includes recoupment, counterclaim, setoff, suit in equity and any other proceeding in which rights are determined, including an action for possession.

(b) "Building and housing codes" includes any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

(c) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household; but such term shall not include real property used to accommodate a manufactured home or mobile home, unless such manufactured home or mobile home is rented or leased by the landlord.

(d) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(e) "Landlord" means 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 and amendments thereto.

(f) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership

or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(g) "Owner" means 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.

(h) "Person" includes an individual or organization.

(i) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or the use of which is promised to the tenant.

(j) "Rent" means all payments to be made to the landlord under the rental agreement, other than the security deposit.

(k) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under K.S.A. 58-2556 and amendments thereto, embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premise.

(l) "Roomer" means a person occupying a dwelling unit that lacks a major bathroom and kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. As used herein, a major bathroom facility means a toilet, and either a bath or shower, and a major kitchen facility means a refrigerator, stove and sink.

(m) "Security deposit" means any sum of money specified in a rental agreement, however denominated, to be deposited with a landlord by a tenant as a condition precedent to the occupancy of a dwelling unit, which sum of money, or any part thereof, may be forfeited by the tenant under the terms of the rental agreement upon the occurrence or breach of conditions specified therein.

(n) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.

(o) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

**History:** L. 1975, ch. 290, § 4; L. 1991, ch. 33, § 33; July 1.

**58-2544. Finding of unconscionability; remedies; evidence.** (a) If the court, as a matter of law, finds: (1) A rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

(2) a settlement in which a party waives or agrees to forego a claim or right under this act or under a rental agreement was unconscionable at the time it was made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision or limit the application of any unconscionable provision to avoid any unconscionable result.

(b) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement or settlement to aid the court in making the determination.

**History:** L. 1975, ch. 290, § 5, July 1.

**58-2545. Rental agreements; terms and conditions in absence thereof.** (a) The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this act or other rule of law, including rent, term of the agreement and other provisions governing the rights and obligations of the parties.

(b) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

(c) Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit, and periodic rent is payable at the beginning of any term of one (1) month or less and otherwise in equal monthly installments at the beginning of each

month. Unless otherwise agreed, rent shall be uniformly apportionable from day-to-day.

(d) Unless the rental agreement fixes a definite term, the tenancy shall be week-to-week, in the case of a roomer who pays weekly rent, and in all other cases month-to-month.

**History:** L. 1975, ch. 290, § 6; July 1.

**58-2546. Same; agreement not signed and delivered given effect by certain actions; limitation on term.** (a) If the landlord does not sign and deliver a written rental agreement which has been signed and delivered to such landlord by the tenant, the knowing acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(b) If the tenant does not sign and deliver a written rental agreement which has been signed and delivered to such tenant by the landlord, the knowing acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(c) If a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective only for one year.

**History:** L. 1975, ch. 290, § 7; July 1.

**58-2547. Same; prohibited terms and conditions; damages.** (a) No rental agreement may provide that the tenant or landlord:

(1) Agrees to waive or to forego rights or remedies under this act;

(2) authorizes any person to confess judgment on a claim arising out of the rental agreement;

(3) agrees to pay either party's attorneys' fees; or

(4) agrees to the exculpation or limitation of any liability of either party arising under law or to indemnify either party for that liability or the costs connected therewith, except that a rental agreement may provide that a tenant agrees to limit the landlord's liability for fire, theft or breakage with respect to common areas of the dwelling unit.

(b) A provision prohibited by subsection (a) included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by such landlord to be prohibited, the tenant may recover actual damages sustained by such tenant.

**History:** L. 1975, ch. 290, § 8, July 1.

**58-2548. Inventory of premises by landlord and tenant, when; copies.** Within five (5) days of the initial date of occupancy or upon delivery of possession, the landlord, or such landlord's designated representative, and the tenant shall jointly inventory the premises. A written record detailing the condition of the premises and any furnishings or appliances provided shall be completed. Duplicate copies of the record shall be signed by the landlord and the tenant as an indication the inventory was completed. The tenant shall be given a copy of the inventory.

**History:** L. 1975, ch. 290, § 9; July 1.

**58-2549. Receipt of rent subject to certain obligations.** A rental agreement, assignment, conveyance, trust deed or security instrument may not permit the receipt of rent free of the obligation to comply with subsection (a) of K.S.A. 58-2553.

**History:** L. 1975, ch. 290, § 10; July 1.

**58-2550. Security deposits; amounts; return; damages for noncompliance.** (a) A landlord may not demand or receive a security deposit for an unfurnished dwelling unit in an amount or value in excess of one month's periodic rent. If the rental agreement provides for the tenant to use furniture owned by the landlord, the landlord may demand and receive a security deposit not to exceed one and one-half (1 1/2) month's rent, and if the rental agreement permits the tenant to keep or maintain pets in the dwelling unit, the landlord may demand and receive an additional security deposit not to exceed one-half (1/2) of one month's rent. A municipal housing authority created under the provisions of K.S.A. 17-2337 et seq., and amendments thereto, which is wholly or partially subsidized by aid from the federal government, pursuant to a rental agreement in which rent is determined solely by the personal income of the tenant, may demand and receive a security deposit in accordance with a schedule

established by the housing authority, which is based on the
bedroom unit size of the dwelling unit. Any such municipal housing authority which establishes such a schedule shall provide a deferred payment plan whereby the tenant may pay the deposit in reasonable increments over a period of time.

(b) Upon termination of the tenancy, any security deposit held by the landlord may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with K.S.A. 58-2555, and amendments thereto, and the rental agreement, all as itemized by the landlord in a written notice delivered to the tenant. If the landlord proposes to retain any portion of the security deposit for expenses, damages or other legally allowable charges under the provisions of the rental agreement, other than rent, the landlord shall return the balance of the security deposit to the tenant within fourteen (14) days after the determination of the amount of such expenses, damages or other charges, but in no event to exceed thirty (30) days after termination of the tenancy, delivery of possession and demand by the tenant. If the tenant does not make such demand within thirty (30) days after termination of the tenancy, the landlord shall mail that portion of the security deposit due the tenant to the tenant's last known address.

(c) If the landlord fails to comply with subsection (b) of this section, the tenant may recover that portion of the security deposit due together with damages in an amount equal to one and one-half (1 1/2) the amount wrongfully withheld.

(d) Except as otherwise provided by the rental agreement, a tenant
shall not apply or deduct any portion of the security deposit from the last month's rent or use or apply such tenant's security deposit at any time in lieu of payment of rent. If a tenant fails to comply with this subsection, the security deposit shall be forfeited and the landlord may recover the rent due as if the deposit had not been applied or deducted from the rent due.

(e) Nothing in this section shall preclude the landlord or tenant from
recovering other damages to which such landlord or tenant may be entitled under this act.

(f) The holder of the landlord's interest in the premises at the time
of the termination of the tenancy shall be bound by this section.

**History:** L. 1975, ch. 290, § 11; L. 1978, ch. 216, § 1; L. 1997, ch. 68, § 1, July 1.

**58-2551. Disclosures required of landlord or person authorized to enter rental agreement; person failing to comply becomes landlord's agent for certain purposes.** (a) The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing, at or before the commencement of the tenancy, the name and address of:

(1) The person authorized to manage the premises; and

(2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

(b) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner or manager.

(c) A person who fails to comply with subsection (a) becomes an agent of each person who is a landlord for the purpose of:

(1) Service of process and receiving and receipting for notices and demands; and

(2) performing the obligations of the landlord under this act and under the rental agreement and expending or making available for such purpose all rent collected from the premises.

**History:** L. 1975, ch. 290, § 12, July 1.

**58-2552. Delivery of possession of premises; action for possession; damages.** At the commencement of the term the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and K.S.A. 58-2553. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in subsection (c) of K.S.A. 58-2570.

**History:** L. 1975, ch. 290, § 13; July 1.

**58-2553. Duties of landlord; agreement that tenant perform landlord's duties; limitations.** (a) Except when prevented by an act of God, the failure of public utility services or other conditions beyond the landlord's control, the landlord shall:

(1) Comply with the requirements of applicable building and housing codes materially affecting health and safety. If the duty imposed by this paragraph is greater than any duty imposed by any other paragraph of this subsection, the landlord's duty shall be determined in accordance with the provisions of this paragraph;

(2) exercise reasonable care in the maintenance of the common areas;

(3) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating and air-conditioning appliances including elevators, supplied or required to be supplied by such landlord;

(4) except where provided by a governmental entity, provide and maintain on the grounds, for the common use by all tenants, appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and

(5) supply running water and reasonable amounts of hot water at all times and reasonable heat, unless the building that includes the dwelling units is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection. Nothing in this section shall be construed as abrogating, limiting or otherwise affecting the obligation of a tenant to pay for any utility service in accordance with the provisions of the rental agreement. The landlord shall not interfere with or refuse to allow access or service to a tenant by a communication or cable television service duly franchised by a municipality.

(b) The landlord and tenants of a dwelling unit or units which provide a home, residence or sleeping place for not to exceed four households having common areas may agree in writing that the tenant is to perform the landlord's duties specified in paragraphs (4) and (5) of subsection (a) of this section and also specified repairs, maintenance tasks, alterations or remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(c) The landlord and tenant of any dwelling unit, other than a single family residence, may agree that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling only if:

(1) The agreement of the parties is entered into in good faith, and not to evade the obligations of the landlord, and is set forth in a separate written agreement signed by the parties and supported by adequate consideration;

(2) the work is not necessary to cure noncompliance with subsection (a)(1) of this section; and

(3) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

(d) The landlord may not treat performance of the separate agreement described in subsection (c) of this section as a condition to any obligation or the performance of any rental agreement.

**History:** L. 1975, ch. 290, § 14; L. 1982, ch. 230, § 2; July 1.

**58-2554. Conveyance by landlord or termination by manager; notice; no liability for subsequent events.** (a) Unless otherwise agreed, a landlord, who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser, is relieved of liability under the rental agreement and this act as to events occurring subsequent to written notice to the tenant of the conveyance. However, such landlord remains liable to the tenant for any portion of a security deposit to which the tenant is entitled under K.S.A. 58-2550.

(b) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this act as to events occurring after written notice to the tenant of the termination of such manager's management.

**History:** L. 1975, ch. 290, § 15; July 1.

**58-2555. Duties of tenant.** The tenant shall: (a) Comply with all obligations primarily

imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that such tenant occupies and uses as clean and safe as the condition of the premises permit;

(c) remove from such tenant's dwelling unit all ashes, rubbish, garbage and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators in the premises;

(f) be responsible for any destruction, defacement, damage, impairment or removal of any part of the premises caused by an act or omission of the tenant or by any person or animal or pet on the premises at any time with the express or implied permission or consent of the tenant;

(g) not engage in conduct or allow any person or animal or pet, on the premises with the express or implied permission or consent of the tenant, to engage in conduct that will disturb the quiet and peaceful enjoyment of the premises by other tenants.

**History:** L. 1975, ch. 290, § 16; July 1.

**58-2556. Rules and regulations of landlord; when enforceable.** A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the premises. Any such rule or regulation is enforceable against the tenant only if:

(a) Its purpose is to promote the convenience, safety, peace or welfare of the tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all tenants in the premises equally;

(d) it is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant of what such tenant must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time such tenant enters into the rental agreement.

After the tenant enters into the rental agreement, if a rule or regulation which effects a substantial modification of the rental agreement is adopted, such rule or regulation is not enforceable against the tenant unless such tenant consents to it in writing.

**History:** L. 1975, ch. 290, § 17; July 1.

**58-2557. Landlord's right to enter; limitations.** (a) The landlord shall have the right to enter the dwelling unit at reasonable hours, after reasonable notice to the tenant, in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.

(b) The landlord may enter the dwelling unit without consent of the tenant in case of an extreme hazard involving the potential loss of life or severe property damage.

(c) The landlord shall not abuse the right of access or use it to harass the tenant.

**History:** L. 1975, ch. 290, § 18; July 1.

**58-2558. Use of premises; extended absence of tenant.** Unless otherwise agreed, the tenant shall occupy such tenant's dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of any anticipated extended absence from the premises in excess of seven days no later than the first day of the extended absence.

**History:** L. 1975, ch. 290, § 19; July 1.

**58-2559. Material noncompliance by landlord; notice; termination of rental agreement; limitations; remedies; security deposit.** (a) Except as otherwise provided in this act, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with K.S.A. 58-2553 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a periodic rent-paying date not less than thirty (30) days after receipt of the

notice. The rental agreement shall terminate as provided in the notice, subject to the following:

(1) If the breach is remediable by repairs or the payment of damages or otherwise, and the landlord adequately initiates a good faith effort to remedy the breach within fourteen (14) days after receipt of the notice, the rental agreement shall not terminate. However, in the event that the same or a similar breach occurs after the fourteen-day period provided herein, the tenant may deliver a written notice to the landlord specifically describing the breach and stating that the rental agreement shall terminate upon a periodic rent-paying date not less than thirty (30) days after the receipt of such notice by the landlord. The rental agreement then shall terminate as provided in such notice.

(2) The tenant may not terminate for a condition caused by an act or omission of, or which is or can be properly attributable or applicable to, the tenant or any person or animal or pet on the premises at any time with the tenant's express or implied permission or consent.

(b) Except as otherwise provided in this act, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or K.S.A. 58-2553. The remedy provided in this subsection shall be in addition to any right of the tenant arising under subsection (a) of this section.

(c) If the rental agreement is terminated, the landlord shall return that portion of the security deposit recoverable by the tenant under K.S.A. 58-2550.

(d) The provisions of this section shall not limit a landlord's or tenant's right to terminate the rental agreement pursuant to K.S.A. 58-2570, and amendments thereto.

**History: L.** 1975**.** Ch**.** 290**, §** 20**; L.** 1978**,** ch**.** 218**, § 2; L.** 1978**,** ch**.** 217**,** § 2; July 1.

**58-2560. Failure by landlord to deliver possession; remedies.** If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in K.S.A. 58-2552, rent abates until possession is delivered and the tenant:

(a) Upon at least five days' written notice to the landlord, may terminate the rental agreement and upon termination the landlord shall return all of the security deposit; or

(b) may demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord, or any person wrongfully in possession, and recover the damages sustained by such tenant.

If a person's failure to deliver possession is willful and not in good faith, an aggrieved party may recover from such person an amount not more than one and one-half (1 1/2) months' periodic rent or one and one-half (1 1/2) times the actual damages sustained by such party, whichever is greater.

**History:** L. 1975, ch. 290, § 21; July 1.

**58-2561. Action for possession for nonpayment of rent; counterclaim, waiver; accrued rent, payment into court; disposition; when judgment for tenant.** (a) In an action for possession based upon nonpayment of the rent, or in an action for rent where the tenant is in possession, the tenant shall counterclaim for any amount which such tenant may recover under the rental agreement or this act or such counterclaim shall be deemed to have been waived. In that event, the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and the balance shall be paid by the other party. If no rent remains due after application of this section, judgment may be entered for the tenant in the action for possession.

(b) In an action for rent where the tenant is not in possession, the tenant may counterclaim as provided in subsection (a), but the tenant shall not be required to pay any rent into court.

**History:** L. 1975, ch. 290, § 22; July 1.

**58-2562. Damage or destruction by fire or casualty; termination of rental agreement; notice; vacation of part of dwelling; reduction of rent; security deposit.** (a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that the use and habitability of the dwelling unit is substantially impaired, the tenant:

(1) May vacate the premises immediately and shall notify the landlord in writing within

five (5) days thereafter of such tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(2) if continued occupancy is lawful, may vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(b) If the rental agreement is terminated pursuant to this section, the landlord shall return that portion of the security deposit recoverable by the tenant under K.S.A. 58-2550, and accounting for rent in the event of either termination of the rental agreement or apportionment of rent shall occur as of the date of vacating.

**History: L.** 1975**,** ch**.** 290**, §** 23; July 1.

**58-2563. Unlawful removal or exclusion of tenant; diminished services; damages; security deposit.** If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than one and one-half (1 1/2) months' periodic rent or the damages sustained by the tenant, whichever is greater. If the rental agreement is terminated, the landlord shall return that portion of the security deposit recoverable by the tenant under K.S.A. 58-2550.

**History:** L. 1975, ch. 290, § 24; July 1.

**58-2564. Material noncompliance by tenant; notice; termination of rental agreement; limitations; nonpayment of rent; remedies.** (a) Except as otherwise provided in the residential landlord and tenant act, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with K.S.A. 58-2555 and amendments thereto materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice, if the breach is not remedied in 14 days. The rental agreement shall terminate as provided in the notice regardless of the periodic rent-paying date, except that if the breach is remediable by repairs or the payment of damages or otherwise, and the tenant adequately initiates a good faith effort to remedy the breach prior to the date specified in the notice, the rental agreement will not terminate. However, in the event that such breach or a similar breach occurs after the 14-day period provided in this subsection, the landlord may deliver a written notice to the tenant that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice without providing the opportunity to remedy the breach. The rental agreement then shall terminate as provided in such notice regardless of the periodic rent-paying date.

(b) The landlord may terminate the rental agreement if rent is unpaid when due and the tenant fails to pay rent within three days, after written notice by the landlord of nonpayment and such landlord's intention to terminate the rental agreement if the rent is not paid within such three-day period. The three-day notice period provided for in this subsection shall be computed as three consecutive 24-hour periods. When such notice is served on the tenant or to some person over 12 years of age residing on the premises, or by posting a copy of the notice in a conspicuous place thereon, the three-day period shall commence at the time of delivery or posting. When such notice is delivered by mailing, an additional two days from the date of mailing should be allowed for the tenant to pay such tenant's rent and thereby avoid having the rental agreement terminated.

(c) Except as otherwise provided in the residential landlord and tenant act, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or K.S.A. 58-2555 and amendments thereto.

(d) The provisions of this section shall not limit a landlord's or tenant's right to terminate the rental agreement pursuant to K.S.A. 58-2570, and amendments thereto.

**History:** L. 1975, ch. 290, § 25; L. 1978, ch. 218, § 1; L. 1978, ch. 217, § 1; L. 1992, ch. 306, § 1; July 1.

**58-2565. Extended absence of tenant; damages; entry by landlord; abandonment by tenant, when; reasonable effort to rent required; termination of rental agreement, when; personal property of tenant; disposition, procedure; proceeds; rights of person receiving property.** (a) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven days required in K.S.A. 58-2558, and amendments thereto, and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.

(b) During any absence of the tenant in excess of 30 days, the landlord may enter the dwelling unit at times reasonably necessary. If, after the tenant is 10 days in default for nonpayment of rent and has removed a substantial portion of such tenant's belongings from the dwelling unit, the landlord may assume that the tenant has abandoned the dwelling unit, unless the tenant has notified the landlord to the contrary.

(c) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins. The rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment, if the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender. If the tenancy is from month-to-month, or week-to-week, the term of the rental agreement for this purpose shall be deemed to be a month or a week, as the case may be.

(d) If the tenant abandons or surrenders possession of the dwelling unit and leaves household goods, furnishings, fixtures or any other personal property in or at the dwelling unit or if the tenant is removed from the dwelling unit as a result of a forcible detainer action, pursuant to K.S.A. 2003 Supp. 61-3801 through 61-3808 and amendments thereto, and fails to remove any household goods, furnishings, fixtures or any other personal property in or at the dwelling unit after possession of the dwelling unit is returned to the landlord, the landlord may take possession of the property, store it at tenant's expense and sell or otherwise dispose of the same upon the expiration of 30 days after the landlord takes possession of the property, if at least 15 days prior to the sale or other disposition of such property the landlord shall publish once in a newspaper of general circulation in the county in which such dwelling unit is located a notice of the landlord's intention to sell or dispose of such property. Within seven days after publication, a copy of the published notice shall be mailed by the landlord to the tenant at the tenant's last known address. Such notice shall state the name of the tenant, a brief description of the property and the approximate date on which the landlord intends to sell or otherwise dispose of such property. If the foregoing requirements are met, the landlord may sell or otherwise dispose of the property without liability to the tenant or to any other person who has or claims to have an interest in such property, except as to any secured creditor who gives notice of creditor's interest in such property to the landlord prior to the sale or disposition thereof, if the landlord has no knowledge or notice that any person, other than the tenant, has or claims to have an interest in such property. During such 30 [30-day] period after the landlord takes possession of the property, and at any time prior to sale or other disposition thereof, the tenant may redeem the property upon payment to the landlord of the reasonable expenses incurred by the landlord of taking, holding and preparing the property for sale and of any amount due from the tenant to the landlord for rent or otherwise.

(e) Any proceeds from the sale or other disposition of the property as provided in subsection (d) shall be applied by the landlord in the following order:

(1) To the reasonable expenses of taking, holding, preparing for sale or disposition, giving notice and selling or disposing thereof;

(2) to the satisfaction of any amount due from the tenant to the landlord for rent or otherwise; and,

(3) the balance, if any, may be retained by the landlord, without liability to the tenant or to any other person, other than a secured creditor who gave notice of creditors interest as provided in subsection (d), for any profit made as a result of a sale or other disposition of such

property.

(f) Any person who purchases or otherwise receives the property pursuant to a sale or other disposition of the property as provided under subsection (d) of this section, without knowledge that such sale or disposition is in violation of the ownership rights or security interest of a third party in the property, takes title to the property free and clear of any right, title, claim or interest of the tenant or such third party in the property.

**History:** L. 1975, ch. 290, § 26; L. 1996, ch. 113, § 1; L. 2000, ch. 161, § 107; Jan. 1, 2001

**58-2566. Acceptance of late rent; effect.** Acceptance of late payment of rent from the tenant without reservation by the landlord, or acceptance of performance by the tenant, other than for payment of rent, that varies from the terms of the rental agreement, constitutes a waiver of the landlord's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

**History:** L. 1975, ch. 290, § 27; July 1.

**58-2567. Lien or security interest in tenant's personal property unenforceable; distraint abolished, exception.** (a) Except as otherwise provided in this act, a lien or security interest on behalf of the landlord in the tenant's household goods, furnishings, fixtures or other personal property is not enforceable unless perfected prior to the effective date of this act.

(b) Except as otherwise provided in K.S.A. 58-2565, distraint for rent is abolished.

**History:** L. 1975, ch. 290, § 28; July 1.

**58-2568. Landlord's remedies upon termination of rental agreement.** Upon termination of the rental agreement, the landlord may have a claim and file an action for possession or for rent or both. The landlord also may have a separate claim for actual damages for breach of the rental agreement and may file an action for such damages prior to the termination date of the rental agreement.

**History:** L. 1975, ch. 290, § 29; July 1.

**58-2569. Landlord's recovery or possession of dwelling; limitations.** A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, except in case of abandonment, surrender or as otherwise permitted in this act.

**History:** L. 1975, ch. 290, § 30; July 1.

**58-2570. Termination of tenancy; notice; holdover by tenant; remedies; notice obligating tenant beyond terms of lease agreement, form.** (a) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least seven days prior to the termination date specified in the notice.

(b) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other party stating that the tenancy shall terminate upon a periodic rent-paying date not less than 30 days after the receipt of the notice, except that not more than 15 days' written notice by a tenant shall be necessary to terminate any such tenancy where the tenant is in the military service of the United States and termination of the tenancy is necessitated by military orders. Any rental agreement for a definite term of more than 30 days shall not be construed as a month-to-month tenancy, even though the rent is reserved payable at intervals of 30 days.

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. In addition, if the tenant's holdover is willful and not in good faith the landlord may recover an amount not more than 1½ months' periodic rent or not more than 1½ times the actual damages sustained by the landlord, whichever is greater. If the landlord consents to the tenant's continued occupancy subsection (d) of K.S.A. 58-2545, and amendments thereto, shall govern.

(d) In any action for possession, the landlord may obtain an order of the court granting immediate possession of the dwelling unit to the landlord by filing a motion therefor in accordance with subsection (b) of K.S.A. 60-207, and amendments thereto, and service thereof on the tenant pursuant to K.S.A. 60-205, and amendments thereto. After a

hearing and presentation of evidence on the motion, and if the judge is satisfied that granting immediate possession of the dwelling unit to the landlord is in the interest of justice and will properly protect the interests of all the parties, the judge may enter or cause to be entered an order for the immediate restitution of the premises to the landlord upon the landlord giving an undertaking to the tenant in an amount and with such surety as the court may require, conditioned for the payment of damages or otherwise if judgment be entered in favor of the tenant.

(e) If a landlord provides to a tenant a document which, if signed by the landlord or tenant or both, would constitute the tenant's written notice to the landlord that the tenant intends to vacate the premises, and if such document contains any additional terms that are not contained in the rental agreement between the landlord and tenant, then the document shall include the following statement in no less than 10-point boldface type: 'YOUR SIGNATURE ON THIS DOCUMENT MAY BIND YOU TO ADDITIONAL TERMS NOT IN YOUR ORIGINAL LEASE AGREEMENT. IF YOUR LEASE REQUIRES YOU TO GIVE WRITTEN NOTICE OF YOUR INTENT TO VACATE, YOU HAVE THE RIGHT TO DECLINE TO SIGN THIS DOCUMENT AND TO PROVIDE WRITTEN NOTICE IN ANOTHER FORM.' If such statement does not appear in such document, a tenant's signature on such document shall not bind the tenant to any additional terms that are not contained in the rental agreement.

**History:** L. 1975, ch. 290, § 31; L. 1978, ch. 218, § 3; L. 1978, ch. 217, § 3; L. 2003, ch. 103 § 1; July 1.

**58-2571. Tenant's refusal to allow lawful access; remedies; landlord's unlawful or unreasonable entry; remedies.** (a) If the tenant refuses to allow lawful access to the dwelling unit, the landlord may obtain injunctive relief to compel access, or may terminate the rental agreement. In either case, the landlord may recover actual damages.

(b) If the landlord makes an unlawful entry, or a lawful entry in an unreasonable manner, or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or may terminate the rental agreement. In either case, the tenant may recover actual damages.

**History:** L. 1975, ch. 290, § 32; July 1.

**58-2572. Certain retaliatory actions by landlord prohibited; remedies; increased rent, when; action for possession, when.** (a) Except as otherwise provided in this section, a landlord may not retaliate by increasing rent or decreasing services after:

(1) The tenant has complained to a governmental agency, charged with responsibility for enforcement of a building or housing code, of a violation applicable to the premises materially affecting health and safety; or

(2) the tenant has complained to the landlord of a violation under K.S.A. 58-2553; or

(3) the tenant has organized or become a member of a tenants' union or similar organization.

(b) If the landlord acts in violation of subsection (a) of this section, the tenant is entitled to the remedies provided in K.S.A. 58-2563 and has a defense in an action against such tenant for possession.

(c) Notwithstanding the provisions of subsection (a), the landlord may increase the rent of a tenant even though the tenant has complained of a violation as described in clauses (1) or (2) of subsection (a) or has organized or become a member of an organization as described in clause (3) of subsection (a), if such rent increase does not conflict with a lease agreement in effect and is made in good faith to compensate the landlord for expenses incurred as a result of acts of God, public utility service rate increases, property tax increases or other increases in costs of operations.

(d) Notwithstanding subsections (a) and (b), a landlord may bring an action for possession if:

(1) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person or animal or pet upon the premises with his or her express or implied consent;

(2) the tenant is in default in rent; or

(3) compliance with the applicable building or housing code requires alteration, remodeling or demolition which would effectively deprive

the tenant of use of the dwelling unit. The maintenance of an action under this subsection does not release the landlord from liability under subsection (b) of K.S.A. 58-2559.

**History:** L. 1975, ch. 290, § 33; July 1.

**58-2573. Inapplicability of act.** The provisions of this act shall not: (a) Apply to or affect any valid rental agreement entered into prior to the effective date of this act, nor shall it apply to or affect any conduct or transaction of the parties to such rental agreement, if such conduct or transaction is in accordance with and pursuant to such rental agreement; but the provisions of this act shall apply to and govern any renewal, extension or modification of any such rental agreement, where such renewal, extension or modification is effected on or after the effective date of this act; or

(b) apply to any person or persons who enter and remain in a dwelling unit without a rental agreement and without the landlord's knowledge and such person knows that such person is not authorized or privileged to do so and an order to leave has been personally communicated to such person by the landlord. Such person or persons may be prosecuted pursuant to K.S.A. 21-3721, and amendments thereto.

**History:** L. 1975, ch. 290, § 34; L. 1994, ch. 271, § 2, July 1.

# OTHER APPLICABLE STATUTES

**58-2504. Termination of tenancy at will; notice.** Thirty days' notice in writing is necessary to be given by either party before he or she can terminate a tenancy at will, or from one period to another of three months or less; but where in any case rent is reserved payable at intervals of less than thirty days, the length of notice need not be greater than such interval between the days of payment: Provided, however, That when premises are furnished or let by an employer to an employee, said tenancy shall cease and determine ten days after written notice to vacate: Provided further, That not more than fifteen (15) days' notice in writing by a tenant shall be necessary to terminate any tenancy as described in this section of persons in the military service of the United States in which the termination of tenancy is necessitated by military orders.

**History:** G.S. 1868, ch. 55, ¶ 4; L. 1919, ch. 223, § 1; R.S. 1923, 67-504; L. 1967, ch. 305, § 1; L. 1973, ch. 223, § 1, July 1.

**58-2505. Termination of tenancy from year-to-year; notice.** All tenancies from year to year, other than farm tenancies from year-to-year, may be terminated by at least thirty days' notice in writing, given to the tenant prior to the expiration of the year.

**History:** G.S. 1868, ch. 55, § 5; L. 1905, ch. 281, § 1; R.S. 1923, 67-505; L. 1978, ch. 215, § 1; July 1.

**58-2506. Termination of farm or pastureland tenancy; notice.** (a) Except as may be otherwise provided by this section or by a written lease signed by the parties thereto, in cases of tenants occupying and cultivating farms or occupying or leasing pastureland, the notice to terminate such a farm or pastureland tenancy must be given in writing at least 30 days prior to March 1 and must fix the termination of the tenancy to take place on March 1. For purposes of this act, "pastureland" means land used for livestock grazing or hay production, or both, which includes perennial vegetation, including, but not limited to, native vegetation, grass-like plants, forbs, shrubs, savannas, shrublands, marshes and meadows. (b) When a notice of termination is given pursuant to subsection (a) after a fall seeded grain crop has been planted, as to that part of the farm which is planted to a fall seeded grain crop on cropland which has been prepared in conformance with normal practices in the area, the notice shall be construed as fixing the termination of the tenancy of such portion to take place on the day following the last day of harvesting such crop or crops, or August 1, whichever comes first. (c) When a notice of termination is given pursuant to subsection (a) after the 30th day preceding March 1 and prior to the planting of a fall seeded grain crop on cropland which has been prepared in conformance with normal practices in the area, in any year in which a

fall seeded grain crop has been or will be harvested, the notice shall be construed as fixing the termination of the tenancy of that part of the farm devoted to fall seeded grain crops on the day following the last day of harvesting such crop or crops in the succeeding year or August 1 of such succeeding year, whichever comes first. (d) Subject to the provisions of this section, a farm or pastureland tenant becomes a tenant from year-to-year by occupying the premises after the expiration of the term fixed in a written lease, in which case the notice of termination of tenancy must fix the termination of tenancy to take place on the same day of the same month following the service of the notice as the day and month of termination fixed in the original lease under which the tenant first occupied the premises. Such notice shall be written and given to the tenant at least 30 days prior to such termination date. **History:** G.S. 1868, ch. 55, § 6; L. 1919, ch. 224, § 1; R.S. 1923, 67-506; L. 1975, ch. 294, § 1; L. 1978, ch. 215, § 2; L. 1979, ch. 175, § 1; L. 1981, ch. 225, § 1; L. 2002, ch. 81, § 1; July 1

**58-2506a. Termination of farm tenancies; landlord's liability for certain substances and services provided by tenant.** (a) When a notice of termination is given by the landlord pursuant to subsection (a) or (d) of K.S.A. 58-2506 and amendments thereto, and the tenant prior to receiving such notice has (1) performed customary tillage practices or has applied or furnished fertilizers, herbicides or pest control substances and (2) has not planted the ground, the landlord shall pay the tenant the fair and reasonable value of the services furnished and the fertilizers, herbicides or pest control substances furnished. (b) Where a farm tenancy is terminated by the landlord on March 1 pursuant to subsection (a) of K.S.A. 58-2506 and amendments thereto, and the tenant planted and obtained a satisfactory stand of alfalfa the preceding fall, the landlord shall pay the tenant the fair and reasonable value of all services performed in preparing and planting the alfalfa and for all of the tenant's expenditures for seed, fertilizer, herbicide or pest control substances. **History:** L. 1978, ch. 215, § 3; L. 1985, ch. 186, § 1; July 1.

**58-2507. Termination of lease for three months or longer; notice; effect of payment of rent.** If a tenant for a period of three months or longer neglect or refuse to pay rent when due, ten days' notice in writing to quit shall determine the lease, unless such rent be paid before the expiration of said ten days.

**History:** G.S. 1868, ch. 55, § 7; Oct. 31; R.S. 1923, 67-507.

**58-2508. Termination of tenancy of less than three months for nonpayment of rent; notice.** If a tenant for a period of less than three months shall neglect or refuse to pay rent when due, three days' notice in writing to quit shall determine the same, unless such rent be paid before the expiration of said three days.

**History:** G.S. 1868, ch. 55, § 8; L. 1905, ch. 280, § 1; March 4, R.S. 1923, 67-508.

**58-2509. Notice to quit not necessary, when.** Where the time for the termination of a tenancy is specified in the contract, or where a tenant at will commits waste, or in the case of a tenant by sufferance, and in any case where the relation of landlord and tenant does not exist, no notice to quit shall be necessary.

**History:** G.S. 1868, ch. 55, § 8; L. 1905, ch. 280, § 1; March 4; R.S. 1923, 67-508.

**58-2510. Service of notice of termination of lease or tenancy.** Notice as required in the preceding sections may be served on the tenant, or, if the tenant cannot be found, by leaving a copy thereof at the tenant's usual place of residence, or by delivering a copy thereof to some person over 12 years of age residing on the premises, or, if no person is found upon the premises, by posting a copy of the notice in a conspicuous place thereon, or by registered mail, registered mail return receipt requested, or certified mail, return receipt requested, addressed to the tenant at the tenant's usual place of residence. Proof of service by registered mail may be by the affidavit of the person mailing such notice or by the return receipt. Proof of service by certified mail may be by the return receipt.

**History:** G.S. 1868, ch. 55, § 10; L. 1905, ch. 280, § 2; R.S. 1923, 67-510; L. 1951, ch. 372, § 1; L. 1982, ch. 230, § 1; July 1.

**58-2511. Assignment or transfer by tenant, when.** No tenant for a term not exceeding two years, or at will, or by sufferance, shall assign or transfer his or her term or interest or any part thereof to another without the written consent of the landlord or person holding under the landlord.

**History:** G.S. 1868, ch. 55, § 11; Oct. 31; R.S. 1923, 67-511.

**58-2512. Same; re-entry upon violation of 58-2511.** If any tenant shall violate the provisions of the preceding section, the landlord or person holding under the landlord, after giving ten days' notice to quit possession, shall have a right to re-enter the premises and take possession thereof and dispossess the tenant, subtenant or undertenant.

**History:** G.S. 1868, ch. 55, § 12; Oct. 31; R.S. 1923, 67-512.

## The following statutes have been reprinted and are available in hard copy at HCCI.

**22-3901 through 22-3904, 41-805.** "Illegal Activity/Party Shack" laws.

**61-2301 through 61-2311, 61-1312 through 61-1314 and 61-2106.** Forcible Detainer (eviction) laws.

# Kansas Mobile Home Parks Residential Landlord & Tenant Act

*– Reprinted by Housing & Credit Counseling, Inc. from Kansas Statutes, Updated 2006*

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**58-25,100. Title of Act.** K.S.A. 58-**25,100 through** 58**-25,126** shall be known and may be cited as the mobile home parks residential landlord and tenant act and shall govern mobile home parks residential landlord and tenant actions on and after January 1, 1993.

**History:** L. 1992, ch. 306, § 2; July 1.

**58-25,101. Application of act, exclusions.** The provisions of this act shall not apply to an occupancy in or operation of public housing pursuant to any federal law or regulation with which it might conflict. This act shall govern the rental of mobile home space in mobile home parks. When both the mobile home and the space used to accommodate the mobile home are rented or leased by the same landlord, the residential landlord and tenant act, K.S.A. 58-2540 et seq., and amendments thereto, rather than this act, shall apply.

**History:** L. 1992, ch. 306, § 3; July 1.

**58-25,102. Jurisdiction of courts; procedure.** (a) The district court shall have jurisdiction over a landlord or tenant with respect to conduct in this state governed by this act or with respect to any claim arising from a transaction subject to this act, and notwithstanding the provisions of subsection (b) of K.S.A. 2003 Supp. 61-2802, and amendments thereto, such actions may be commenced pursuant to the code of civil procedure for limited actions. Unless otherwise specifically provided in this act, the code of civil procedure for limited actions shall govern any action commenced pursuant to this act. If the relief sought is beyond the jurisdiction of a district magistrate judge as provided in K.S.A. 20-302b, and amendments thereto, the action shall be heard by a district judge.

**History:** L. 1992, ch. 306, § 4; L. 2000, ch. 161, § 108; Jan. 1, 2001.

**58-25,103. Definitions.** Subject to additional definitions contained in subsequent sections of this act which apply to specific sections thereof, and unless the context otherwise requires, in this act:

(a) "Building and housing codes" includes any law, ordinance or governmental rule and regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any mobile home park, dwelling unit or mobile home space.

(b) "Business" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest and any other legal or commercial entity which is a landlord, owner, manager or constructive agent pursuant to K.S.A. 58-25,109.

(c) "Dwelling unit" excludes real property used to accommodate a mobile home.

(d) "Landlord" means the owner, lessor or sublessor of a mobile home park and it also means a manager of the mobile home park who fails to disclose as required by K.S.A. 58-25,109.

(e) "Mobile home" includes manufactured homes and mobile homes as defined in subsections (a) and (b) of K.S.A. 58-4202, and amendments thereto.

(f) "Mobile home park" shall mean any site, lot, field or tract of land upon which two or more occupied mobile homes are harbored, either free of charge or for revenue purposes, and shall include any building, structure, or enclosure used or intended for use as part of the equipment of such mobile home park.

(g) "Mobile home space" means a plot of ground within a mobile home park designed for the accommodation of one mobile home.

(h) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of the legal title to property or all or part

of the beneficial ownership and a right to present use and enjoyment of the mobile home park. The term includes a mortgagee in possession.

(i) "Rent" means all payments to be made to the landlord under the rental agreement, other than the security deposit.

(j) "Rental agreement" means agreements, written or those implied by law, and valid rules and regulations adopted under K.S.A. 58-25,114 embodying the terms and conditions concerning the use and occupancy of a mobile home space.

(k) "Security deposit" means a deposit of money to secure performance of a mobile home space rental agreement under this act other than a deposit which is exclusively in advance payment of rent.

(l) "Tenant" means a person entitled under a rental agreement to occupy a mobile home space to the exclusion of others.

**History:** L. 1992, ch. 306, § 5;, July 1.

**58-25,104. Finding of unconscionability, remedies; evidence.**

(a) If the court, as a matter of law, finds that:

(1) A rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) A settlement in which a party waives or agrees to forego a claim or right under this act or under a rental agreement was unconscionable at the time it was made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision or limit the application of any unconscionable provision to avoid any unconscionable result.

(b) If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement or settlement to aid the court in making the determination.

**History:** L. 1992, ch. 306, § 6; July 1.

**58-25,105. Terms and conditions of rental agreement**; terms and conditions in absence of rental agreement; notice of tenant's rights under act.

(a) The landlord and tenant may include in a rental agreement terms and conditions not prohibited by this act or other rule of law including rent, term of the agreement and other provisions governing the rights and obligations of the parties.

(b) The tenant shall pay as rent the amount stated in the rental agreement. In the absence of a rental agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the mobile home space.

(c) Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed periodic rent is payable at the beginning of any term and thereafter in equal monthly installments. Rent shall be uniformly apportionable from day to day.

(d) Rental agreements shall be a month-to-month tenancy unless otherwise specified in the rental agreement. Upon the expiration of such agreement, if a new agreement is not executed, the tenancy shall be month-to-month. Except as provided in the written rental agreement, month-to-month tenancies shall be canceled by at least 60 days' written notice given by either party.

(e) Unless otherwise agreed in writing, improvements, except a natural lawn, purchased and installed by a tenant on a mobile home space shall remain the property of the tenant even though affixed to or in the ground and may be removed or disposed of by the tenant prior to the termination of the tenancy, provided that a tenant shall leave the mobile home space in substantially the same or better condition than upon taking possession.

(f) In any rental agreement entered into between a landlord and tenant in a mobile home park where five or more mobile homes are harbored, such rental agreement shall contain a notice that specifies that the tenant has certain rights under the mobile home parks residential landlord and tenant act and copies of the act may be obtained from the landlord upon the request of the tenant.

**History:** L. 1992, ch. 306, § 7; July 1.

**58-25,106. Prohibited terms and conditions.**

(a) A rental agreement shall not provide that the tenant or landlord does any of the following:

(1) Agrees to waive or to forego rights or remedies under this act;

(2) authorizes any person to confess judgment on a claim arising out of the rental agreement;

(3) agrees to pay the other party's attorney fees;

(4) agrees to the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the costs connected therewith; or

(5) agrees to a designated agent for the sale of tenant's mobile home.

(b) A provision prohibited by subsection (a) included in a rental agreement is unenforceable.

**History:** L. 1992, ch. 306, § 8; July 1.

**58-25,107. Receipt of rent subject to certain obligations.** A rental agreement, assignment, conveyance, trust deed or security instrument shall not permit the receipt of rent, unless the landlord has agreed to comply with K.S.A. 58-25,111.

**History:** L. 1992, ch. 306, § 9,; L. 1993, ch. 128, § 1; July 1.

**58-25,108. Security deposits.**

(a) A landlord shall not demand or receive as a security deposit an amount or value in excess of two months' rent.

(b) All security deposits shall be held by the landlord for the tenant, who is a party to the agreement, in a bank, credit union or savings and loan association which is insured by an agency of the federal government. Security deposits shall not be commingled with the personal funds of the landlord. All security deposits may be held in a trust account, which may be a common trust account and which may be an interest bearing account. Any interest earned on a security deposit shall be the property of the landlord.

(c) Upon termination of the tenancy, any security deposit held by the landlord may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with K.S.A. 58-25,113 and the rental agreement, all as itemized by the landlord in a written notice delivered to the tenant. If the landlord proposes to retain any portion of the security deposit for expenses, damages or other legally allowable charges under the provisions of the rental agreement, other than rent, the landlord shall return the balance of the security deposit to the tenant within 14 days after the determination of the amount of such expenses, damages or other charges, but in no event to exceed 30 days after termination of the tenancy, delivery of possession and demand by the tenant. If the tenant does not make such demand within 30 days after termination of the tenancy, the landlord shall mail that portion of the security deposit due the tenant to the tenant's last-known address.

(d) If the landlord fails to comply with subsection (c) of this section, the tenant may recover that portion of the security deposit due together with damages in an amount equal to 1 1/2 the amount wrongfully withheld.

(e) Except as otherwise provided by the rental agreement, a tenant shall not apply or deduct any portion of the security deposit from the last month's rent or use or apply such tenant's security deposit at any time in lieu of payment of rent. If a tenant fails to comply with this subsection, the security deposit shall be forfeited and the landlord may recover the rent due as if the deposit had not been applied or deducted from the rent due.

(f) Nothing in this section shall preclude the landlord or tenant from recovering other damages to which such landlord or tenant may be entitled under this act.

(g) Upon termination of a landlord's interest in the mobile home park, the landlord or the landlord's agent, within a reasonable time, shall transfer the security deposit, or any remainder after any lawful deductions to the landlord's successor in interest and notify the tenant of the transfer and of the transferee's name and address or return the deposit, or any remainder after any lawful deductions to the tenant. Upon termination of the landlord's interest in the mobile home park and compliance with the provisions of this subsection, the landlord shall be relieved of any further liability with respect to the security deposit.

(h) Upon termination of the landlord's interest in the mobile home park, the landlord's successor in interest shall have all the rights and obligations of the landlord with respect to the security deposits, except that if the tenant does not object to the stated amount within 20 days after written notice to the tenant of the amount of security deposit being transferred or assumed, the obligations of the landlord's successor to return the deposit shall be limited to the amount

contained in the notice. The notice shall contain a stamped envelope addressed to the landlord's successor and may be given by mail or by personal service.

**History:** L. 1992, ch. 306, § 10; July 1.

**58-25,109. Disclosures required of landlord** or person authorized to enter rental agreement; person failing to comply becomes landlord's agent for certain purposes; rental agreement not signed and delivered given effect by certain actions, limitation on term; explanation of utility rates and charges; written notice of rent increase.

(a) The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(1) The person authorized to manage the mobile home park; and

(2) the owner of the mobile home park or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

(b) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner or manager.

(c) A person who fails to comply with subsection (a) becomes an agent of each person who is a landlord for the following purposes:

(1) Service of process and receiving and receipting for notices and demands; or

(2) performing the obligations of the landlord under this act and under the rental agreement and expending or making available for the purpose all rent collected from the mobile home park.

(d) (1) If the landlord does not sign and deliver a written rental agreement which has been signed and delivered to such landlord by the tenant, the knowing acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(2) If the tenant does not sign and deliver a written rental agreement which has been signed and delivered to such tenant by the landlord, the knowing acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this subsection provides for a term longer than one year, it is effective only for one year.

(e) The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall provide a written explanation of utility rates, charges and services to the prospective tenant before the rental agreement is signed unless the utility charges are paid by the tenant directly to the utility company.

(f) Each tenant shall be notified, in writing, of any rent increase at least 60 days before the effective date. Such effective date shall not be sooner than the expiration date of the original rental agreement or any renewal or extension thereof.

**History:** L. 1992, ch. 306, § 11; July 1.

**58-25,110. Delivery of possession of mobile home space; action for possession; damages.** At the commencement of the term the landlord shall deliver possession of the mobile home space to the tenant in compliance with the rental agreement and K.S.A. 58-25,111. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in K.S.A. 58-25,123.

**History:** L. 1992, ch. 306, § 12; July 1.

**58-25,111. Duties of landlord.** (a) Except as provided in subsections (c) and (d), when prevented by an act of God, the failure of public utility services or other conditions beyond the landlord's control, the landlord shall:

(1) Comply with the requirements of all applicable city, county and state codes materially affecting health and safety which are primarily imposed upon the landlord. If the duty imposed by this paragraph is greater than any duty imposed by any other paragraph of this subsection, the landlord's duty shall be determined in accordance with the provisions of this paragraph.

(2) Make all repairs and do whatever is necessary to put and keep the mobile home space in a fit and habitable condition.

(3) Keep all common areas of the mobile home park in a clean and safe condition.

(4) Maintain in good and safe working order and condition all facilities supplied or required to be supplied by the landlord.

(5) Provide for removal of garbage, rubbish, and other waste from the mobile home park.

(6) Furnish outlets for electric, water and sewer services and provide to such outlets an adequate, safe and sanitary supply of such services.

(b) A landlord shall not impose any conditions of rental or occupancy which restrict the tenant in the choice of a seller of fuel, furnishings, goods, services or mobile homes connected with the rental or occupancy of a mobile home space unless such condition is reasonably necessary to protect the health, safety or welfare of mobile home tenants in the park. The landlord may impose reasonable requirements designed to standardize methods of utility connection and hookup. If any such conditions are imposed which result in charges for such goods or services, the charges shall not exceed the actual cost incurred in providing the tenant with such goods or services.

(c) The landlord and tenant may agree in writing that the tenant is to perform the landlord's duties specified in subsection (a)(5) and (6) and also specified repairs, maintenance tasks, alterations or remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(d) The landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling only if:

(1) The agreement of the parties is entered into in good faith, and not to evade the obligations of the landlord, and is set forth in a separate written agreement signed by the parties and supported by adequate consideration;

(2) the work is not necessary to cure noncompliance with subsection (a)(1); and

(3) the agreement does not diminish or affect the obligation of the landlord to other tenants.

**History:** L. 1992, ch. 306, § 13; L. 1993, ch. 128, § 2; July 1.

**58-25,112. Conveyance by landlord or termination by manager; notice; no liability for subsequent events.**

(a) A landlord who conveys a mobile home park in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this act as to events occurring subsequent to written notice to the tenant of the conveyance.

(b) A manager of a mobile home park is relieved of liability under the rental agreement and this act as to events occurring after written notice to the tenant of the termination of the manager's management.

**History:** L. 1992, ch. 306, § 14; July 1.

**58-25,113. Duties of tenant.** A tenant shall maintain the mobile home space in as good a condition as when the tenant took possession and shall:

(a) Comply with all obligations primarily imposed upon tenants by applicable provisions of city, county and state codes materially affecting health and safety.

(b) Keep that part of the mobile home park that the tenant occupies and uses reasonably clean and safe.

(c) Dispose from the tenant's mobile home space all rubbish, garbage and other waste in a clean and safe manner.

(d) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the mobile home park or knowingly permit any person to do so.

(e) Act and require other persons in the mobile home park with the tenant's consent to act in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the mobile home park.

**History:** L. 1992, ch. 306, § 15; July 1.

**58-25,114. Rules and regulations of landlord, when enforceable; notice; limitations.**

(a) A landlord may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the mobile home park. Such rules or regulations are enforceable against the tenant only if they are written and if:

(1) Their purpose is to promote the convenience, safety or welfare of the tenants in the mobile home park, to preserve the landlord's property from abuse, to make a fair distribution of services and facilities held out for the tenants generally, or to facilitate mobile home park management.

(2) They are reasonably related to the purpose for which adopted.

(3) They apply to all tenants in the mobile home park in a fair manner.

(4) They are sufficiently explicit in prohibition, direction or limitation of the tenant's conduct to fairly inform that person of what must or must not be done to comply.

(5) They are not for the purpose of evading the obligations of the landlord.

(6) The prospective tenant is given a copy of them before the rental agreement is entered into.

(b) Notice of all such additions, changes, deletions or amendments shall be given to all mobile home tenants 30 days before they become effective. Any rule or condition of occupancy which is unfair and deceptive or which does not conform to the requirements of this act shall be unenforceable. A rule or regulation adopted after the tenant enters into the rental agreement is enforceable against the tenant only if it does not work a substantial modification of that person's rental agreement or the tenant consents to it in writing.

(c) A landlord shall not:

(1) Deny rental unless the tenant or prospective tenant cannot conform to park rules and regulations;

(2) require any person as a precondition to renting, leasing or otherwise occupying or removing from a mobile home space in a mobile home park to pay an entrance or exit fee of any kind unless for services actually rendered;

(3) deny any resident of a mobile home park the right to sell that person's mobile home at a price of the person's own choosing, but may reserve the right to approve the purchaser of such mobile home as a tenant but such permission may not be unreasonably withheld, provided however, that the landlord, in the event of a sale to a third party, in order to upgrade the quality of the mobile home park, may require that any mobile home in a rundown condition or in disrepair be removed from the park within 60 days;

(4) exact a commission or fee with respect to the price realized by the tenant selling the tenant's mobile home, unless the park owner or operator has acted as agent for the mobile home owner pursuant to a written agreement;

(5) prohibit meetings among tenants in the mobile home park relating to mobile home living and affairs in the park community or recreational hall if such meetings are held at reasonable hours and when the facility is not otherwise in use;

(6) charge a fee based on the number of members in the tenant's immediate family. Immediate family includes the tenant, the tenant's spouse, any children of the tenant or the tenant's spouse, and the parents of the tenant or the tenant's spouse;

(7) charge a fee to an individual resident who shares such resident's mobile home with one other person; or

(8) charge a fee for a guest of a resident who stays in such resident mobile home less than 30 days in any calendar year.

**History:** L. 1992, ch. 306, § 16; July 1.

**58-25,115. Landlord's right to access; limitations.**

(a) A landlord shall not have the right of access to a mobile home owned by a tenant without consent of the tenant unless it is an extreme hazard involving the potential loss of life or severe property damage.

(b) The landlord may enter onto the mobile home space at reasonable hours in order to inspect the mobile home space, make necessary or agreed repairs or improvements, supply necessary or agreed services or exhibit the mobile home space to prospective or actual purchasers, mortgagees, tenants, workers or contractors.

(c) The landlord shall not abuse the right of access or use it to harass the tenant.

**History:** L. 1992, ch. 306, § 17; July 1.

**58-25,116. Tenant to occupy as a dwelling unit; authority to sublet.** The tenant shall occupy the tenant's mobile home only as a dwelling unit and may rent the mobile home to another, only upon written agreement with the park management.

**History:** L. 1992, ch. 306, § 18; July 1.

**58-25,117. Material noncompliance by landlord; notice; termination of rental agreement; limitations; remedies; security deposit.**

(a) Except as provided in this act, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with K.S.A. 58-25,111 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and

omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. The rental agreement shall terminate and the mobile home space shall be vacated as provided in the notice, subject to the following:

(1) If the breach is remediable by repairs or the payment of damages or otherwise and the landlord initiates a good faith effort to remedy the breach within 14 days after receipt of the notice, the rental agreement shall not terminate. However, in the event that the same or a similar breach occurs after the fourteen-day period provided herein, the tenant may deliver a written notice to the landlord specifically describing the breach and stating that the rental agreement shall terminate upon a date not less than 30 days after the receipt of such notice by the landlord. The rental agreement then shall terminate as provided in such notice.

(2) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family or other person in the mobile home park with the tenant's consent.

(b) Except as provided in this act, the tenant may recover damages, and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or with K.S.A. 58-25,111.

(c) The remedy provided in subsection (b) is in addition to any right of the tenant arising under subsection (a).

(d) If the rental agreement is terminated, the landlord shall return that portion of the security deposit recoverable by the tenant under K.S.A. 58-25,108.

**History:** L. 1992, ch. 306, § 19; July 1.

**58-25,118. Failure to deliver possession; remedies.** (a) If the landlord fails to deliver physical possession of the mobile home space to the tenant as provided in K.S.A. 58-25,110, rent abates until possession is delivered and the tenant:

(1) Upon at least five days' written notice to the landlord, may terminate the rental agreement and upon termination the landlord shall return all of the security deposit; or

(2) may demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the mobile home space against the landlord, or any person in wrongful possession, and recover the damages sustained by the tenant.

(b) If a person's failure to deliver possession is willful and not in good faith, an aggrieved party may recover from such person an amount not more than 1 1/2 months' periodic rent or 1 1/2 times the actual damages sustained by such party, whichever is greater.

**History:** L. 1992, ch. 306, § 20; July 1.

**58-25,119. Unlawful removal or exclusion of tenant; diminished services; damages; security deposit.** If the landlord unlawfully removes or excludes the tenant from the mobile home park or willfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not to exceed 1 1/2 months' periodic rent or the actual damages sustained by the tenant, whichever is greater. If the rental agreement is terminated, the landlord shall return that portion of the security deposit recoverable by the tenant under K.S.A. 58-25,108.

**History:** L. 1992, ch. 306, § 21; July 1.

**58-25,120. Material noncompliance by tenant; notice; termination of rental agreement; limitations; nonpayment of rent; remedies.**

(a) Except as provided in this act, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with K.S.A. 58-25,113 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. The rental agreement shall terminate as provided in the notice, except that, if the breach is remediable by repair or the payment of damages or otherwise, and the tenant initiates a good faith effort to remedy the breach prior to the date specified in the notice, the rental agreement will not terminate. However, in the event that the same or a similar breach occurs after the fourteen-day period provided herein, the landlord may deliver a written notice to the tenant that the

rental agreement will terminate upon a date not less than 30 days after receipt of the notice without providing the opportunity to remedy the breach. The rental agreement then shall terminate as provided in such notice.

(b) If rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

(c) Except as otherwise provided in this act, the landlord may recover damages and obtain injunctive relief for any material noncompliance by the tenant with the rental agreement or with K.S.A. 58-25,113.

**History:** L. 1992, ch. 306, § 22; July 1.

**58-25,121. Abandonment, remedies; required registration.**

(a) A tenant is considered to have abandoned a mobile home when the tenant has been absent from the mobile home without reasonable explanation for 30 days or more during which time there is a default of rent three days after rent is due or when the rental agreement is terminated pursuant to the provisions of this act. A tenant's return to the mobile home does not change its status as abandoned unless the tenant pays to the landlord all costs incurred for the mobile home space, including costs of removal, storage, notice and utilities due and owing.

(b) If a tenant abandons a mobile home on a mobile home space, the landlord shall notify the legal owner and known lienholder of the mobile home of the abandonment and communicate to the legal owner and lien holder that the legal owner and lien holder is liable for any costs incurred for the mobile home space, including rent and utilities due and owing. However, the legal owner and lien holder is only liable for costs incurred from the point of written notification by the landlord. After the landlord's notification, costs for which liability is incurred shall then become the responsibility of the legal owner or lienholder of the mobile home. The mobile home may not be removed from the mobile home space without a signed written agreement from the landlord showing clearance for removal, showing that all debts are paid in full, or without an agreement reached with the legal owner and lien holder and the landlord. The right of possession of the legal owner or lienholder shall be subject to the landlord's claim for the landlord's reasonable costs of removal and storage of the abandoned mobile home. Any landlord who is entitled to costs for which liability is incurred as provided in this subsection shall have a lien as provided in K.S.A. 58-227 and amendments thereto.

(c) A required standardized registration form shall be filled out by each tenant, upon the rental of a mobile home space, showing the mobile home make, year and serial number if there is a lien on the mobile home, and if so the lienholder, and who is the legal owner of the mobile home. The registration cards or forms shall be kept on file with the landlord as long as the mobile home is on the mobile home space within the mobile home park.

**History:** L. 1992, ch. 306, § 23; July 1.

**58-25,122. Acceptance of late rent, effect.** Acceptance of late payment of rent from the tenant without reservation by the landlord or acceptance of performance by the tenant, other than for payment of rent, that varies from the terms of the rental agreement constitutes a waiver of the landlord's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

**History:** L. 1992, ch. 306, § 24; July 1.

**58-25,123. Termination of tenancy; holdover by tenant; remedies.**

(a) The landlord may terminate a tenancy only as provided in this act.

(b) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. If the tenant's holdover is willful and not in good faith the landlord in addition may recover an amount not to exceed 1 1/2 months' periodic rent or 1 1/2 the actual damages sustained by the landlord, whichever is greater.

**History:** L. 1992, ch. 306, § 25; July 1.

**58-25,124. Tenant's refusal to allow lawful access, remedies; landlord's unlawful or unreasonable entry, remedies.**

(a) If the tenant refuses to allow lawful access to the mobile home space, the landlord may obtain injunctive relief to compel access

or may terminate the rental agreement. In either case, the landlord may recover actual damages.

(b) If the landlord makes an unlawful entry or a lawful entry to the mobile home space in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case, the tenant may recover actual damages.

**History:** L. 1992, ch. 306, § 26; July 1.

**58-25,125. Certain retaliatory actions by landlord prohibited, remedies; increased rent, when; action for possession, when.**

(a) Except as provided in this section, a landlord shall not retaliate by increasing rent or decreasing services or by failing to renew a rental agreement after any of the following:

(1) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the mobile home park materially affecting health and safety;

(2) the tenant has complained to the landlord of a violation under K.S.A. 58-25,111; or

(3) the tenant has organized or become a member of a tenant's union or similar organization.

(b) If the landlord acts in violation of subsection (a), the tenant is entitled to the remedies provided in K.S.A. 58-25,119 and has a defense in an action for possession.

(c) Notwithstanding the provisions of subsection (a), the landlord may increase the rent of a tenant even though the tenant has complained of a violation as described in clause (1) or (2) of subsection (a) or has organized or become a member of an organization as described in clause (3) of subsection (a), if such rent increase does not conflict with a lease agreement in effect and is made in good faith to compensate the landlord for expenses incurred as a result of acts of God, public utility service rate increases, property tax increases or other increases in costs of operations.

(d) Notwithstanding subsections (a) and (b), a landlord may bring an action for possession if either of the following occurs:

(1) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person upon the premises with the tenant's consent.

(2) The tenant is in default of rent three days after rent is due. The maintenance of the action does not release the landlord from liability under subsection (b) of K.S.A. 58-25,117.

**History:** L. 1992, ch. 306, § 27; July 1.

**58-25,126. Act inapplicable to rental agreements valid prior to act; renewals, extensions or modifications.** The provisions of this act shall not apply to or affect any valid rental agreement entered into prior to the effective date of this act, nor shall it apply to or affect any conduct or transaction of the parties to such rental agreement, if such conduct or transaction is in accordance with and pursuant to such rental agreement; but the provisions of this act shall apply to and govern any renewal, extension or modification of any such rental agreement, where such renewal, extension or modification is effected on or after the effective date of this act.

**History:** L. 1992, ch. 306, § 28; July 1.

**58-25,127. Separate metering for water by landlord; requirements; not public utility.** (a) The term "public utility" within the meaning of K.S.A. 66-104, and amendments thereto, shall not include any person or entity in the business of being a landlord who is supplied water by a city or water district and who furnishes such water to its tenants pursuant to subsection (a)(5) of K.S.A. 58-2553 or subsection (a)(6) of K.S.A. 58-25,111, and amendments thereto, with the use of a separate meter to measure the water furnished to the tenant, so long as the landlord charges the tenant at the same rate charged by the city or water district to the landlord. Any lease between a landlord and tenant in effect at the time this section becomes effective shall not be affected by the provisions of this section. The furnishing of water by a landlord to a tenant in accordance with this section shall not be construed as a sale for resale which may be subject to the jurisdiction of the state corporation commission.

(b) The landlord shall not charge the tenant any surcharge for the installation,

maintenance or any other purpose related to the use of a separate water meter.

(c) The landlord shall provide the tenant with a monthly water statement showing the computation of the amount the tenant owes, the tenant's meter reading for the current water statement period and the tenant's meter reading for the prior water statement period.

**History:** L. 2005, ch. 72, § 1; July 1.

**The following statutes have been reprinted and are available in hard copy at HCCI.**

**Illegal Activity/Party Shack Laws**

22-3901 through 22-3904, 41-805

**Forcible Detainer (eviction) Laws**

61-3801 through 61-3808

Repealed:
61-2301 through 61-2311,
61-1312 through 61-1314, 61-2106

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Satellite Offices: Lawrence, Kansas (785) 749-422
Manhattan, Kansas (785) 539-6666

# Landlord Form Packet

## Instructions for use of forms

1. These forms are only samples. They may be used and fill-in forms or you may hand-write or type them on your own paper.

2. Always sign and date your letters.

3. Always make a copy; send the original to the other person and keep the copy for your records. Note on your copy how, when, and to whom it is delivered.

4. When you write your letter, wherever the form has blank lines or boxes to check, you should fill in or choose the appropriate information.

5. Wherever the form offers a choice between two words (for example: I/we, me/us, my/our) choose the word that is right for your situation and use only that word in your letter.

6. Kansas law does not require notices such as these to be notarized.

7. Kansas law allows for notices to be hand-delivered to someone over 12 years of age who lives at the address, to be posted at the property, or to be mailed.

   It is usually adequate to send your letters by regular mail or to deliver to the door. However, if you think you might have problems, sending your letter certified or registered mail, return receipt requested, or delivering to or posting on a door, taking a witness along might be a good idea so you can DOCUMENT that the notice was delivered on time. Have the witness sign or initial and date your copy of the letter or notice.

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HCCI forms provide a format which may be followed when drafting notices. Forms are created in accordance with Kansas law.

# 14/30 Day Notice of Tenant Noncompliance

In accordance with Kansas Residential Landlord and Tenant Act, KSA 58-2564

**To:** (Tenant/s) _____

Street Address: _____

City/State/Zip: _____

**From:** (Landlord) _____

Street Address: _____

City/State/Zip: _____

**Y**ou are in serious noncompliance with our rental agreement and/or your legal responsibilities as a Tenant. The following conditions, which have an effect on health and safety, exist and/or the following act(s) has/have occurred at the premises:

_____

_____

_____

The violation(s) listed above constitute cause for termination of the rental agreement. The rental agreement will terminate 30 days from the receipt of this notice. You must vacate the premises on or before _____ ***UNLESS* within 14 days you remedy or begin a "good faith" effort to remedy the violation(s).**

[ ] The violation(s) **can** be remedied. Suggested action to remedy: _____

_____

_____

_____

**Within 14 days, Tenant must provide Landlord verification that Tenant has remedied or has adequately initiated a good faith effort to remedy the violation(s).**

[ ] The violation(s) **cannot** be remedied. **You must vacate the premises by the date listed above.** See explanation below:

- ❑ This is the second notice for the same or similar violation. A 14 day opportunity to remedy the violation(s) is no longer available. Supporting statements: _____

  _____

  _____

- ❑ There is no remedy for this violation. There is no good faith effort that can be adequately initiated to remedy this violation**. (*Caution: this option should be utilized only in extreme situations for which there is no reasonable action that can be taken to redeem the tenancy.)*** Supporting statements:

  _____

  _____

[ ] Additional supporting documentation is attached.

**If you do not remedy the problem, verify efforts you have made to remedy the problem, or vacate as noted above; an eviction action, suit for damages, and/or other allowable actions may be initiated against you.**

Please note: The final three days of this 30-day period shall serve as the notice requirement of KSA 61-3803.

_____ _____

Landlord Signature Date

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# Notice to Vacate – Nonpayment of Rent

In accordance with Kansas Residential Landlord and Tenant Act, KSA 58-2564(b)

**Posted / Tacked at** _____ Time / Date _____ Initials _____

Or

**Personal Delivery to** _____ Time / Date _____ Initials _____

Or

**Mailed by** ❑ **Regular Mail** ❑ **Certified Mail** Time / Date _____ Initials _____

Or

**Other** _____ Time / Date _____ Initials _____

**Witness/es** _____

**To:** (Tenant/s) _____

Street Address: _____

City/State/Zip: _____

**From:** (Landlord) _____

Street Address: _____

City/State/Zip: _____

You are hereby notified that within three days (72 hours) you must either vacate and surrender possession of the following premises: _____

_____,

occupied by you as my tenant/s, or pay rent in the amount of $_____, which was due on (date) _____.

Should you fail to pay the rent in full, you are also notified that your tenancy of the premises is terminated for nonpayment of rent and that, if you have failed to vacate and surrender the premises, an eviction action, suit for damages, and/or other allowable actions may be initiated against you to remove you and your possessions from the premises.

_____ _____

Landlord signature Date Landlord printed name

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# 30 Day Notice to Vacate

In accordance with Kansas Residential Landlord and Tenant Act, KSA 58-2570

**To:** (Tenant/s) _____

Street Address: _____

City/State/Zip: _____

**From:** (Landlord) _____

Street Address: _____

City/State/Zip: _____

The purpose of this letter is to ask you to move out of the property you are renting from me at (address) _____

by (date) _____.

**Failure to vacate by this date would allow me to take legal action against you for possession of my property. Kansas law provides for substantial penalties if you do not move out on time.**

**KSA 58-2570** (c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. In addition, if the tenant's holdover is willful and not in good faith the landlord may recover an amount not more than 1½ months' periodic rent or not more than 1½ times the actual damages sustained by the landlord, whichever is greater.

Please note: The final three days of this 30-day period shall serve as the notice requirement of KSA 61-3803.

Sincerely,

_____ _____

Landlord's signature Date

_____ _____

Telephone

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# Security Deposit Itemization / Refund Form

In accordance with Kansas Residential Landlord and Tenant Act, KSA 58-2550

**Posted / Tacked at** _____ Time / Date _____ Initials _____

Or

**Personal Delivery to** _____ Time / Date _____ Initials _____

Or

**Mailed by** ❑ **Regular Mail** ❑ **Certified Mail** Time / Date _____ Initials _____

Or

**Other** _____ Time / Date _____ Initials _____

**Witness/es** _____

**To:** (Tenant/s) _____

Street Address: _____

City/State/Zip: _____

**From:** (Landlord) _____

Street Address: _____

City/State/Zip: _____

Amount of Security Deposit: $_____ Amount of Rent: $_____

Last Date Rent Paid: _____ Last Date Rent Charged: _____

Date Possession Returned: _____

| **Damage above normal wear and tear:** | **Amount** |
|---|---|
| | |
| | |
| | |
| | |
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| | |
| | |
| | |
| | |
| | |

**Rent Charged for _____ days at $_____ per day.** _____

**Total Charges:** _____

**Security Deposit Paid:** _____

**Total:** ❑ **Refund, check #** _____ ❑ **Amount Owed** $

_____ _____

Landlord Signature Date

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Manhattan, Kansas (785) 539-6666

# TENANT FORM PACKET

## INSTRUCTIONS FOR USE OF FORMS

1. These forms are only samples. They may be used as a fill-in form or you may hand-write or type them on your own paper.

2. Always sign and date your letters.

3. Always make a copy; send the original to the other person and keep the copy for yourself. Note on your copy how, when, and to whom it is delivered.

4. When you write your letter, wherever the form has blank lines or boxes to check, you should fill in or choose the appropriate information.

5. When the form offers a choice of words, (for example: I/we, me/us, my/our), choose the word that is right for your situation and use only that word in your letter.

6. Kansas law does not require notices such as these to be notarized.

7. Kansas law allows for notices to be hand-delivered to someone over 12 years of age who lives at the address, to be posted at the property, or to be mailed.

   It is usually adequate to send your letters by regular mail or to deliver to the door. However, if you think you might have problems, sending your letter certified or registered mail, return-receipt requested or when delivering to or posting on a door, taking a witness along might be a good idea so you can DOCUMENT that the notice was delivered on time. Have the witness sign or initial and date your copy of the letter or notice.

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# Maintenance Request Form

In accordance with Kansas Residential Landlord and Tenant Act, KSA 58-2553

**To:** (Landlord) _____

Street Address: _____

City/State/Zip: _____

**From:** (Tenant/s) _____

Street Address: _____

City/State/Zip: _____

Written maintenance requests provide a good record for the tenant and a good reminder and record for the landlord. Kansas Law (KSA 58-2557) provides that a landlord must have the tenant's consent to enter the tenant's home, and entry must be at a reasonable time after reasonable notice has been given. The optional sentence allows tenant/s to provide contact information if tenant/s wish to be home when the maintenance is done.

The following maintenance and/or repairs are needed at the premises I/we rent from you at

(address of rental unit) _____.

1
2
3
4
5
6
7

(Option: I/We would like to be at home when the maintenance work is done. I/We can arrange to be there or have someone there (days, times) _____.
You may reach me/us at the numbers below to make arrangements.

Contact number/time: _____

Contact number/time: _____

_____ _____

Tenant signature Date Tenant signature Date

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# 14/30 Day Notice of Landlord Noncompliance

In accordance with Kansas Residential Landlord and Tenant Act, KSA 58-2559

**To:** (Landlord) _____

Street Address: _____

City/State/Zip: _____

**From:** (Tenant/s) _____

Street Address: _____

City/State/Zip: _____

**Y**ou are in serious noncompliance with our rental agreement and/or your legal responsibilities as a Landlord. The following conditions exist at the above premises and/or the following act(s) has/have occurred at the premises:

_____

_____

_____

The violation(s) listed above constitute cause for termination of the rental agreement**. This notice is being provided on or before our rent-paying date of: _____. The rental agreement will terminate upon the next rent-paying date, not less than 30 days from the receipt of this notice. I/We will vacate the premises on or before _____, *UNLESS*:**

[ ] The violation(s) **can** be remedied. Suggested action to remedy: _____

_____

_____

_____

**Within 14 days, Landlord must provide Tenant verification that Landlord has remedied or has adequately initiated a good faith effort to remedy the violation(s).**

[ ] The violation(s) **cannot** be remedied. **I/We will vacate the premises by the date listed above.** See explanation below:

- ❑ This is the second notice for the same or similar violation. A 14-day opportunity to remedy the violation(s) is no longer available. Supporting statements_____

  _____

  _____

- ❑ There is no remedy for this violation. There is no good faith effort that can be adequately initiated, towards remedy for this violation. **(*Caution: this option should only be utilized in extreme situations for which there is no reasonable action that can redeem the tenancy.*)** Supporting statements: _____

  _____

  _____

[ ] Additional supporting documentation is attached.

**Failure to comply with this notice may result in a suit for damages being filed and/or other actions being taken against you as a result of your noncompliance. My/Our security deposit must be returned in accordance with Kansas law.**

_____ _____

Tenant Signature Date Tenant Signature Date

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# Notice of Landlord Entry

In accordance with Kansas Residential Landlord and Tenant Act, KSA 58-2557

**To:** (Landlord) _____

Street Address: _____

City/State/Zip: _____

**From:** (Tenant/s) _____

Street Address: _____

City/State/Zip: _____

I/We am writing to inform you that you are in violation of section 58-2557 of the Kansas Residential Landlord and Tenant Act by entering the premises that I/we rent from you without giving prior notice and obtaining my/our consent. A copy of KSA 58-2557 and 58-2571 is attached for your reference.

This letter is to request that I/we be given a minimum of twenty-four (24) hours notice prior to your entry onto the premises. For me/us, reasonable times for entry are:_____

_____.

You may notify me/us by: ❑ phone, ❑ in person, ❑ mail, ❑ email

_____

Contact information

Any future violations of section 58-2557 could result in legal action as provided for under the Kansas Residential Landlord and Tenant Act, KSA 58-2571.

Sincerely,

_____ _____

Tenant signature Date Tenant signature Date

See attached KSA 58-2557, KSA 58:2571.

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**KSA 58-2557. Landlord's right to enter; limitations.**

(a) The landlord shall have the right to enter the dwelling unit at reasonable hours, after reasonable notice to the tenant, in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.

(b) The landlord may enter the dwelling unit without consent of the tenant in case of an extreme hazard involving the potential loss of life or severe property damage.

(c) The landlord shall not abuse the right of access or use it to harass the tenant.

**History**: L. 1975, ch. 290, § 18; July 1

**58-2571. Tenant's refusal to allow lawful access; remedies; landlord's unlawful or unreasonable entry; remedies.**

(a) If the tenant refuses to allow lawful access to the dwelling unit, the landlord may obtain injunctive relief to compel access, or may terminate the rental agreement. In either case, the landlord may recover actual damages.

(b) If the landlord makes an unlawful entry, or a lawful entry in an unreasonable manner, or makes repeated demands for entry otherwise lawful but which have the effect of unreasonable harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or may terminate the rental agreement. In either case, the tenant may recover actual damages.

**History:** L. 1975, ch. 290, § 32; July 1

# 30 Day Notice to Terminate

In accordance with Kansas Residential Landlord and Tenant Act, KSA 58-2570(b)

**To:** (Landlord) _____

Street Address: _____

City/State Zip: _____

**From:** (Tenant/s) _____

Street Address: _____

City/State/Zip: _____

Dear (Landlord) _____:

The purpose of this letter is to give my/our legal 30-Day/7-Day notice. I/We plan to be entirely out of the property at the above address and return the keys to you by

(Date) _____.

(Option: When I/we have finished moving and cleaning, I/we would like to do a move out inspection with you to insure the return of my/our security deposit. When it gets closer to my/our move out day, I/we will call you to arrange for an appointment at our mutual convenience.)

Sincerely,

_____ _____

Tenant signature Date Tenant signature Date

_____

Phone/contact #

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# Request for Return of Security Deposit

In accordance with Kansas Residential Landlord and Tenant Act, KSA 58-2550(b)

**To:** (Landlord) _____

Street Address: _____

City/State/Zip: _____

**From:** (Tenant/s) _____

Street Address: _____

City/State/Zip: _____

On _____ , I/We vacated the property we rented
Date

from you at_____

Address of Rental Unit

and returned possession (the keys) to you.

- ❑ returned the unit in "as good a condition as when received, but for normal wear and tear"
- ❑ agree that I am/we are responsible for reasonable costs for damages/repairs over and above normal wear and tear ***attributable to my/our tenancy****: (list damages/repairs)*

_____

_____

_____

_____

_____

I/We request the amount of $_____ (minus damages) be returned to me/us within 30 days at the following address:

_____

_____

Sincerely,

_____ _____

Tenant Signature Date Tenant Printed Name Date

_____ _____

Tenant Signature Date Tenant Printed Name Date

KSA 58-2550 (b) Upon termination of the tenancy, any security deposit held by the landlord may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with K.S.A. 58-2555, and amendments thereto, and the rental agreement, all as itemized by the landlord in a written notice delivered to the tenant. If the landlord proposes to retain any portion of the security deposit for expenses, damages or other legally allowable charges under the provisions of the rental agreement, other than rent, the landlord shall return the balance of the security deposit to the tenant within fourteen (14) days after the determination of the amount of such expenses, damages or other charges, but in no event to exceed thirty (30) days after termination of the tenancy, delivery of possession and demand by the tenant. If the tenant does not make such demand within thirty (30) days after termination of the tenancy, the landlord shall mail that portion of the security deposit due the tenant to the tenant's last known address. **(c) If the landlord fails to comply with subsection (b) of this section, the tenant may recover that portion of the security deposit due together with damages in an amount equal to one and one-half (1 1/2) the amount wrongfully withheld.**

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**1195 SW Buchanan, Topeka, KS 66604 (785) 234-0217 (800) 383-0217 www.hcci-ks.org**

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HCCI forms provide a format which may be followed when drafting notices. Forms are created in accordance with Kansas law.

# Protect Your Family From Lead in Your Home

United States Environmental Protection Agency

United States Consumer Product Safety Commission

United States Department of Housing and Urban Development

September 2013

## Are You Planning to Buy or Rent a Home Built Before 1978?

Did you know that many homes built before 1978 have **lead-based paint**? Lead from paint, chips, and dust can pose serious health hazards.

**Read this entire brochure to learn:**

- How lead gets into the body
- About health effects of lead
- What you can do to protect your family
- Where to go for more information

**Before renting or buying a pre-1978 home or apartment, federal law requires:**

- Sellers must disclose known information on lead-based paint or lead-based paint hazards before selling a house.
- Real estate sales contracts must include a specific warning statement about lead-based paint. Buyers have up to 10 days to check for lead.
- Landlords must disclose known information on lead-based paint and lead-based paint hazards before leases take effect. Leases must include a specific warning statement about lead-based paint.

**If undertaking renovations, repairs, or painting (RRP) projects in your pre-1978 home or apartment:**

- Read EPA's pamphlet, *The Lead-Safe Certified Guide to Renovate Right,* to learn about the lead-safe work practices that contractors are required to follow when working in your home (see page 12).

## Simple Steps to Protect Your Family from Lead Hazards

**If you think your home has lead-based paint:**

- Don't try to remove lead-based paint yourself.
- Always keep painted surfaces in good condition to minimize deterioration.
- Get your home checked for lead hazards. Find a certified inspector or risk assessor at epa.gov/lead.
- Talk to your landlord about fixing surfaces with peeling or chipping paint.
- Regularly clean floors, window sills, and other surfaces.
- Take precautions to avoid exposure to lead dust when remodeling.
- When renovating, repairing, or painting, hire only EPA- or state-approved Lead-Safe certified renovation firms.
- Before buying, renting, or renovating your home, have it checked for lead-based paint.
- Consult your health care provider about testing your children for lead. Your pediatrician can check for lead with a simple blood test.
- Wash children's hands, bottles, pacifiers, and toys often.
- Make sure children avoid fatty (or high fat) foods and eat nutritious meals high in iron and calcium.
- Remove shoes or wipe soil off shoes before entering your house.

## Lead Gets into the Body in Many Ways

**Adults and children can get lead into their bodies if they:**

- Breathe in lead dust (especially during activities such as renovations, repairs, or painting that disturb painted surfaces).
- Swallow lead dust that has settled on food, food preparation surfaces, and other places.
- Eat paint chips or soil that contains lead.

**Lead is especially dangerous to children under the age of 6.**

- At this age, children's brains and nervous systems are more sensitive to the damaging effects of lead.
- Children's growing bodies absorb more lead.
- Babies and young children often put their hands and other objects in their mouths. These objects can have lead dust on them.

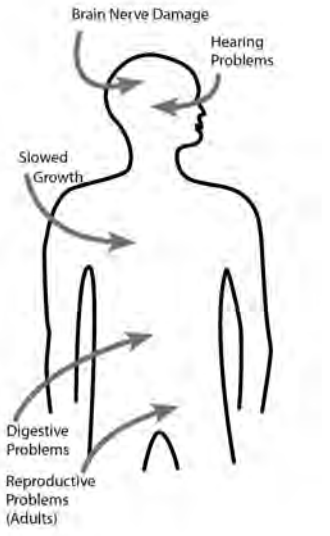
**Women of childbearing age should know that lead is dangerous to a developing fetus.**

- Women with a high lead level in their system before or during pregnancy risk exposing the fetus to lead through the placenta during fetal development.

## Health Effects of Lead

**Lead affects the body in many ways.** It is important to know that even exposure to low levels of lead can severely harm children.

**In children, exposure to lead can cause:**




- Nervous system and kidney damage
- Learning disabilities, attention deficit disorder, and decreased intelligence
- Speech, language, and behavior problems
- Poor muscle coordination
- Decreased muscle and bone growth
- Hearing damage

While low-lead exposure is most common, exposure to high amounts of lead can have devastating effects on children, including seizures, unconsciousness, and, in some cases, death.

Although children are especially susceptible to lead exposure, lead can be dangerous for adults, too.

**In adults, exposure to lead can cause:**

- Harm to a developing fetus
- Increased chance of high blood pressure during pregnancy
- Fertility problems (in men and women)
- High blood pressure
- Digestive problems
- Nerve disorders
- Memory and concentration problems
- Muscle and joint pain

## Check Your Family for Lead

**Get your children and home tested if you think your home has lead.**

Children's blood lead levels tend to increase rapidly from 6 to 12 months of age, and tend to peak at 18 to 24 months of age.

Consult your doctor for advice on testing your children. A simple blood test can detect lead. Blood lead tests are usually recommended for:

- Children at ages 1 and 2
- Children or other family members who have been exposed to high levels of lead
- Children who should be tested under your state or local health screening plan

**Your doctor can explain what the test results mean and if more testing will be needed.**

## Where Lead-Based Paint Is Found

In general, the older your home or childcare facility, the more likely it has lead-based paint.[1]

**Many homes, including private, federally-assisted, federally-owned housing, and childcare facilities built before 1978 have lead-based paint.** In 1978, the federal government banned consumer uses of lead-containing paint.[2]

Learn how to determine if paint is lead-based paint on page 7.

**Lead can be found:**

- In homes and childcare facilities in the city, country, or suburbs,
- In private and public single-family homes and apartments,
- On surfaces inside and outside of the house, and
- In soil around a home. (Soil can pick up lead from exterior paint or other sources, such as past use of leaded gas in cars.)

Learn more about where lead is found at epa.gov/lead.

[1] "Lead-based paint" is currently defined by the federal government as paint with lead levels greater than or equal to 1.0 milligram per square centimeter (mg/cm), or more than 0.5% by weight.

[2] "Lead-containing paint" is currently defined by the federal government as lead in new dried paint in excess of 90 parts per million (ppm) by weight.

## Identifying Lead-Based Paint and Lead-Based Paint Hazards

**Deteriorating lead-based paint (peeling, chipping, chalking, cracking, or damaged paint)** is a hazard and needs immediate attention. **Lead-based paint** may also be a hazard when found on surfaces that children can chew or that get a lot of wear and tear, such as:

- On windows and window sills
- Doors and door frames
- Stairs, railings, banisters, and porches

**Lead-based paint is usually not a hazard if it is in good condition** and if it is not on an impact or friction surface like a window.

**Lead dust** can form when lead-based paint is scraped, sanded, or heated. Lead dust also forms when painted surfaces containing lead bump or rub together. Lead paint chips and dust can get on surfaces and objects that people touch. Settled lead dust can reenter the air when the home is vacuumed or swept, or when people walk through it. EPA currently defines the following levels of lead in dust as hazardous:

- 40 micrograms per square foot ($\mu g/ft^2$) and higher for floors, including carpeted floors
- 250 $\mu g/ft^2$ and higher for interior window sills

**Lead in soil** can be a hazard when children play in bare soil or when people bring soil into the house on their shoes. EPA currently defines the following levels of lead in soil as hazardous:

- 400 parts per million (ppm) and higher in play areas of bare soil
- 1,200 ppm (average) and higher in bare soil in the remainder of the yard

**Remember, lead from paint chips—which you can see—and lead dust—which you may not be able to see—both can be hazards.**

The only way to find out if paint, dust, or soil lead hazards exist is to test for them. The next page describes how to do this.

## Checking Your Home for Lead

You can get your home tested for lead in several different ways:

- A lead-based paint **inspection** tells you if your home has lead-based paint and where it is located. It won't tell you whether your home currently has lead hazards. A trained and certified testing professional, called a lead-based paint inspector, will conduct a paint inspection using methods, such as:
  - Portable x-ray fluorescence (XRF) machine
  - Lab tests of paint samples

- A **risk assessment** tells you if your home currently has any lead hazards from lead in paint, dust, or soil. It also tells you what actions to take to address any hazards. A trained and certified testing professional, called a risk assessor, will:
  - Sample paint that is deteriorated on doors, windows, floors, stairs, and walls
  - Sample dust near painted surfaces and sample bare soil in the yard
  - Get lab tests of paint, dust, and soil samples
- A combination inspection and risk assessment tells you if your home has any lead-based paint and if your home has any lead hazards, and where both are located.

Be sure to read the report provided to you after your inspection or risk assessment is completed, and ask questions about anything you do not understand.

## Checking Your Home for Lead, continued

In preparing for renovation, repair, or painting work in a pre-1978 home, Lead-Safe Certified renovators (see page 12) may:

- Take paint chip samples to determine if lead-based paint is present in the area planned for renovation and send them to an EPA-recognized lead lab for analysis. In housing receiving federal assistance, the person collecting these samples must be a certified lead-based paint inspector or risk assessor
- Use EPA-recognized tests kits to determine if lead-based paint is absent (but not in housing receiving federal assistance)
- Presume that lead-based paint is present and use lead-safe work practices

There are state and federal programs in place to ensure that testing is done safely, reliably, and effectively. Contact your state or local agency for more information, visit epa.gov/lead, or call **1-800-424-LEAD (5323)** for a list of contacts in your area.[3]

[3] Hearing- or speech-challenged individuals may access this number through TTY by calling the Federal Relay Service at 1-800-877-8399.

## What You Can Do Now to Protect Your Family

**If you suspect that your house has lead-based paint hazards, you can take some immediate steps to reduce your family's risk:**

- If you rent, notify your landlord of peeling or chipping paint.
- Keep painted surfaces clean and free of dust. Clean floors, window frames, window sills, and other surfaces weekly. Use a mop or sponge with warm water and a general all-purpose cleaner. (Remember: never mix ammonia and bleach products together because they can form a dangerous gas.)
- Carefully clean up paint chips immediately without creating dust.
- Thoroughly rinse sponges and mop heads often during cleaning of dirty or dusty areas, and again afterward.
- Wash your hands and your children's hands often, especially before they eat and before nap time and bed time.
- Keep play areas clean. Wash bottles, pacifiers, toys, and stuffed animals regularly.
- Keep children from chewing window sills or other painted surfaces, or eating soil.
- When renovating, repairing, or painting, hire only EPA- or state-approved Lead-Safe Certified renovation firms (see page 12).
- Clean or remove shoes before entering your home to avoid tracking in lead from soil.
- Make sure children avoid fatty (or high fat) foods and eat nutritious meals high in iron and calcium. Children with good diets absorb less lead.

## Reducing Lead Hazards

**Disturbing lead-based paint or removing lead improperly can increase the hazard to your family by spreading even more lead dust around the house.**

- In addition to day-to-day cleaning and good nutrition, you can **temporarily** reduce lead-based paint hazards by taking actions, such as repairing damaged painted surfaces and planting grass to cover lead-contaminated soil. These actions are not permanent solutions and will need ongoing attention.
- You can minimize exposure to lead when renovating, repairing, or painting by hiring an EPA- or state-certified renovator who is trained in the use of lead-safe work practices. If you are a do-it-yourselfer, learn how to use lead–safe work practices in your home.
- To remove lead hazards permanently, you should hire a certified lead abatement contractor. Abatement (or permanent hazard elimination) methods include removing, sealing, or enclosing lead-based paint with special materials. Just painting over the hazard with regular paint is not permanent control.

**Always use a certified contractor who is trained to address lead hazards safely.**

- Hire a Lead-Safe Certified firm (see page 12) to perform renovation, repair, or painting (RRP) projects that disturb painted surfaces.
- To correct lead hazards permanently, hire a certified lead abatement professional. This will ensure your contractor knows how to work safely and has the proper equipment to clean up thoroughly.

Certified contractors will employ qualified workers and follow strict safety rules as set by their state or by the federal government.

## Reducing Lead Hazards, continued

**If your home has had lead abatement work done** or if the housing is receiving federal assistance, once the work is completed, dust cleanup activities must be conducted until clearance testing indicates that lead dust levels are below the following levels:

- 40 micrograms per square foot (µg/ft$^2$) for floors, including carpeted floors
- 250 µg/ft$^2$ for interior windows sills
- 400 µg/ft$^2$ for window troughs

For help in locating certified lead abatement professionals in your area, call your state or local agency (see pages 14 and 15), or visit epa.gov/lead, or call 1-800-424-LEAD.

## Renovating, Remodeling, or Repairing (RRP) a Home with Lead-Based Paint

**If you hire a contractor to conduct renovation, repair, or painting (RRP) projects in your pre-1978 home or childcare facility (such as pre-school and kindergarten), your contractor must:**

- Be a Lead-Safe Certified firm approved by EPA or an EPA-authorized state program
- Use qualified trained individuals (Lead-Safe Certified renovators) who follow specific lead-safe work practices to prevent lead contamination
- Provide a copy of EPA's lead hazard information document, *The Lead-Safe Certified Guide to Renovate Right*

**RRP contractors working in pre-1978 homes and childcare facilities must follow lead-safe work practices that:**

- **Contain the work area.** The area must be contained so that dust and debris do not escape from the work area. Warning signs must be put up, and plastic or other impermeable material and tape must be used.
- **Avoid renovation methods that generate large amounts of lead-contaminated dust.** Some methods generate so much lead-contaminated dust that their use is prohibited. They are:
  - Open-flame burning or torching
  - Sanding, grinding, planing, needle gunning, or blasting with power tools and equipment not equipped with a shroud and HEPA vacuum attachment and
  - Using a heat gun at temperatures greater than 1100°F
- **Clean up thoroughly.** The work area should be cleaned up daily. When all the work is done, the area must be cleaned up using special cleaning methods.
- **Dispose of waste properly.** Collect and seal waste in a heavy duty bag or sheeting. When transported, ensure that waste is contained to prevent release of dust and debris.

To learn more about EPA's requirements for RRP projects visit epa.gov/getleadsafe, or read *The Lead-Safe Certified Guide to Renovate Right*.

## Other Sources of Lead

**While paint, dust, and soil are the most common sources of lead, other lead sources also exist:**

- **Drinking water.** Your home might have plumbing with lead or lead solder. You cannot see, smell, or taste lead, and boiling your water will not get rid of lead. If you think your plumbing might contain lead:
  - Use only cold water for drinking and cooking.
  - Run water for 15 to 30 seconds before drinking it, especially if you have not used your water for a few hours.

  Call your local health department or water supplier to find out about testing your water, or visit epa.gov/lead for EPA's lead in drinking water information.
- **Lead smelters** or other industries that release lead into the air.
- **Your job.** If you work with lead, you could bring it home on your body or clothes. Shower and change clothes before coming home. Launder your work clothes separately from the rest of your family's clothes.
- **Hobbies** that use lead, such as making pottery or stained glass, or refinishing furniture. Call your local health department for information about hobbies that may use lead.
- Old **toys** and **furniture** may have been painted with lead-containing paint. Older toys and other children's products may have parts that contain lead.[4]
- Food and liquids cooked or stored in **lead crystal** or **lead-glazed pottery or porcelain** may contain lead.
- Folk remedies, such as **"greta"** and **"azarcon,"** used to treat an upset stomach.

[4] In 1978, the federal government banned toys, other children's products, and furniture with lead-containing paint (16 CFR 1303). In 2008, the federal government banned lead in most children's products. The federal government currently bans lead in excess of 100 ppm by weight in most children's products (76 FR 44463).

## For More Information

**The National Lead Information Center**
Learn how to protect children from lead poisoning and get other information about lead hazards on the Web at epa.gov/lead and hud.gov/lead, or call **1-800-424-LEAD (5323).**

**EPA's Safe Drinking Water Hotline**
For information about lead in drinking water, call **1-800-426-4791**, or visit epa.gov/lead for information about lead in drinking water.

**Consumer Product Safety Commission (CPSC) Hotline**
For information on lead in toys and other consumer products, or to report an unsafe consumer product or a product-related injury, call **1-800-638-2772,** or visit CPSC's website at cpsc.gov or saferproducts.gov.

**State and Local Health and Environmental Agencies**
Some states, tribes, and cities have their own rules related to lead-based paint. Check with your local agency to see which laws apply to you. Most agencies can also provide information on finding a lead abatement firm in your area, and on possible sources of financial aid for reducing lead hazards. Receive up-to-date address and phone information for your state or local contacts on the Web at epa.gov/lead, or contact the National Lead Information Center at **1-800-424-LEAD.**

Hearing- or speech-challenged individuals may access any of the phone numbers in this brochure through TTY by calling the toll-free Federal Relay Service at **1-800-877-8339**.

# U. S. Environmental Protection Agency (EPA) Regional Offices

The mission of EPA is to protect human health and the environment. Your Regional EPA Office can provide further information regarding regulations and lead protection programs.

**Region 1** (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont)

Regional Lead Contact
U.S. EPA Region 1
5 Post Office Square, Suite 100, OES 05-4
Boston, MA 02109-3912
(888) 372-7341

**Region 2** (New Jersey, New York, Puerto Rico, Virgin Islands)

Regional Lead Contact
U.S. EPA Region 2
2890 Woodbridge Avenue
Building 205, Mail Stop 225
Edison, NJ 08837-3679
(732) 321-6671

**Region 3** (Delaware, Maryland, Pennsylvania, Virginia, DC, West Virginia)

Regional Lead Contact
U.S. EPA Region 3
1650 Arch Street
Philadelphia, PA 19103
(215) 814-2088

**Region 4** (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Regional Lead Contact
U.S. EPA Region 4
AFC Tower, 12th Floor, Air, Pesticides & Toxics
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-8998

**Region 5** (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Regional Lead Contact
U.S. EPA Region 5 (DT-8J)
77 West Jackson Boulevard
Chicago, IL 60604-3666
(312) 886-7836

**Region 6** (Arkansas, Louisiana, New Mexico, Oklahoma, Texas, and 66 Tribes)

Regional Lead Contact
U.S. EPA Region 6
1445 Ross Avenue, 12th Floor
Dallas, TX 75202-2733
(214) 665-2704

**Region 7** (Iowa, Kansas, Missouri, Nebraska)

Regional Lead Contact
U.S. EPA Region 7
11201 Renner Blvd.
WWPD/TOPE
Lenexa, KS 66219
(800) 223-0425

**Region 8** (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Regional Lead Contact
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202
(303) 312-6966

**Region 9** (Arizona, California, Hawaii, Nevada)

Regional Lead Contact
U.S. EPA Region 9 (CMD-4-2)
75 Hawthorne Street
San Francisco, CA 94105
(415) 947-4280

**Region 10** (Alaska, Idaho, Oregon, Washington)

Regional Lead Contact
U.S. EPA Region 10
Solid Waste & Toxics Unit (WCM-128)
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
(206) 553-1200

## Consumer Product Safety Commission (CPSC)

The CPSC protects the public against unreasonable risk of injury from consumer products through education, safety standards activities, and enforcement. Contact CPSC for further information regarding consumer product safety and regulations.

**CPSC**
4330 East West Highway
Bethesda, MD 20814-4421
1-800-638-2772
cpsc.gov or saferproducts.gov

## U. S. Department of Housing and Urban Development (HUD)

HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. Contact HUD's Office of Healthy Homes and Lead Hazard Control for further information regarding the Lead Safe Housing Rule, which protects families in pre-1978 assisted housing, and for the lead hazard control and research grant programs.

**HUD**
451 Seventh Street, SW, Room 8236
Washington, DC 20410-3000
(202) 402-7698
hud.gov/offices/lead/

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U. S. EPA Washington DC 20460
U. S. CPSC Bethesda MD 20814
U. S. HUD Washington DC 20410

EPA-747-K-12-001
September 2013

# IMPORTANT!

## Lead From Paint, Dust, and Soil in and Around Your Home Can Be Dangerous if Not Managed Properly

- Children under 6 years old are most at risk for lead poisoning in your home.
- Lead exposure can harm young children and babies even before they are born.
- Homes, schools, and child care facilities built before 1978 are likely to contain lead-based paint.
- Even children who seem healthy may have dangerous levels of lead in their bodies.
- Disturbing surfaces with lead-based paint or removing lead-based paint improperly can increase the danger to your family.
- People can get lead into their bodies by breathing or swallowing lead dust, or by eating soil or paint chips containing lead.
- People have many options for reducing lead hazards. Generally, lead-based paint that is in good condition is not a hazard (see page 10).

## Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

### Lead Warning Statement

*Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.*

### Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i)_____Known lead-based paint and/or lead-based paint hazards are present in the housing (explain):

_____

_____

(ii)____Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i)_____Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below):

_____

_____

(ii)____Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

### Lessee's Acknowledgement (initial)

(c ) ____ Lessee has received copies of all information listed above.

(d) _____ Lessee has received the pamphlet Protect Your Family from Lead in Your Home.

### Agent's Acknowledgement (initial)

(e) _____ Agent has informed the lessor of the lessor's obligations under 42 U.S.C.4852d and is aware of his/her responsibility to ensure compliance.

### Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

| | | | | | |
|---|---|---|---|---|---|
| Lessor | (Sign and PRINT name) | Date | Lessor | (Sign and PRINT name) | Date |
| Lessee | (Sign and PRINT name) | Date | Lessee | (Sign and PRINT name) | Date |
| Agent | (Sign and PRINT name) | Date | Agent | (Sign and PRINT name) | Date |

**March 31, 2008** - To better protect children from lead-based paint hazards, EPA issued a new rule (PDF) (174 pp, 610K) for home improvement contractors and maintenance professionals who renovate or repair pre-1978 housing, child care facilities or schools. The rule requires that by April 2010 contractors and maintenance professionals be certified, that their employees be trained, and that they follow protective lead-safe work practice standards. Trained contractors must post warning signs, restrict occupants from work areas, contain work areas to prevent dust and debris from spreading, conduct a thorough cleanup, and verify that the cleanup was effective.

To foster adoption of the new measures, EPA is launching an education and outreach campaign promoting use of lead-safe work practices. EPA's analysis indicates that renovation, repair and painting projects in housing and child-occupied facilities that are likely to contain lead-based paint affect 1.4 million children under age six annually. The new requirements are key components of a comprehensive federal effort to eliminate childhood lead poisoning. These include programs to educate parents and caregivers to keep their housing clean and well-maintained, to make sure their young children wash their hands frequently and eat nutritious food, and to talk to their doctor about testing young children for lead poisoning. Read more about the new rule for renovation, repair and painting to protect against lead poisoning. Read the fact sheet on renovation. En Español. Más información en inglés.

**Information for Property Owners** -
http://www.epa.gov/lead/pubs/renovation.htm#owners

As a property owner, you have the ultimate responsibility for the safety of your family, tenants, or children in your care. To learn more about lead-safe practices and actions you can take before beginning work, read EPA's lead hazard information pamphlet *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools* (PDF) (20 pp, 3.7MB).

**Information for Tenants and Families of Children Under Age 6 in Child Care Facilities and Schools**

As a tenant or a parent or guardian of children in a child care facility or school, you should know your rights when a renovation job is performed in your home, or in the child care facility or school that your child attends.

Before starting a renovation in residential buildings built before 1978, the contractor or property owner is required to have tenants sign a pre-renovation disclosure form (PDF) (1 pp, 29K), which indicates that the tenant received the *Renovate Right* lead hazard information pamphlet.

Beginning in December 2008, the contractor must also provide a copy of EPA's *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools* (PDF) lead hazard information pamphlet (20 pp, 3.7MB) to owners and administrators of

pre-1978 child care facilities and schools to be renovated and make renovation information available to the parents or guardians of children under age six that attend child care facilities and schools.

## Effective Dates for Renovation, Repair, and Painting Program Rule

| | |
|---|---|
| **June 23, 2008** | Unaccredited renovator or dust sampling technician training programs may not advertise or provide training leading to EPA certification |
| | States, Tribes, and Territories may begin to apply for authorization |
| | Persons performing renovations for compensation in pre-1978 child-occupied facilities (e.g., child care facilities, kindergarten and pre-kindergarten classrooms) must provide either *Protect Your Family* or *Renovate Right* to the owners and occupants before beginning renovations |
| | Modifications to Pre-renovation Education Rule take effect:<br>(1) Minor repair and maintenance exception changes to < 6 $ft^2$ for interiors, 20 $ft^2$ for exteriors. To qualify, the project cannot involve the use of high dust generating ("prohibited") practices or window replacement.<br>(2) Emergency renovations specifically include interim controls performed in response to an elevated blood lead level in a child.<br>(3) Persons performing renovations for compensation in pre-1978 housing may use either *Protect Your Family* or *Renovate Right* to comply with the existing requirement to provide a lead hazard information pamphlet to the owners and occupants of target (pre-1978) housing before beginning renovations |
| **December 22, 2008** | Persons performing renovations for compensation in target (pre-1978) housing or child-occupied facilities must provide *Renovate Right* to the owners and occupants before beginning renovations |
| **April 22, 2009** | Training providers may begin applying to EPA for accreditation to provide renovator or dust sampling technician training |
| | Persons seeking certification as renovators or dust sampling technicians may take accredited training as soon as it is available |
| **October 22, 2009** | Firms may begin applying to EPA for certification to conduct renovations |
| **April 22, 2010** | Renovations in target (pre-1978) housing and child-occupied facilities must be conducted by certified renovation firms, using renovators with accredited training, and following the work practice requirements of the rule |

# Sample Pre-Renovation Form

This sample form may be used by contractors in documenting compliance with the Federal lead disclosure and renovation regulations.

## Occupant Confirmation

- ❑ I have received a copy of the lead hazard information pamphlet informing me of the potential risk of the lead hazard exposure from renovation activity to be performed in my dwelling unit. I received this pamphlet before the work began.
- ❑ I confirm that I own and live in this property, and that no child under the age of 6 resides here.

  **Note:** A child may reside in the primary residence of his or her custodial parents, legal guardians, foster parents, or informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.
- ❑ I confirm that no child under the age of 6 residing in this home has been diagnosed with an elevated blood lead level by a qualified medical professional.

Printed name of recipient _____ Date _____

Signature of recipient _____

## Self Certification Option (for tenant-occupied dwellings only)

If the lead hazard information pamphlet was delivered but a tenant signature was not obtainable, you may check the appropriate box below.

- ❑ **Refusal to sign** – I certify that I have made a good faith effort to deliver the lead hazard information pamphlet to the rental dwelling unit listed below at the date and time indicated and that the occupant refused to sign the confirmation of receipt. I further certify that I have left a copy of the pamphlet at the unit with the occupant.
- ❑ **Unavailable for signature** – I certify that I have made a good faith effort to deliver the lead hazard information pamphlet to the rental dwelling unit listed below and that the occupant was unavailable to sign the confirmation and time of receipt. I further certify that I have left a copy of the pamphlet at the unit by sliding it under the door.

Printed name of person certifying lead pamphlet delivery _____ Attempted delivery date _____

Signature of person certifying lead pamphlet delivery _____

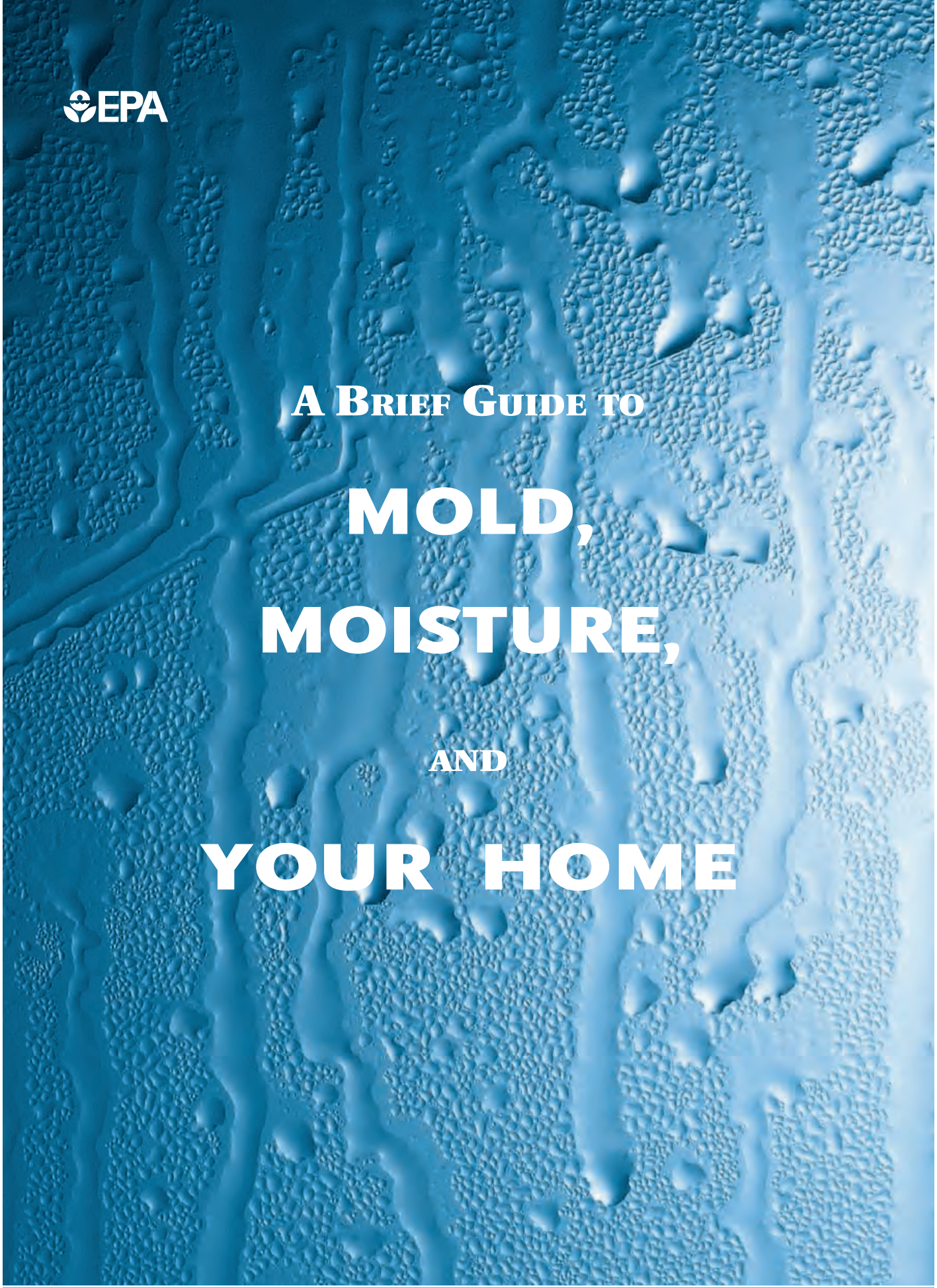
_____

_____

Unit Address _____

**Note Regarding Mailing Option** – As an alternative to delivery in person, you may mail the lead hazard information pamphlet to the owner and/or tenant. Pamphlet must be mailed at least seven days before renovation. Document with a certificate of mailing from the post office.

—Occupant's Copy—



EPA

# A Brief Guide to

# MOLD, MOISTURE, AND YOUR HOME

Indoor Air Quality (IAQ)

*EPA 402-K-02-003*
*(Reprinted 09/2010)*

**This Guide provides information and guidance for homeowners and renters on how to clean up residential mold problems and how to prevent mold growth.**

*U.S. Environmental Protection Agency*
*Office of Air and Radiation*
*Indoor Environments Division*
*1200 Pennsylvania Avenue, N. W.*
*Mailcode: 6609J*
*Washington, DC 20460*
*www.epa.gov/iaq*

# A Brief Guide to Mold, Moisture, and Your Home

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# MOLD BASICS

- **The key to mold control is moisture control.**
- **If mold is a problem in your home, you should clean up the mold promptly *and* fix the water problem.**
- **It is important to dry water-damaged areas and items within 24-48 hours to prevent mold growth.**

## Why is mold growing in my home?

Molds are part of the natural environment. Outdoors, molds play a part in nature by breaking down dead organic matter such as fallen leaves and dead trees, but indoors, mold growth should be avoided. Molds reproduce by means of tiny spores; the spores are invisible to the naked eye and float through outdoor and indoor air. Mold may begin growing indoors when mold spores land on surfaces that are wet. There are many types of mold, and none of them will grow without water or moisture.

*Mold growing outdoors on firewood. Molds come in many colors; both white and black molds are shown here.*

## Can mold cause health problems?

Molds are usually not a problem indoors, unless mold spores land on a wet or damp spot and begin growing. Molds have the potential to cause health problems. Molds produce allergens (substances that can cause allergic reactions), irritants, and in some cases, potentially toxic substances (mycotoxins).

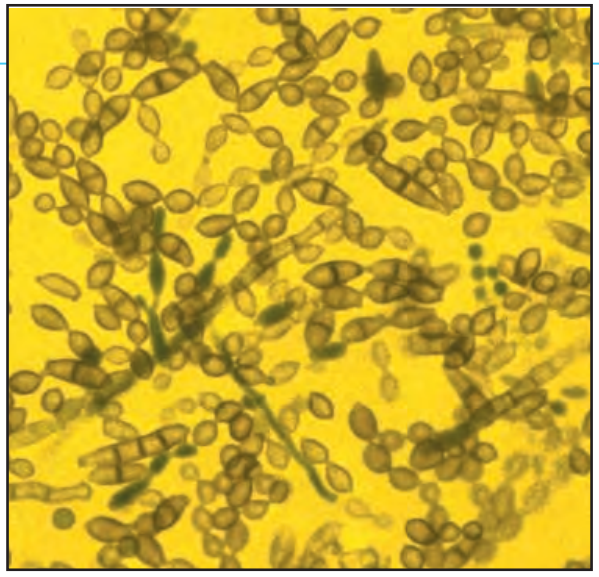
Inhaling or touching mold or mold spores may cause allergic reactions in sensitive individuals. Allergic responses include hay fever-type symptoms, such as sneezing, runny nose, red eyes, and skin rash (dermatitis). Allergic reactions to mold are common. They can be immediate or delayed. Molds can also cause asthma attacks in people with asthma who are allergic to mold. In addition, mold exposure can irritate the eyes, skin, nose, throat, and lungs of both mold-

allergic and non-allergic people. Symptoms other than the allergic and irritant types are not commonly reported as a result of inhaling mold.

Research on mold and health effects is ongoing. This brochure provides a brief overview; it does not describe all potential health effects related to mold exposure. For more detailed information consult a health professional. You may also wish to consult your state or local health department.

## How do I get rid of mold?

It is impossible to get rid of all mold and mold spores indoors; some mold spores will be found floating through the air and in house dust. The mold spores will not grow if moisture is not present. Indoor mold growth can and should be prevented or controlled by controlling moisture indoors. If there is mold growth in your home, you must clean up the mold **and** fix the water problem. If you clean up the mold, but don't fix the water problem, then, most likely, the mold problem will come back.



*Magnified mold spores.*

**Molds can gradually destroy the things they grow on. You can prevent damage to your home and furnishings, save money, and avoid potential health problems by controlling moisture and eliminating mold growth.**

# MOLD CLEANUP

*Leaky window – mold is beginning to rot the wooden frame and windowsill.*

**If you already have a mold problem – ACT QUICKLY.**

**Mold damages what it grows on. The longer it grows, the more damage it can cause.**

**Who should do the cleanup?** Who should do the cleanup depends on a number of factors. One consideration is the size of the mold problem. If the moldy area is less than about 10 square feet (less than roughly a 3 ft. by 3 ft. patch), in most cases, you can handle the job yourself, following the guidelines below. However:

- If there has been a lot of water damage, and/or mold growth covers more than 10 square feet, consult the U.S. Environmental Protection Agency (EPA) guide: *Mold Remediation in Schools and Commercial Buildings*. Although focused on schools and commercial

buildings, this document is applicable to other building types. It is available on the Internet at: www.epa.gov/mold.

- If you choose to hire a contractor (or other professional service provider) to do the cleanup, make sure the contractor has experience cleaning up mold. Check references and ask the contractor to follow the recommendations in EPA's *Mold Remediation in Schools and Commercial Buildings*, the guidelines of the American Conference of Governmental Industrial Hygenists (ACGIH), or other guidelines from professional or government organizations.

- If you suspect that the heating/ventilation/air conditioning (HVAC) system may be contaminated with mold (it is part of an identified moisture problem, for instance, or there is mold near the intake to the system), consult EPA's guide *Should You Have the Air Ducts in Your Home Cleaned?* before taking further action. Do not run the HVAC system if you know or suspect that it is contaminated with mold - it could spread mold throughout the building. Visit www.epa.gov/iaq/pubs to download a copy of the EPA guide.

- If the water and/or mold damage was caused by sewage or other contaminated water, then call in a professional who has experience cleaning and fixing buildings damaged by contaminated water.

- If you have health concerns, consult a health professional before starting cleanup.

# MOLD CLEANUP GUIDELINES

## Bathroom Tip

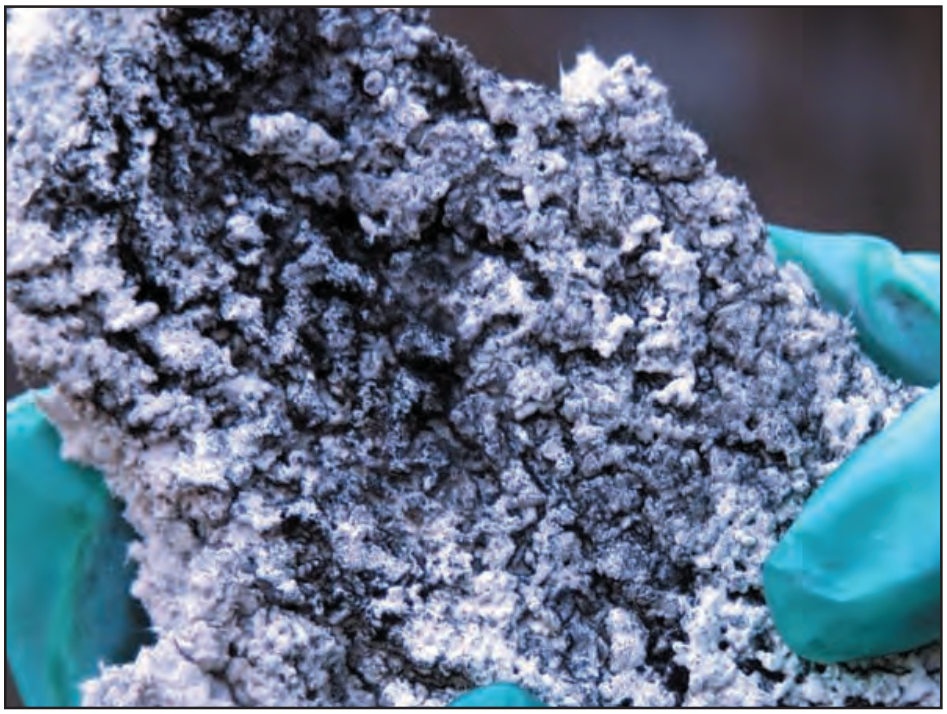
**Places that are often or always damp can be hard to maintain completely free of mold. If there's some mold in the shower or elsewhere in the bathroom that seems to reappear, increasing the ventilation (running a fan or opening a window) and cleaning more frequently will usually prevent mold from recurring, or at least keep the mold to a minimum.**

**Tips and techniques** The tips and techniques presented in this section will help you clean up your mold problem. Professional cleaners or remediators may use methods not covered in this publication. Please note that mold may cause staining and cosmetic damage. It may not be possible to clean an item so that its original appearance is restored.

- **Fix plumbing leaks and other water problems as soon as possible. Dry all items completely.**
- **Scrub mold off hard surfaces with detergent and water, and dry completely.**

*Mold growing on the underside of a plastic lawnchair in an area where rainwater drips through and deposits organic material.*

*Mold growing on a piece of ceiling tile.*



- Absorbent or porous materials, such as ceiling tiles and carpet, may have to be thrown away if they become moldy. Mold can grow on or fill in the empty spaces and crevices of porous materials, so the mold may be difficult or impossible to remove completely.

- Avoid exposing yourself or others to mold (see discussions: **What to Wear When Cleaning Moldy Areas** and **Hidden Mold**.)

- Do not paint or caulk moldy surfaces. Clean up the mold and dry the surfaces before painting. Paint applied over moldy surfaces is likely to peel.

- If you are unsure about how to clean an item, or if the item is expensive or of sentimental value, you may wish to consult a specialist. Specialists in furniture repair, restoration, painting, art restoration and conservation, carpet and rug cleaning, water damage, and fire or water restoration are commonly listed in phone books. Be sure to ask for and check references. Look for specialists who are affiliated with professional organizations.

# WHAT TO WEAR WHEN CLEANING MOLDY AREAS

*Mold growing on a suitcase stored in a humid basement.*

**It is important to take precautions to LIMIT YOUR EXPOSURE to mold and mold spores.**

- **Avoid breathing in mold or mold spores**. In order to limit your exposure to airborne mold, you may want to wear an N-95 respirator, available at many hardware stores and from companies that advertise on the Internet. (They cost about $12 to $25.) Some N-95 respirators resemble a paper dust mask with a nozzle on the front, others are made primarily of plastic or rubber and have removable cartridges that trap most of the mold spores from entering. In order to be effective, the respirator or mask must fit properly, so carefully follow the instructions supplied with the respirator. Please note that the Occupational Safety and Health Administration (OSHA) requires that respirators fit properly (fit testing) when used in an occupational setting; consult OSHA for more information (800-321-OSHA or osha.gov/).

- **Wear gloves**. Long gloves that extend to the middle of the forearm are recommended. When working with water and a mild detergent, ordinary household rubber gloves may be used. If you are using a disinfectant, a biocide such as chlorine bleach, or a strong cleaning solution, you should select gloves made from natural rubber, neoprene, nitrile, polyurethane, or PVC (see **Cleanup and Biocides**). Avoid touching mold or moldy items with your bare hands.

- **Wear goggles**. Goggles that do not have ventilation holes are recommended. Avoid getting mold or mold spores in your eyes.

*Cleaning while wearing N-95 respirator, gloves, and goggles.*

## How do I know when the remediation or cleanup is finished?

You must have completely fixed the water or moisture problem before the cleanup or remediation can be considered finished.

- You should have completed mold removal. Visible mold and moldy odors should not be present. Please note that mold may cause staining and cosmetic damage.

- You should have revisited the site(s) shortly after cleanup and it should show no signs of water damage or mold growth.

- People should have been able to occupy or re-occupy the area without health complaints or physical symptoms.

- Ultimately, this is a judgment call; there is no easy answer.

# MOISTURE AND MOLD PREVENTION AND CONTROL TIPS

## Moisture Control is the Key to Mold Control

*Mold growing on the surface of a unit ventilator.*

- When water leaks or spills occur indoors - **ACT QUICKLY**. If wet or damp materials or areas are dried 24-48 hours after a leak or spill happens, in most cases mold will not grow.
- Clean and repair roof gutters regularly.
- Make sure the ground slopes away from the building foundation, so that water does not enter or collect around the foundation.
- Keep air conditioning drip pans clean and the drain lines unobstructed and flowing properly.

*Condensation on the inside of a window-pane.*

- Keep indoor humidity low. If possible, keep indoor humidity below 60 percent (ideally between 30 and 50 percent) relative humidity. Relative humidity can be measured with a moisture or humidity meter, a small, inexpensive ($10-$50) instrument available at many hardware stores.

- If you see condensation or moisture collecting on windows, walls or pipes - ACT QUICKLY to dry the wet surface and reduce the moisture/water source. Condensation can be a sign of high humidity.

**Actions that will help to reduce humidity:**

- Vent appliances that produce moisture, such as clothes dryers, stoves, and kerosene heaters to the outside where possible. (Combustion appliances such as stoves and kerosene heaters produce water vapor and will increase the humidity unless vented to the outside.)

- Use air conditioners and/or de-humidifiers when needed.

- Run the bathroom fan or open the window when showering. Use exhaust fans or open windows whenever cooking, running the dishwasher or dishwashing, etc.

**Actions that will help prevent condensation:**

- Reduce the humidity (see preceeding page).
- Increase ventilation or air movement by opening doors and/or windows, when practical. Use fans as needed.
- Cover cold surfaces, such as cold water pipes, with insulation.
- Increase air temperature.

*Mold growing on a wooden headboard in a room with high humidity.*

**Renters:** Report all plumbing leaks and moisture problems immediately to your building owner, manager, or superintendent. In cases where persistent water problems are not addressed, you may want to contact local, state, or federal health or housing authorities.

*Rust is an indicator that condensation occurs on this drainpipe. The pipe should be insulated to prevent condensation.*

## Testing or sampling for mold

Is sampling for mold needed? **In most cases, if visible mold growth is present, sampling is unnecessary.** Since no EPA or other federal limits have been set for mold or mold spores, sampling cannot be used to check a building's compliance with federal mold standards. Surface sampling may be useful to determine if an area has been adequately cleaned or remediated. Sampling for mold should be conducted by professionals who have specific experience in designing mold sampling protocols, sampling methods, and interpreting results. Sample analysis should follow analytical methods recommended by the American Industrial Hygiene Association (AIHA), the American Conference of Governmental Industrial Hygienists (ACGIH), or other professional organizations.

# HIDDEN MOLD

*Mold growing on the back side of wallpaper.*

**Suspicion of hidden mold** You may suspect hidden mold if a building smells moldy, but you cannot see the source, or if you know there has been water damage and residents are reporting health problems. Mold may be hidden in places such as the back side of dry wall, wallpaper, or paneling, the top side of ceiling tiles, the underside of carpets and pads, etc. Other possible locations of hidden mold include areas inside walls around pipes (with leaking or condensing pipes), the surface of walls behind furniture (where condensation forms), inside ductwork, and in roof materials above ceiling tiles (due to roof leaks or insufficient insulation).

**Investigating hidden mold problems** Investigating hidden mold problems may be difficult and will require caution when the investigation involves disturbing potential sites of mold growth. For example, removal of wallpaper can lead to a massive release of spores if there is mold growing on the underside of the paper. If you believe that you may have a hidden mold problem, consider hiring an experienced professional.

**Cleanup and Biocides** Biocides are substances that can destroy living organisms. The use of a chemical or biocide that kills organisms such as mold (chlorine bleach, for example) is not recommended as a routine practice during mold cleanup. There may be instances, however, when professional judgment may indicate its use (for example, when immune-compromised individuals are present). In most cases, it is not possible or desirable to sterilize an area; a background level of mold spores will remain - these spores will not grow if the moisture problem has been resolved. If you choose to use disinfectants or biocides, always ventilate the area and exhaust the air to the outdoors. Never mix chlorine bleach solution with other cleaning solutions or detergents that contain ammonia because toxic fumes could be produced.

**Please note:** Dead mold may still cause allergic reactions in some people, so it is not enough to simply kill the mold, it must also be removed.

*Water stain on a basement wall — locate and fix the source of the water promptly.*

# ADDITIONAL RESOURCES

For more information on mold related issues including mold cleanup and moisture control/condensation/ humidity issues, visit:

**www.epa.gov/mold**

*Mold growing on fallen leaves.*

*This document is available on the Environmental Protection Agency, Indoor Environments Division website at: www.epa.gov/mold*

# NOTES

**Acknowledgements**

**EPA would like to thank Paul Ellringer, PE, CIH, for providing the photo on page 14.**

**Please note that this document presents recommendations. EPA does not regulate mold or mold spores in indoor air.**

Indoor Air Quality (IAQ)

# KANSAS HOMEOWNERS AND RENTERS INSURANCE

## KANSAS INSURANCE DEPARTMENT

SANDY PRAEGER
COMMISSIONER OF INSURANCE

**"We're here to make sure Kansans get the kind of protection they expect and deserve from their insurance companies."**

**Commissioner, Sandy Praeger**

Dear Kansas Consumer:

In most cases, residential insurance protects your largest financial investment. Therefore, it is wise to take time to conduct a comprehensive search of the insurance marketplace when purchasing this insurance.

Whether you are interested in purchasing homeowners, renters, condominium, townhouse or mobile home insurance, it is important to shop and compare insurance products just like you would when shopping for any other important consumer purchase.

This Homeowners and Renters Insurance Shopper's Guide has been published to provide you with valuable information, as well as address common consumer concerns and issues surrounding residential insurance. If you are having difficulty obtaining residential property insurance, you may want to investigate coverage through the Kansas FAIR Plan. This plan is described on page 8 of this guide.

Should you encounter any problems or have questions about home insurance, please call our toll-free Hotline at 1-800-432-2484.

Sincerely yours,

Sandy

Sandy Praeger
Commissioner of Insurance

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# ~ Section One ~
## Homeowners

For many Kansans, the purchase of a home is the largest single investment they will make. Homeowners insurance provides a security net for your investment. It helps you pay for repairs, rebuild your home, or replace personal belongings if disaster strikes. Also, it provides personal liability protection if an accident occurs on your property.

This chapter gives you an overview of the basic coverages available and tips on buying homeowners insurance.

## Basic Coverages

There are various types of homeowners policies sold in Kansas. Several types provide coverage for homeowners. Another type is designed specifically for renters and another is for condominium owners.

Most homeowners insurance policies combine **property** and **personal liability** coverages. The property coverage insures your home, contents and other structures against loss or damage from a specified number of perils. Perils are events that cause damage to property, such as fire, windstorm and theft.

In addition to the property coverage, the policy may also provide personal liability coverage for bodily injury and/or property damage caused to others as a result of your negligence. This part also provides payment of medical expenses for injuries to anyone other than you or household members living with you.

## Property Coverage

**Dwelling** – Property coverage which protects your primary residence and attached structures. It also covers fixtures in the house such as built-in appliances, plumbing, heating and permanently installed air-conditioning systems and electrical wiring.

**Other Structures** – Provides insurance coverage for detached structures such as garages, storage sheds, and fixtures attached to the land, such as fences and wood decks.

**Contents** – Protects your furniture, appliances, clothing and other personal belongings. Contents coverage usually has special limits on certain kinds of personal property. For example, theft of jewelry and furs is limited to a certain dollar amount. Check your policy for a full listing of limits. For additional premium, you may increase these special limits.

**Additional Living Expenses** – Provides coverage for some of your extra expenses if your home is damaged and you cannot live there while repairs are being made. Some examples of covered items are extra food costs, lodging, relocation and storage expenses. This benefit covers only the difference over and above your normal household expenses. For example, the cost of restaurant meals minus normal food expenses. Keep your receipts for additional living expenses and submit these to your insurance company for reimbursement.

**Additional Property Coverages Contained in Your Policy** – Most homeowners insurance policies contain additional coverages. When a peril damages or destroys a house, there are expenses that go beyond the repair of the house itself. Certain dollar limits apply. See your policy for the additional coverages:

- Debris removal
- Reasonable repairs
- Damaged trees, shrubs and other plants
- Fire department service charges
- Theft or illegal use of credit or transfer cards
- Collapse of building caused by certain perils insured against
- Glass breakage

## Exclusions to Property Coverage

Most homeowners policies under the property coverage section DO NOT provide coverage for loss to:

- Animals, birds or fish
- Motor vehicles, including equipment & accessories
- Aircraft and parts
- Flood or rising water damage
- Water damage from sewer backup
- Damage resulting from war, terrorism, nuclear hazard, neglect, earthquakes or power failure.

These are only examples of property not covered. Carefully review your policy to determine exactly what specific exclusions apply under your contract of insurance.

## Personal Liability Coverage

**Personal Liability** – Provides coverage for a claim or lawsuit resulting from bodily injury or property damage to others caused by an accident on your property or as a result of your personal activities. Most policies provide a minimum amount of coverage, such as $100,000 per claim. Higher limits are available for an additional premium charge.

**Medical Payments** – Provides coverage for medical expenses should others accidentally be injured on your property or through your personal activities. Coverage applies to necessary medical expenses and is typically written with a $1,000 per person limit; however, higher limits are available for an additional premium charge. Medical payments do not apply to you or other household members. Also, there is no medical payments coverage for any activity relative to a business located on the premisis.

In addition to the personal liability and medical payments coverages in your homeowners policy, there are other coverages, which may include the following:

- Damage to the Property of Others - Covers when you damage property which you borrowed from a friend or relative, or if you damage another person's property.
- Claim Expenses - Coverage for expenses incurred with a lawsuit, such as interest on court judgments or premiums on required bonds.
- First Aid Expenses - Covers expenses for first aid to others. (This does not apply to first aid for the insured).

## Exclusions to Personal Liability Coverages

Most homeowners policies under the personal liability coverage section DO NOT provide coverage for loss to:

- Aircraft, automobile, recreational motor vehicles, watercraft (50 hp or more)
- Bodily injury or physical damage due to professional services.
- Bodily injury or physical damage caused by intentional acts of the insured.

Carefully review your policy to determine exactly what coverage you have.

## How Much Coverage Is Enough?

The correct amount of coverage on the structure means the cost to rebuild the dwelling with material of like kind and quality at current reconstruction prices. You don't want to apply for more coverage than you need, but you don't want to be underinsured either.

**Property Protection** – The better your coverage, the less you will have to pay out of your own pocket if disaster strikes. Your contents limit is commonly calculated as a percentage of your dwelling coverage limit. Generally, it will be 50% of the amount of insurance on your house, unless you buy additional coverage. In other words, if your home is insured for $100,000, your contents limit would be $50,000.

**Personal Liability Protection** – You need enough personal liability coverage to protect yourself from lawsuits resulting from your negligence. Higher limits are available for an additional premium charge.

**Lender Requirements** – Usually, your lender will require you to name the lending institution as a loss payee (this protects the lending institution in case of loss). You *are not* required to purchase insurance from the insurer recommended by your lender. However, if you fail to keep insurance coverage in force, the lending institution will purchase coverage that protects *its* financial interest and you may have to pay for this coverage. This type of coverage is more expensive than an insurance policy that you may purchase.

**Deductible Requirements** –Homeowners policies require you to specify a deductible, which is the amount of money you pay before the insurance company begins paying on a loss. A common deductible is $500. Your insurance company may have a separate higher deductible amount for the perils of wind and hail. Your choice of a higher deductible will usually reduce the price of your homeowners insurance.

**Policy Requirements –** Insurance companies will provide coverage on either a replacement cost or actual cash value basis. Insurers will impose some coverage requirements for replacement cost protection. Definitions of replacement cost and actual cash value follow in the next few pages.

Your home and belongings are insured against the perils specified in your policy. The specific policy you purchase will depend on your unique needs. The more perils insured against, the more you will pay for the insurance policy.

- **Basic Form –** insures your property with limited coverage against 11 basic perils (fire or lightening; smoke damage; windstorm or hail; explosion; riot or civil commotion; aircraft; vehicles; theft; vandalism and malicioius mischief; glass breakage; and, loss of property removed from premises endangered by fire or other perils.)
- **Broad Form –** covers more perils and provides a broader protection base. (falling objects; weight of ice, snow and sleet; collapse of building(s) or any part thereof; sudden accidental tearing apart, cracking, burning, or bulging of a steam or hot water heating system; accidental discharge, leakage or overflow of water or steam; freezing of plumbing, heating and air-conditioning systems; sudden and accidental damage from artificially generated currents to electrical applicances and devices).
- **Special Form –** is the most common of all homeowners forms. It usually offers all peril coverage on the structure and broadened named peril coverages on your contents.
- **Modified Coverage Form –** is designed to provide coverage of homes that do not meet the requirements applicable to other types of homeowners policies. It is more restrictive.

## Dwelling: Replacement Cost

Replacement cost on your dwelling is the amount it would take to repair or rebuild your home or replace damaged property with materials of similar kind and quality. Do not confuse replacement cost with market value. Market value is the value of property established by the price you agreed to pay for your home when purchased from the seller. The market value generally is not involved in determining what amount to purchase under a homeowners policy. In some situations, the replacement cost value may actually be higher than the market value of your home. Insurance coverage is based upon the construction replacement cost amount while market value is associated with real estate and taxation valuations.

### 80% of Replacement Cost

Most insurance companies require a home owner to insure their structure for at least 80% of the replacement cost value during the entire term (365 days) of coverage. If the homeowner fails to insure for at least 80% of the replacement cost, a penalty is applied for payment of claim(s) on partial losses.

For example, if it would cost $100,000 to replace your home and it is insured for $80,000 (80% of the replacement value), when a fire causes a $25,000 loss, your insurance will pay for the full $25,000. If it would cost $100,000 to replace your home, but it is insured for only $60,000 (less than 80% replacement), and a fire causes a $25,000 loss, your company would pay for only part of the loss. You would have to pay the balance out of pocket, plus any applicable deductible. Insuring your home for at least 80% of its replacement cost value throughout the entire policy term (365 days) is very important.

| Home Replacement Amount | at 80% | At less than 80% |
|---|---|---|
| *$100,000 (x80%) =* | *$80,000* | *$60,000 / $80,000 = 75%* |
| *Loss amount* | *$25,000* | *$25,000* |
| *Company pays* | *$25,000* | *$25,000 x 75% or $18,750* |
| *You pay* | *$ -0-* | *$6,250* |

## Dwelling: Actual Cash Value

In some cases, especially if you have an older home, insurance companies will only offer actual cash value coverage as opposed to replacement cost coverage. Actual cash value is the amount it would take to repair or replace damage to your home after depreciation. Depreciation is the decrease in a home or property value because of age and wear and tear over time. For example:

A storm destroys your roof. Your roof has a 25-year life expectancy and is 10 years old. The company pays based upon 15 years left on the life expectancy of your roof.

| New roof cost: | Depreciation wear & tear | Company Pays* | You Pay |
|---|---|---|---|
| $4,365 | 15/25=60% | $2619 | $1746 |

* No matter what the value, the amount you actually receive will always be reduced by the amount of your deductible.

## Contents: Actual Cash Value or Replacement Cost

Most insurance companies provide coverage on the contents of your home on an actual cash value basis. You may insure your personal belongings at replacement cost, however there will be an increased premium charge for such.

For example, in 1996 you purchased a couch for $700. Your couch is destroyed in 2004 and is worth only $300 because of age and wear and tear since the time it was purchased. A new couch now costs $900.

If you have an actual cash value policy, you are entitled to the current value of the couch which is $300, minus your deductible.

If you have replacement cost coverage, you will be paid $300 for the couch's current value. When you show proof of purchase of a replacement couch, you will receive the $600 minus your deductible.

| | New Cost | Company Pays | You Pay | Company Additonally Pays |
|---|---|---|---|---|
| Actual Cash Value | $900 | $300 | $600 | $-0- |
| Replacement Cost | $900 | $300 | $600* | $600 |

No matter what the value, the amount you actually receive will always be reduced by the amount of your deductible.

** Be sure to keep your receipts. Proof of purchase is a must to get your full amount for replacement cost.*

## Keep Your Coverage Current

Whether your home is insured for replacement cost or actual cash value, it is important to keep track of construction costs. For instance, the addition of a room, new insulation and yearly inflation all increase the value of your home.

It is your responsibility to update your coverage so that you will be fully covered in case of a loss. Inflationary protection coverage may be added to your policy. (See Other Property and Personal Liability Coverages in the next column.)

**There is NO GRACE PERIOD! ALWAYS pay ON or BEFORE your DUE DATE or your insurance will be cancelled.**

## Take Inventory of Your Property

A household inventory will help you decide if you need to increase the coverage amount for your personal property. The inventory helps you estimate the cost to replace these items and is useful if you need to file a claim.

The inventory should include a list of the items in your home and their value. Most insurance companies will give you a worksheet to help you record this information. Just ask.

Photograph or video tape your personal belongings. Save receipts from major purchases, such as furniture or electronic equipment.

Keep your inventory in a safe place away from your home such as your office or in a safety deposit box. This protects you if your home burns or is destroyed by a windstorm.

## Other Property and Personal Liability Coverages

In addition to the standard coverages, you may buy other types of insurance coverages as separate policies, or as endorsements to your existing policy.

**Inflation Guard Coverage** is a practical procedure to help you maintain adequate protection on your home. Even though the amount of homeowners insurance you carry should be at least 80% of your home replacement cost, such amount of coverage may not be enough in the future. The Inflation Guard coverage provides periodic increases in the policy limit and will allow the insurance company to automatically change your policy limit at time of renewal. Not all insurance companies offer this coverage.

**Scheduled Personal Property Coverage** usually covers possessions such as jewelry, furs, stamps, coins, guns, computers, antiques, and other items that may exceed normal limits in your regular homeowner's insurance policy. These endorsements often provide broader coverage, at an additional premium charge, than that granted in the homeowners insurance policy.

Other optional coverages available:

- Increased limits on money and securities
- Secondary Residence Premises (such as vacation homes, etc.)

- Watercraft
- Higher Limits of Theft Protection
- Theft or illegal use of credit or debit cards
- Business activities and rental properties
- Personal Injury Liability (slander, libel, etc.)

## Fire and Extended Coverage

Your dwelling may not meet the underwriting requirements of insurance companies to qualify for a standard homeowners policy. Therefore, a company may offer you limited coverage on your home.

These limited insurance policies often are referred to as a Dwelling or Fire & Extended Coverage policy. They provide coverage for only your dwelling or structure. This is not a homeowners policy. Coverage usually includes perils insured against: fire or lightening, windstorm or hail, explosion, riot or civil commotion, aircraft, vehicles, and smoke.

The policy does not include coverage for contents or personal liability.

## National Flood Insurance Program

ALL homeowners and property insurance policies ***exclude*** damage from flood or rising water. However, flood insurance is available through the Federal government with the National Flood Insurance Program (NFIP).

If your home is located in a flood plain, your lender must require flood insurance. The type of coverage available in your area depends on your community's participation in the National Flood Insurance Program. For more information, contact the National Flood Insurance Program at their toll-free number: 1-800-638-6620

The Kansas Insurance Department does not regulate any federal insurance programs such as the National Flood Insurance Program. However, you may obtain a flood brochure listing insurance companies that offer policies by calling:**1-800-638-6620.**

## Umbrella Liability Policy

This policy provides an additional $1 to $5 million limit of liability coverage beyond the limits of your primary homeowners personal liability coverage.

This is excess personal liability coverage which pays only after you exhaust the primary limits of personal liability insurance coverage. The company providing personal liability coverage normally will require you to maintain certain limits of liability for your primary personal liability coverage.

Also, insurance companies will require that they provide the primary coverage for both your motor vehicles and your primary residence before they offer the Umbrella Liability Policy..

## The Kansas FAIR Plan

The Kansas FAIR Plan (Fair Access to Insurance Requirements) may permit property insurance coverage to be written on structures which do not qualify to be covered under an insurance company's program of property insurance.

The Kansas FAIR Plan is funded by participation of the admitted insurance companies who have the authority to write property insurance in Kansas.

If you cannot find an insurance company that will insure your structure, the Kansas FAIR Plan may accept your application. The Kansas FAIR Plan provides a property coverage policy and may offer optional theft and personal liability coverage. The coverage is not as comprehensive as homeowner's insurance.

Qualifications may include:

- Coverage for your property must be declined by at least three insurance companies before application can be made to the Kansas FAIR Plan.
- You can apply for the Kansas FAIR Plan through any licensed insurance agent who sells property insurance.
- The FAIR Plan will inspect your property to determine whether you are eligible.
- Approval in the Plan is NOT guaranteed. You do not have a guaranteed right to buy Kansas FAIR Plan coverage.

## Make Sure Your Coverage Fits Your Needs

**Buy enough coverage to avoid a major financial loss if your home is badly damaged or destroyed.**

# ~ Section Two ~
## Renters, Condos, Townhouses and Mobile Homes

This chapter discusses different types of home insurance: Renters, Condominium, Townhouse and Mobile Home Coverage.

## Renters and Condominium Insurance

**Renters:** Of all types of insurance, renters insurance may be the most overlooked by consumers. Three out of four renters carry no renters insurance at all. Renters may assume that the landlords have insurance. They do, but ONLY for the building itself – not for the people who live in the building. Landlords are not responsible for protecting renters property. As a renter, you have no coverage if your possessions are lost in a fire or burglary, or if you are held liable for bodily injury or property damage to others.

You can buy a renters policy to insure your household contents and personal belongings against the same perils as in a Broad Form homeowners policy.

**Condominium**: If you live in a condominium, your condominium association should purchase a policy that covers the building including any common walls and grounds, and liability associated with common properties. You have a right to examine the association policy to see what protection is provided.

To protect your contents, personal property, and interior walls, fixtures, improvements, additions and alterations installed at your expense, you may purchase a Condominium Unit Owners policy. It covers any items not insured by the association's policy.

Both renters and condominium insurance are similar to homeowners insurance. The standard policies provide two major coverages: Personal Property and Liability.

**There is NO GRACE PERIOD! ALWAYS pay ON or BEFORE your DUE DATE or your insurance will be cancelled.**

## Personal Property Coverage for Condo Residents and Renters

**Personal Property Coverage** – Provides coverage to repair or replace your personal belongings – such as your television, stereo, clothing, furniture, jewelry, carpets, appliances and most other personal items – if they are damaged, destroyed or stolen. Most personal property is usually covered anywhere in the world, for example, a camera stolen from your car or luggage stolen from your hotel room. Contents coverage has special limits on certain kinds of personal property. For example, theft of jewelry and furs is limited to $1,000. Check your policy for a full listing of limits. For a higher premium charge, you may increase the limit of coverage on these items.

**Additional Living Expenses** – Provides coverage to protect some of your extra expenses if your apartment or condo is damaged and you cannot live there while repairs are being made. Some examples of covered items are extra food costs, lodging, relocation and storage expenses, etc. This benefit covers only the difference over and above your normal expenses. For example, the cost of restaurant meals minus normal food expenses. Keep your receipts for additional living expenses, and submit these to your insurance company for reimbursement.

**Perils Insured Against –** The events which may cause damage to property. Most standard condo or renters policies are named-perils policies. Perils typically insured against are: fire, lightening, smoke, theft, vandalism or malicious mischief, breakage of glass, falling objects, freezing, etc.

**Additional Coverages** – Condo and renter policies may contain additional coverages. Check your policy closely for actual coverage. Additional coverages may include: food spoilage, lock replacement, loss of use of residence, fire department service charge, reasonable repair, debris removal, personal property at another location, moving, storage, travel, trees, shrubs and other plants, property removal, theft or illegal use of credit and fund transfer cards, condo and townhouse association loss assessment, collapse of a building, and tenant's waterbed liability.

**Exclusions –** Most renters or condo policies under the property coverage section DO NOT provide coverage for loss to the following: animals, birds or fish; motor vehicles including equipment and accessories; aircraft and parts; flood or rising water damage; water damage from sewer backup; damage resulting from war, terrorism, nuclear hazard; neglect; earthquakes, and power failure.

The above are only examples of personal property not covered. Review your policy carefully to determine exactly what exclusions apply.

## Personal Liability Coverage for Renters and Condo Residents

**Personal Liability –** Provides coverage against a claim or lawsuit resulting from bodily injury or property damage to others caused by an accident on your property or as a result of your personal activities. The policy is usually written to pay up to $100,000 per claim. Higher limits are available for an additional premium charge.

**Damage to the Property of Others –** Provides coverage for damage to property which you borrowed from a friend or relative, or if you damage another person's property in their home.

**Medical Expenses for Injury to Others –** Provides coverage for the medical expenses of others accidentally injured on your property or through your personal activities. Policies are typically written with a $1,000 per person limit, but higher limits are available for an additional premium. Medical payments do not apply to you or household member's injuries or activities involving any business conducted on your primary premisis.

## How Much Coverage Should You Buy?

The main factor to consider in determining how much renters and condo insurance to buy is the actual value of your belongings. This involves establishing the value of all your possessions.

## Actual Cash Value vs. Replacement Cost

**Actual Cash Value (ACV):** Most insurance companies provide coverage on the contents of your rental home, apartment or condo on an actual cash value basis. Actual cash value means the value of your personal property, less allowance for depreciation and physical deterioration.

**Replacement Cost:** Replacement cost coverage is the amount it would cost at today's prices to replace damaged or destroyed personal property.

Let's say in 1998 you purchased a couch for $700. Your couch is destroyed in 2004 and is worth $300 because of age and wear and tear since the time it was purchased. A new couch now costs $900. If you have an actual cash value policy, coverage entitles you to the current value of the couch which is $300, minus your deductible. If you have a replacement cost policy, you will be paid $300 for the couch's current value. When you show proof of replacement purchase, you will receive the $600 reimbursement from the company, minus your deductible.

| | New Cost | Company Pays | You Pay | Company Pays Additionally |
|---|---|---|---|---|
| Actual Cash Value | $900 | $300 | $600 | $-0- |
| Replacement Cost | $900 | $300 | $600* | $600 |

No matter what the value, the amount you actually receive will always be reduced by the amount of your deductible.

** Be sure to keep your receipts. Proof of purchase is a must to get your full amount for replacement cost.*

**Take Inventory of Your Property –** The easiest way to determine what needs to be insured is to take a complete inventory of the contents or personal property and estimate their value. Most insurance companies will give you a worksheet to help you record this information. Photograph or video tape your personal property. Save receipts from major purchases, such as furniture or electronic equipment. Keep your inventory in a safe place away from your home, such as in a safety deposit box at a bank.

**Deductibles** – Renters or condo policies require you to specify a deductible, which is the amount of money you pay before the insurance company begins paying on a loss. Choosing a higher deductible will reduce the premium charge you pay for your insurance.

**Optional Coverages** – In addition to standard coverages, you may purchase other types of insurance coverage such as separate policies or endorsements. Some property, such as art objects and antiques, should be listed separately by endorsement on your policy. Check with your insurance agent or company for a full list of endorsements or other policies you may consider.

## Townhouse Insurance

Kansas law established a Townhouse Ownership Act in 1974 which provides for the townhouse association to purchase one Fire and Extended Coverage policy on all units in the complex if the articles of incorporation and declarations of the Townhouse Association meet all other requirements of the Act. If your Townhouse Association qualifies, and if there is a blanket policy covering all structures in the complex, then you may wish to purchase a policy covering only your personal property and personal liability. This coverage is basically the same as a renters policy.

However, if you want to have your own homeowners policy, or if the Townhouse Association does not qualify for a blanket policy, then you may purchase your own homeowner's policy as described in Section One.

## Manufactured, Modular or Mobile Home Coverage

There are various types of non-conventionally constructed homes, such as manufactured, modular or mobile homes. These traditionally described mobile homes may be single or double-wide, or they may be units on permanent foundations on land owned by the occupant or in mobile home parks.

Just as there are different types of non-conventional constructed homes, there are various types of insurance policies which may be offered by insurance companies.

It is important to keep in mind that manufactured, modular or mobile home insurance being sold is not as standardized as it is for a conventionally built structure. Coverage is written depending upon your specific situation and the type of manufactured, modular or mobile home you may have.

## Important Points to Know When Purchasing Manufactured, Modular or Mobile Home Insurance

**No Standardized Coverage –** Make sure your insurance agent explains the coverage provided in the policy and that you understand what you are buying. Manufactured, modular and mobile home coverage is not standardized and most types of units are classed and taxed as personal property as opposed to real property.

## Contents or Personal Property

**Coverage** – Find out if your policy automatically covers furnishings and equipment that are sold with your home. For example, the built-in dresser or couch that comes with your manufactured, modular or mobile home may be covered, but your television, clothing and other personal belongings may not be covered as part of the unit. Find out how the insurance policy will cover your personal contents. You may need to buy extra coverage to protect your other personal contents.

**Personal Liability Coverage** – Not all manufactured, modular or mobile home coverage provides personal liability coverage. Be sure to ask your insurance agent if your policy includes personal liability coverage.

**Deductibles** – Most manufactured, modular and mobile home coverage requires a separate wind and/or hail and all other peril deductibles, since these types of homes are more easily damaged by wind, hail and other perils.

**Value of Personal Property** – Companies may offer one of the following methods to value your personal property:

- **Actual Cash Value** is defined by the amount it would cost to repair or replace damaged property, less allowance for physical depreciation and deterioration. Depreciation is the decreased value of personal property because of age, wear and tear, and/or lack of maintenance. For example, a ten-year old couch will not be replaced at current value because of age, wear, depreciation and deterioriation.

- **Replacement Cost** coverage usually applies only to contents and not to the unit itself. The replacement cost coverage pays for your losses on the basis of how much it would cost to repair or replace the item at today's cost without deduction for depreciation. Your premium will be higher for this type of coverage.

**Moving your mobile home** – If you plan to move your mobile home from one location to another, contact your insurance company prior to the move to make sure you have insurance coverage during the period of transportation. Usually, a higher premium charge is required to have this coverage.

**Flood damage** – Some mobile home policies may cover loss due to flood damage, while others do not. Ask your agent whether flood coverage is provided. If your mobile home coverage does not include loss by flood, coverage may be purchased under the National Flood Insurance Program by calling their toll free number: 1-800-638-6620. See the section in this book on the National Flood Insurance Program (page 8).

## Manufactured, Modular and Mobile Home Tie-Down Law

Kansas law requires every manufactured, modular or mobile home being used as a dwelling, office or commercial space to be secured to the ground by approved tie-downs and ground anchors, unless the unit is secured to the ground on a permanent foundation. You may not be able to insure your unit if you do not have the approved tie downs. Contact your insurance agent or company to see what is required.

## Lender's Insurance Requirements

If you are financing your manufactured, modular or mobile home through a lending institution the lender will usually: (1) require you to purchase adequate insurance protection for your unit, and, (2) require the lending institution to be added as a loss payee (this protects the lending institution in case of loss on the unit).

If you fail to keep insurance coverage in force, the lending institution will purchase coverage that protects its interest and you may have to pay for the coverage. Generally speaking, this type of coverage is more expensive than an insurance policy that you can purchase individually.

# ~ Section Three ~
## Pricing and Underwriting of All Real and Personal Property Insurance

The price of your insurance coverage is affected by two things – personal and company factors.

## Personal Factors

**Type of Construction** – The premium charge on frame houses is usually more than the premium charge on brick houses. The premium charge on houses with wood shingles is usually more than the premium charge on houses with composition shingles.

**Local Fire Protection** – Since fire and smoke damage causes millions of dollars in losses each year, the firefighting capability of a community – such as water supply, building codes, your fire department's equipment and the quality of your local fire department – is taken into account in pricing of insurance coverages. Your city is assigned a fire protection class rating, ranging from 1 to 10 (1 being the most protection and 10 the least). This fire protection rating is used by insurance companies to determine premium charges. Most Kansas cities fall into fire protection classes ranging from 3 to 10.

**Amount of Coverage** – The amount of coverage you buy for your house, contents and personal liability will affect the price you pay.

**Deductible Amount** – A deductible is the dollar amount you must pay out-of-pocket for each covered claim. Your choice of a higher deductible will reduce your insurance premiums.

Most homeowners policies have a separate wind/hail deductible verses an all other peril deductible. The wind/hail deductible is normally 1 or 2% of the amount of insurance carried on the structure. The all other peril deductible is usually a dollar limit that applies to every other peril insured against, except wind and hail.

**Age of the House** – Some insurance companies may offer new home discounts, and some insurance companies may not offer insurance on very old homes or only offer a limited form of coverage.

**Discounts** – By qualifying for certain discounts, you may be able to lower your insurance premium charge. Not all insurance companies offer the same discounts. Ask your insurance company or agent what discounts are offered and how much you can save. Here are some possible discounts:

- Nonsmoker
- Senior Citizen
- Auto/Home Insurance with same company
- Premise Alarm
- Smoke Detectors/Fire Extinguishers
- Fire Retardant Roof
- Deadbolt Locks or Other Devices
- Burglar Alarm

## Company Factors Affecting the Premium Charge

**Loss Experience** – Premiums charged by insurance companies in Kansas vary from company to company. An insurance company may adjust its premium charge in accordance with their own respective loss experience. Insurance companies may also adjust their premium charge to reflect loss experience in a specific region within the state. Adjustments may be made for losses in an entire area that result from factors such as weather conditions, crime losses, etc. This method of rating, referred to as territorial rating, is intended to encourage price stability and competition by allowing companies to charge premiums based on differences in losses in various regions of the state.

**Comparison Shop** – Often, the only way you will be able to determine if your insurance company is fairly pricing your insurance premium charge is to comparison shop. Use the Kansas Insurance Department Homeowners and Renters Insurance Shopper's Guide for assistance. Get quotes from at least three insurance companies. If you are shopping with an independent insurance agent/agency, make sure you find out which specific insurance company the agent is representing. Independent agents can represent many different insurance companies. This will prevent you from obtaining the same quotes from different agents/ agencies. Shop carefully to get the best value for your insurance premium dollar.

## Underwriting Guidelines

Underwriting guidelines are the standards and rules insurance companies use to decide whether to offer or renew insurance coverage. The insurance company may decline your application or renewal for coverage if you or your property does not meet the insurance company's underwriting guidelines. Each insurance company has its own underwriting guidelines, but some typical ones might include:

The condition of your home

- Leaky or lack of maintenance of the roof
- Poor property upkeep and maintenance, i.e, painting, old wiring and plumbing
- Amount of insurance on the structure
- Number of claims over past 7-10 years
- Your personal credit history in compliance with Federal guidelines.

Also, when your homeowners policy is up for renewal, the company may re-underwrite your property for the next policy term. Generally, insurance companies are under no statutory obligation to renew your homeowners or renters coverage.

# ~ Section Four ~
# Cancellation and Nonrenewal

An insurance company may terminate your coverage, but they can only do so under certain circumstances. Coverage may be cancelled or nonrenewed. *Cancellation means* the company terminates your policy before it expires during the policy term. *Nonrenewal means* the company refuses to offer renewal when the current coverage expires.

## Cancellation

**When You Cancel Your Policy –** You may cancel your policy at any time by notifying the company and returning the policy to the company. Any unused premium will be refunded to you. There may be a penalty if you cancel the policy during the term of coverage.

**When The Insurance Company Cancels Your Policy** – The insurance company may cancel your policy at any time for the reasons stated below. Any unused premium will be refunded to you as described below:

1) For nonpayment of premium or installment when due. The insurance company may cancel your policy at any time by letting you know at least 10 days before the date the cancellation takes place.

2) When the policy has been in effect for **less than 60 days** and is a new policy, the insurance company may cancel at any time by letting you know at least 30 days before the effective date of the cancellation.

3) When the policy has been in effect for **60 days or more,** or at time of renewal, your policy may be cancelled for the following reasons:

– Insurance was obtained through fraudulent misrepresentation;

– Risk has substantially changed since the policy was originally issued or was last renewed.

This can be accomplished by notifying you in writing at least 30 days before the date the cancellation takes place.

## Nonrenewal

Nonrenewal of your policy is always a company option. If a company is not going to renew your policy, they must give you a 30-day written notice before the expiration date of the policy.

To avoid cancellation or nonrenewal of your coverage, premium or installment payment for your homeowners insurance needs to be **<u>received</u>** by the insurance company **<u>on or before</u>** the due date. Allow enough mailing time because...

**THERE IS NO GRACE PERIOD**
for Payment of Premium For Homeowners Insurance.

# ~ Section Five ~
## Claims Settlement

Most people will never file a claim under their Homeowners policy. But if you have to file a claim, it is important to understand the claim process and your rights and responsibilities.

### If You Have A Claim

1) Report loss or damage to your insurance agent or insurance company as soon as possible;

2) Take precautions if the damages require you to leave your home.

- Secure your property
- Lock all windows and doors;

3) Survey the damages and take photographs or videos of damaged areas, if possible, and make them available to your insurance company;

4) Make temporary repairs to protect your home and personal property from further damage. <u>If you make permanent repairs before the insurance company inspects the damage, your claim may be denied</u>. Keep all receipts and take photographs of the damage, before and after emergency repairs, to submit with your claim. You may be reimbursed for the expenses associated with temporary repairs;

5) Study and know your policy limits and coverages. If you do not understand your coverage, ask your insurance agent or company representative to explain. If your policy was destroyed in your loss, contact your insurance agent or company to get a replacement copy. Usually, there is a nominal charge for another copy of the insurance policy contract;

6) In some cases, the insurance company will require you to complete a claim form. You will be asked to estimate the actual cash value of the household items you lost and the cost to repair the damage to your home. If you have replacement cost coverage on your house and/or contents, you may need to include an estimate of the costs to make repairs with new materials and/or replacement items. If you have maintained a household inventory, this process will be much easier and go much more quickly. Be sure to find out from the insurance company if you should include sales tax in the cost estimates, and whether you should use exact costs, or if you can round off numbers to the nearest dollar;

7) The insurance company will assign an adjuster to assess damage to your property and estimate the cost of repair. If you don't hear from your adjuster in a reasonable length of time, contact your insurance agent or company again. Be present when the adjuster inspects your property;

8) The settlement, which is the amount of money the insurance company offers for your loss, is based on the adjuster's estimate. If you disagree with the estimate, contact the insurance company to explain your reasoning. They may be willing to make adjustments, or you may wish to ask a contractor or other professional to obtain your own estimate;

9) Beware of fly-by-night contractors. Get more than one bid and hire a local reputable contractor to do the repair work;

10) Make sure a written agreement between you and your insurance company has been agreed to before starting repairs.

## Claim Time Frames

The insurance company has 30 days to complete an investigation of your claim. If they are not finished in 30 days, they must provide a reasonable explanation for taking longer. It is in the best interest of the company to investigate any loss promptly so that valuable evidence is not lost or destroyed. However, there are no provisions requiring a company to pay your claim within a certain period of time.

Talk to your insurance company or agent first, because many claim problems are resolved at this level. If you have tried unsuccessfully to resolve the problem with your insurance company or agent, please contact the Kansas Insurance Department through any of the following

Should it be necessary to file a written complaint with the Kansas Insurance Department, be sure to include the following information to speed processing of your inquiry:

– Include your name, address and daytime phone number

– State your case by giving a full explanation of the problem and what type of insurance is involved.

– Provide the name of your insurance company, policy number, name and address.

– Supply copies of documentation you have to support your case.

– State what has been done to resolve your problem including who you have talked with and what you were told.

– Keep a copy of your letter to the Kansas Insurance Department for reference.

*While the Kansas Insurance Department has recovered millions of dollars for Kansas consumers, the Department cannot force any insurance company to pay a claim if the company in good faith, believes as a matter of law or fact, that it does not owe the money in question. You may wish to hire legal counsel if a company persists in denying what you believe is a valid claim.*

## Be a Smart Shopper

Before you buy an insurance policy **Do Your Research**. Obtain price quotes from several insurance companies and compare the coverages and premium charges.

Include independent insurance agents in your search. Some insurance agents only represent a single company or company group. However, independent insurance agents typically represent several companies and can give you multiple insurance quotes at one time.

***Taking time to shop for insurance can reward you with better prices and better service.***

Determine what coverages you want and need. For instance, if you have valuable stereo equipment or if you need more than basic residential coverage for jewelry, collections, or other valuables, you may need endorsements that change or add coverage. Endorsements that add coverage will increase your premium charge.

When you telephone insurance companies for quotes, answer questions truthfully. Wrong information may result in an incorrect price quote, rejection of your insurance application, or cancellation of your policy.

### Consider Higher Deductibles

Your policy probably will have deductibles. A deductible is the amount you have to pay out of pocket on your claim before the insurance company pays its portion. The higher your deductibles, the lower your premium. Choose the highest deductibles you can afford.

### Ask about Discounts

Insurance companies may offer policy discounts that will lower your premium charge. Ask your agent what discounts the company offers and which ones would apply to you.

### Make Sure You Have Uninterrupted Coverage

Never cancel an existing policy until you get your new policy or a written binder. A binder is a temporary contract of insurance until the insurance company issues your policy contract.

Don´t pay cash to an individual agent. Pay with a personal check or money order made out to the insurance company or agency. Get a receipt for your premium payment.

## It Pays to Shop Around

Taking time to shop for insurance can reward you with better prices and better service. One insurance company´s premium charge could be hundreds of dollars lower than that of another company for a policy with similar coverages. This publication provides tips that can help you reduce your premium and get a better price on homeowners, and renters insurance.

The premium charge shouldn´t be your only consideration. You should choose an insurance company that provides good customer service and is financially stable. It´s also important to buy from licensed insurance agents/agencies and insurance companies admitted to do business in Kansas. Policyholders of authorized insurance companies are protected by guaranty associations, which pay claims if an authorized insurance company becomes insolvent. If you have insurance from a company that is not authorized and it becomes insolvent, there is no guaranty association to protect you, and your claims might go unpaid.

If you have any questions or concerns, contact the Kansas Insurance Department on the internet at www.ksinsurance.org or Toll-free at 1-800-432-2484.

## The Kansas Insurance Department

## Sandy Praeger, Commissioner

If you need assistance or have questions, contact:

**Website: www.ksinsurance.org**

## Consumer Assistance Division

## Toll-Free Hotline

## 1-800-432-2484

**420 SW 9th Street**
**Topeka, KS 66612**

**Phone: 785/296-3071 Fax: 785/296-5806**

**E-mail: commissioner@ksinsurance.org**

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*The information in this booklet is being distributed for educational purposes and does not constitute an endorsement by the Kansas Insurance Department of any service, company or person offering any insurance product or service.*

Kansas Insurance Department
Commissioner Sandy Praeger
420 SW 9th Street
Topeka, KS 66612

# Kansas Homeowners and Renters Insurance