



This is a summary eviction notice termination law guide for all 50 states and the District of Columbia. It includes links to each state's statute. Be advised that there may be other reasons for tenant termination in your particular state or local jurisdiction.

**Disclaimer:** The local, state and federal law is constantly changing and there may be times when the information on this web site will not be current. This information is provided for general informational purposes only and is not intended as legal advice. This information is not a comprehensive treatment of the subject and is not a substitute for advice from an attorney. The information contained herein is deemed to be correct as it was copied from each State's link on the internet. It is recommended that in addition to the information noted below you conduct further investigation to ensure compliance with local, state and federal law.

## ALABAMA

Failure to pay rent or to pay rent on time, for any reason, is grounds for eviction. There are two types of eviction procedures a landlord can use to get you to move:

1. "Unlawful detainer" (a civil eviction)
2. "Failure to vacate" (a criminal eviction)

If a landlord uses the "unlawful detainer" method of eviction, he must give you three (3) days written notice to vacate. If you do not leave, the landlord can sue by filing a complaint against you in court. After you receive a summons to appear in court, you have five (5) days to object in writing to the eviction. If you do not file an objection you can be removed from the dwelling by the Sheriff. If you do object, a hearing will be scheduled to determine your right to possession of the property.

If a landlord uses the "**failure to vacate**" method of eviction, he must give you ten (10) days written notice. This method of eviction applies only to non-payment of rent. If you do not leave the premises within ten (10) days, you can be charged with a misdemeanor. You would then be required to appear in court where you could be fined up to \$25 for each day you remained in the dwelling after being given the ten (10) day notice to vacate.

As in most states, Alabama landlords are not permitted to change the locks on your doors, move your furniture out, turn off your utilities or use any other "self-help" method of eviction or harassment to get you to move.

Additionally, Alabama landlord/tenant law states that upon the voluntary or involuntary termination of any lease agreement, all property left in the dwelling by the tenant will be considered abandoned, and may be disposed of by the landlord as the landlord sees fit and without recourse by the tenant. All property left on the premises by the tenant is subjected to a lien in favor of the landlord for the payment of all sums agreed to be paid by the tenant.

### ***Nonpayment of Rent (7 days) and Breach of Lease other than Rent (14 days)***

1. Except if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with materially affecting health and safety. The landlord may deliver a written notice to terminate the lease to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate

upon a date not less than 14 days after receipt of the notice. If the breach is not remedied within the 14 days after receipt of the notice to terminate the lease, the rental agreement shall terminate on the date provided in the notice to terminate the lease unless the tenant adequately remedies the breach before the date specified in the notice, in which case the rental agreement shall not terminate.

2. If rent is unpaid when due and the tenant fails to pay rent within 7 days after receipt of written notice to terminate the lease for nonpayment and if the rent is not paid within the 7 day period, the landlord may terminate the rental agreement at the expiration of the 7 day period.

3. A landlord may recover actual damages and obtain injunctive relief for noncompliance by the tenant with the rental agreement. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

***Non-default termination by landlord or tenant (7 days for week to week tenancy, 30 days for month to month tenancy)***

1. The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

2. The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least 30 days before the periodic rental date specified in the notice.

3. If a 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 and if the tenant's holdover is willful and not in good faith the landlord may also recover an amount equal to not more than three month's periodic rent or the actual damages sustained by the landlord, whichever is greater, and reasonable attorney's fees.

***Remarks - Landlord may also terminate for failure to maintain affecting health and safety.***

## ALASKA

In order to evict tenants, a landlord must first provide them with a written notice to quit. The notice to quit states the landlord's reason for requiring the tenant to vacate.

### **The Tenant may be evicted for:**

- ~ Damaging the unit
- ~ Violates the Rental Agreement
- ~ Acts in an unsafe manner with regards to health and safety
- ~ Failure to Pay Rent when due

The Alaska notice to quit must state exactly what the tenant must do within a stated time period in order to avoid eviction. The notice to quit must always state the date and time when the tenant must leave, and inform the tenant that if they remain in the unit after the termination date, the landlord may file a lawsuit against the tenant for removal.

The forcible entry and detainer action is filed if the tenant remains and the landlord is seeking to regain possession. They may also sue for unpaid rent and damages. Don't be confused with the word forcible. The landlord FIRST must file an eviction action with the court and cannot forcible remove you.

***Nonpayment of rent (7 days)***

***Breach of lease other than rent (7 days)***

***Non-default termination by landlord or tenant (One month)***

**Remarks** - Landlord may terminate on 24 hours notice in case of deliberate damage to unit  
<http://www.commerce.state.ak.us/occ/pub/landlord.pdf>

## ARIZONA

An eviction is a type of lawsuit called a forcible detainer. Forcible detainer means that the tenant has remained in or on the property after the landlord has given written notice that the rental agreement has been terminated and that the tenant must leave the property. A landlord can file a forcible detainer action against a tenant for nonpayment of rent, if the tenant has breached the lease, or if the tenant has committed a crime. Forcible detainer actions seek the eviction of the tenant and the repossession of the rental property. They may also be filed if the tenant misrepresented information to the landlord or has unauthorized occupants in the residence.

Most forcible detainer actions involve an allegation that the tenant has not paid rent on time. If a tenant fails to pay rent, the landlord can give notice that he will terminate the lease if the rent is not paid within 5 days. After the 5 days notice, the landlord will most likely not be willing to accept partial payment because he will not be able to proceed with the case unless the tenant agrees in writing that the landlord can do so. On day 6, the landlord can file suit. The tenant's inability to pay the rent is not a legal defense to the lawsuit.

However, the tenant does have some options. The tenant can pay all of the rent and any late fees any time before the forcible detainer is filed and avoid eviction. If the action has been filed, then the tenant must pay all past due rent, late fees, attorney's fees and court costs. If the tenant does so before a judgment is entered, he can avoid eviction. After a judgment has been entered, reinstatement of the lease is solely in the landlord's discretion.

Landlords may evict tenants for a variety of reasons; however, all eviction notices must be in writing. The amount of time a tenant has to either vacate the premises or fix the problem, if possible, is dependent upon the type of eviction. For example, if you have an unauthorized pet, the landlord could give you 10 days to either vacate the premises or get rid of the pet. If the problem involves such things as criminal activity or threatening other residents or apartment staff, the required notice to vacate is 24 hours and there is no opportunity to fix the problem. Once an Arizona eviction notice is given, there is a very short period of time, sometimes as little as 2 days, before a trial may be held.

***Nonpayment of rent (5 days) and Breach of lease other than rent (10 days, 5 days for breach creating hazard to health and safety)***

**Noncompliance with rental agreement by tenant; failure to pay rent; utility discontinuation; liability for guests; definition:**

1. If there is a material noncompliance by the tenant with the rental agreement, including material falsification of the information provided on the rental application, 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 10 days after receipt of the notice if the breach is not remedied in 10 days. For the purposes of this section, material falsification shall include the following untrue or misleading information about the:

- Number of occupants in the dwelling unit, pets, and income of prospective tenant, social security number and current employment listed on the application or lease agreement.
- Tenant's criminal records, prior eviction record and current criminal activity. Material falsification of information in this paragraph is not curable under this section.

If there is a noncompliance by the tenant 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 5 days after receipt of the notice if the breach is not remedied in 5 days. However, if the breach is remediable by repair or the payment of damages or otherwise, and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement will not terminate. If

there is an additional act of these types of noncompliance of the same or a similar nature during the term of the lease after the previous remedy of noncompliance, the landlord may institute a special detainer action 10 days after delivery of a written notice advising the tenant that a second noncompliance of the same or a similar nature has occurred. If there is a breach that is both material and irreparable and that occurs on the premises, including but not limited to an illegal discharge of a weapon, homicide through prostitution as defined in section 13-3211, criminal street gang activity as prescribed in section 13-105, activity as prohibited in section 13-2308, the unlawful manufacturing, selling, transferring, possessing, using or storing of a controlled substance as defined in section 13-3451, threatening or intimidating as prohibited in section 13-1202, assault as prohibited in section 13-1203, acts that have been found to constitute a nuisance pursuant to section 12-991 or a breach of the lease agreement that otherwise jeopardizes the health, safety and welfare of the landlord, the landlord's agent or another tenant or involving imminent or actual serious property damage, the landlord may deliver a written notice for immediate termination of the rental agreement and shall proceed under section 33-1377.

2. A tenant may not withhold rent for any reason not authorized by this chapter. If rent is unpaid when due and the tenant fails to pay rent within five days after written notice by the landlord of nonpayment and 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 by filing a special detainer action pursuant to section 33-1377. Before the filing of a special detainer action the rental agreement shall be reinstated if the tenant tenders all past due and unpaid periodic rent and a reasonable late fee set forth in a written rental agreement. After a special detainer action is filed the rental agreement is reinstated only if the tenant pays all past due rent, reasonable late fees set forth in a written rental agreement, attorney fees and court costs. After a judgment has been entered in a special detainer action in favor of the landlord, any reinstatement of the rental agreement is solely in the discretion of the landlord.

3. The landlord may recover all reasonable damages, resulting from noncompliance by the tenant with the rental agreement or section 33-1341 or occupancy of the dwelling unit, court costs, reasonable attorney fees and all quantifiable damage caused by the tenant to the premises.

4. The landlord may discontinue utility services provided by the landlord on the day following the day that a writ of restitution or execution is executed pursuant to section 12-1181. Disconnections shall be performed only by a person authorized by the utility whose service is being discontinued. Nothing in this section shall supersede standard tariff and operational procedures that apply to any public service corporation, municipal corporation or special districts providing utility services in this state.

5. The landlord shall hold the tenant's personal property for a period of twenty-one days beginning on the first day after a writ of restitution or writ of execution is executed as prescribed in section 12-1181. The landlord shall use reasonable care in moving and holding the tenant's property and may store the tenant's property in an unoccupied dwelling unit owned by the landlord, the unoccupied dwelling unit formerly occupied by the tenant or off the premises if an unoccupied dwelling unit is not available. If the tenant's former dwelling unit is used to store the property, the landlord may change the locks on that unit at the landlord's discretion. The landlord shall prepare an inventory and promptly notify the tenant of the location and cost of storage of the personal property by sending a notice by certified mail, return receipt requested, addressed to the tenant's last known address and to any of the tenant's alternative addresses known to the landlord. To reclaim the personal property, the tenant shall pay the landlord only for the cost of removal and storage for the time the property is held by the landlord. Within five days after a written offer by the tenant to pay these charges the landlord must surrender possession of the personal property in the landlord's possession to the tenant upon the tenant's tender of payment. If the landlord fails to surrender possession of the personal property to the tenant, the tenant may recover the possessions or an amount equal to the damages determined by the court if the landlord has destroyed or disposed of the possessions before the twenty-one days specified in this section or after the tenant's offer to pay. The tenant shall pay all removal and storage costs accrued through the fifth day after the tenant's offer to pay is received by the landlord or the date of delivery or surrender of the property, whichever is sooner. Payment by the tenant relieves the landlord of any further responsibility for the tenant's possessions.

6. A tenant does not have any right of access to that property until all payments specified in subsection E of this section have been made in full, except that the tenant may obtain clothing and the tools, apparatus and books of a trade or profession and identification or financial documents including all those related to the tenant's immigration status, employment status, public assistance or medical care. If the landlord holds the property for the twenty-one day period and the tenant does not make a reasonable effort to recover it, the landlord, upon the expiration of twenty-one days as provided in this subsection, may administer the personal property as provided in section 33-1370, subsection E. The landlord shall hold personal property after a writ of restitution or writ of execution is executed for not more than twenty-one days after such an execution. Nothing in this subsection shall preclude the landlord and tenant from making an agreement providing that the landlord will hold the personal property for a period longer than twenty-one days.

7. For the purposes of this chapter, the tenant shall be held responsible for the actions of the tenant's guests that violate the lease agreement or rules or regulations of the landlord if the tenant could reasonably be expected to be aware that such actions might occur and did not attempt to prevent those actions to the best of the tenant's ability.

8. For purposes of this section, "days" means calendar days.

***Non-default termination by landlord or tenant (10 days if week to week tenancy, 30 days for month to month tenancy)***

1. The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least ten days prior to the termination date specified in the notice.

2. The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice.

3. 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 and if the tenant's holdover is willful and not in good faith the landlord, in addition, may recover an amount equal to not more than two months' periodic rent or twice the actual damages sustained by the landlord, whichever is greater. If the landlord consents in writing to the tenant's continued occupancy, section 33-1314, subsection D applies.

***Remarks - Breach of lease includes material misrepresentation on rental application***

## CALIFORNIA

If the tenant doesn't voluntarily move out after the landlord has properly given the required notice to the tenant, the landlord can evict the tenant. In order to evict the tenant, the landlord must file an unlawful detainer lawsuit in superior court.

In an eviction lawsuit, the landlord is called the "plaintiff" and the tenant is called the "defendant."

If the landlord uses unlawful methods to evict a tenant, the landlord may be subject to liability for the tenant's damages, as well as penalties of up to \$100 per day for the time that the landlord used the unlawful methods.

If the court decides in favor of the landlord, the court will issue a writ of possession. The writ of possession orders the sheriff to remove the tenant from the rental unit, but gives the tenant five days from the date that the writ is served to leave voluntarily. If the tenant does not leave by the end of the fifth day, the writ of possession authorizes the sheriff to physically remove and lock the tenant out, and seize (take) the tenant's belongings that have been left in the rental unit. The landlord is not entitled to possession of the rental unit until after the sheriff has removed the tenant.

In an unlawful detainer lawsuit, the court holds a hearing at which the parties can present their evidence and explain their case. If the court finds that the tenant has a good defense, the court will not evict the tenant. If the court decides in favor of the tenant, the tenant will not have to move, and the landlord may be ordered to pay court costs (for example, the tenant's filing fees). The landlord also may have to pay the tenant's attorney's fees, if the rental agreement contains an attorney's fee clause and if the tenant was represented by an attorney.

An unlawful detainer lawsuit is a "summary" court procedure. This means that the court action moves forward very quickly, and that the time given the tenant to respond during the lawsuit is very short. For example, in most cases, the tenant has only *five days* to file a written response to the lawsuit after being served with a copy of the landlord's complaint. Normally, a judge will hear and decide the case within 20 days after the tenant files an answer.

The court-administered eviction process assures the tenant of the right to a court hearing if the tenant believes that the landlord has no right to evict the tenant. The landlord *must* use this court process to evict the tenant; the landlord *cannot* use self-help measures to force the tenant to move. For example, the landlord cannot physically remove or lock out the tenant, cut off utilities such as water or electricity, remove outside windows or doors, or seize (take) the tenant's belongings in order to carry out the eviction. The landlord *must use the court procedures*. The court also may award the landlord any unpaid rent if the eviction is based on the tenant's failure to pay rent. The court also may award the landlord damages, court costs, and attorney's fees (if the rental agreement or lease contains an attorney's fee clause and if the landlord was represented by an attorney). If the court finds that the tenant acted maliciously in not giving up the rental unit, the court also may award the landlord up to \$600 as a penalty. The judgment against the tenant will be reported on the tenant's **credit report** for seven years.

### ***Nonpayment of rent (3 days) and Breach of lease other than rent (3 days)***

A tenant of real property, for a term less than life, or the executor or administrator of his or her estate heretofore qualified and now acting or hereafter to be qualified and act is guilty of unlawful detainer:

1. When he or she continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is left to him or her; provided the expiration is of a non default nature however brought about without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable; including the case where the person to be removed became the occupant of the premises as a servant, employee, agent, or licensee and the relation of master and servant, or employer and employee, or principal and agent, or licensor and licensee, has been lawfully terminated or the time fixed for occupancy by the agreement between the parties has expired; but nothing in this subdivision shall be construed as preventing the

removal of the occupant in any other lawful manner; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the Civil Code.

2. When he or she continues in possession, in person or by subtenant, without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, in writing, requiring its payment, stating the amount which is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure, or possession of the property, shall have been served upon him or her and if there is a subtenant in actual occupation of the premises, also upon the subtenant.

The notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the landlord or the successor in estate of his or her landlord, if applicable, he or she shall be deemed to be holding by permission of the landlord or successor in estate of his or her landlord, if applicable, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during that year, and the holding over for that period shall be taken and construed as a consent on the part of a tenant to hold for another year.

3. When he or she continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him or her, and if there is a subtenant in actual occupation of the premises, also, upon the subtenant. Within three days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided, if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to the lessee or his or her subtenant, demanding the performance of the violated conditions or covenants of the lease.

A tenant may take proceedings, similar to those prescribed in this chapter, to obtain possession of the premises let to a subtenant or held by a servant, employee, agent, or licensee, in case of his or her unlawful detention of the premises underlet to him or her or held by him or her.

4. Any tenant, subtenant, or executor or administrator of his or her estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his or her lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using the premises for an unlawful purpose, thereby terminates the lease, and the landlord, or his or her successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of the demised premises under this chapter. For purposes of this subdivision, a person who commits an offense included in paragraph (1) of subdivision (c) of Section 11571.1 of the Health and Safety Code, or subdivision (c) of Section 3485 of the Civil Code, or uses the premises to further the purpose of that offense shall be deemed to have committed a nuisance upon the premises.

5. When he or she gives written notice as provided in Section 1946 of the Civil Code of his or her intention to terminate the hiring of the real property, or makes a written offer to surrender which is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice, without the permission of his or her landlord, or the successor in estate of the landlord, if applicable.

As used in this section, tenant includes any person who hires real property except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

***Non-default termination by landlord or tenant*** (At least as long as before the end of a term as the length of the term itself is not less than 7 days no more than 30. If month to month, 30 days at any time or 60 days if tenant has resided there for one year or more.)

A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding 30 days; provided, however, that as to tenancies from month to month either of the parties may terminate the same by giving at least 30 days' written notice thereof at any time and the rent shall be due and payable to and including the date of termination. It shall be competent for the parties to provide by an agreement at the time such tenancy is created that a notice of the intention to terminate the same may be given at any time not less than seven days before the expiration of the term thereof. The notice herein required shall be given in the manner prescribed in Section 1162 of the Code of Civil Procedure or by sending a copy by certified or registered mail addressed to the other party. In addition, the lessee may give such notice by sending a copy by certified or registered mail addressed to the agent of the lesser to whom the lessee has paid the rent for the month prior to the date of such notice or by delivering a copy to the agent personally.

***Remarks*** - If the unit is rent subsidized, a 90 day notice of termination is required. Non-curable notices for nuisance and waste are also prescribed.

## COLORADO

Colorado Evictions without Court Order As in most states it is never legal for a Colorado landlord to evict a tenant without a court order.

**When a Colorado Tenant has broken a Condition of the Lease:** Before filing a suit to evict a tenant for noncompliance with lease conditions, the landlord must post a written, signed demand in a conspicuous place for delivery of possession of the premises. The notice must state the reason the landlord believes the tenant is in violation of the lease and give the tenant three days to either move out voluntarily or correct the violation. (Noise violations are particularly difficult issues for both landlords and tenants regarding eviction.) After the written notice has been posted and if the tenant has not moved out by the end of the three days and has not corrected the violation, the landlord may file an eviction suit at the local Justice Center. In computing the three day notice the first day is excluded. Therefore, the three day period begins the day following the posting. The start of the three day time limit begins running whether or not the tenant discovers it posted. Also the time continues to run regardless of whether it is a Saturday, a Sunday or a holiday.

**Roommate Problems:** Where a problem arises in a roommate situation, eviction of one or more roommates can be done by the landlord. The landlord can serve the tenant by posting a three day notice (summons and complaint) on the premises or by leaving a copy with a resident in the household over the age of 18. In addition, the landlord must send the summons and complaint in the mail the following day. If service is by posting, a copy must be mailed the next day.

If a tenant leaves the premises before the end of the lease term in compliance with a landlord's demand to vacate, the tenant may still be responsible to pay rent.

**When a Colorado Tenant Has Not Paid Rent Before filing a suit in Colorado:** To evict a tenant for nonpayment of rent, the landlord must post a written, signed demand giving the tenant the choice of either paying the past due rent or moving out within three days. In computing the period of days the first day is excluded. Therefore, the three day time period begins the day following the posting. The notice must be posted in a conspicuous place on the premises. After the notice has been posted and if the tenant has not paid the rent or moved out within three days, the landlord need not accept the rent and may file an eviction suit at your local Justice Center. The time begins running whether or not the tenant discovers it posted. Also the time continues to run regardless if it is a Saturday, a Sunday, or a holiday. The tenant's legal right to this three day notice prior to eviction for nonpayment of rent cannot be taken away by the language in a lease.

### **Eviction Procedure-Unlawful Detainer:**

#### A. Three Day Notice Colorado

If the proper three day written notice has been given to the tenant, the tenant should immediately call the landlord, the Community Mediation Service (if applicable), and/or legal counsel to attempt to resolve the issues, or comply with the lease (if the eviction is for breaking a clause of the lease, e.g., non-payment of rent, noise, pets, guests.) If the situation has not been remedied within the three-day time period, the landlord may initiate an eviction suit under a specific procedure set forth by laws of the State of Colorado in a statute entitled "Forcible Entry and Detainer."

The Colorado landlord may not lock the tenant out of the premises, shut off the utilities or forcibly move the tenant or his/her possessions out of the building. Once the landlord has obtained a court order for eviction the sheriff may be called in by the court to perform such functions.

By state law, the prevailing party in a "Forcible Entry and Detainer" suit is entitled to an award of reasonable attorney's fees and costs of suit.

B. in Event of a Lockout any form of self-help by a landlord, including locking a tenant out of the premises, is not permissible. Actions such as physical contact or intimidation should be reported to the police. If a tenant is locked out, the tenant may not force their way back into the premises. A tenant should seek legal advice prior to attempting to re-enter the premises on their own.

Uninhabitable Premises-Constructive Eviction Unless otherwise expressly agreed, there is an implied agreement in every lease for real property that the landlord will refrain from acts or omissions which interfere with the tenant's right of peaceable enjoyment of the premises. If this implied agreement is breached by the landlord, either by act or by omission, resulting in the premises becoming legally uninhabitable, the tenant may vacate the premises, terminate the lease, and owe no further rent. To exercise this remedy, the tenant must abandon the premises. Before the tenant is justified in moving out, the landlord must also have been given notice of the problem by the tenant and a reasonable time in which to remedy the situation. A tenant should get legal advice from an attorney prior to exercising this remedy. Only in extreme conditions may a tenant vacate the premises and stop paying rent.

***Nonpayment of rent (3 days) and Breach of lease other than rent (3 days)***

Title cannot be tried. In ordinary actions of forcible entry and detainer, title to the property is not involved and cannot be tried.

Where a determination of the right of possession cannot be had without a trial of title, the plaintiff must fail.

Monuments' of title may be put in evidence. In an action of forcible entry and detainer, title may not be tried, but monuments' of plaintiff's title may be put in evidence to show the character of his possession.

As a bearing on right of possession, title may indirectly be a subject of inquiry. When the action is for unlawful detention, under subsection (1) (f), equitable defenses may be interposed, and indirectly, but only as bearing on the right of possession, title to the property may be a subject of inquiry.

Lessee cannot deny lessor's title. In an action of unlawful detainer, plaintiff having proved the execution of a lease and defendant's possession under it, defendant offered to show that his wife had erected buildings on the leased premises and claimed ownership. The court held that, as lessee of plaintiff, defendant could not deny his title, nor set up an outstanding title in another, and the evidence was properly rejected.

Specific performance of a verbal agreement to execute a lease of lands cannot be had in an action for the wrongful detainer of the lands.

Court may sustain motion for judgment on the pleadings. Where, in an action in forcible entry and detainer, defendant raised no issue and none was shown by the pleadings, there was nothing left for a jury to determine, and regardless of any contention otherwise, the county court could, and did, properly sustain the motion for judgment on the pleadings.

Contempt sanction available in forcible entry and detainer (FED) proceedings in appropriate circumstances. Nothing in C.R.C.P. 107 or the FED statute precludes the remedy of contempt in an FED action under appropriate circumstances.

**PARAGRAPH (b).**

Paragraph (b) provides that any tenant shall be deemed guilty of an unlawful detention that shall hold over, and continue in possession of, the demised premises, after the expiration of the term of occupancy.

The holding over itself constitutes an unlawful detention. This paragraph itself does not say that a holding, only after refusal to surrender on demand, or notice to quit, but that such a holding over itself, constitutes an unlawful detention

It is inapplicable where tenancy fixed and certain. Where a lease is not from year to year or for an indefinite term, but is a lease where the tenancy is fixed and certain, the provisions of this section do not apply.

Notice to quit not necessary when term ends at a certain time. The applicable rule would seem to be that notice to quit is not required where, by the express words of the contract, the term is to end at a certain time.

Action under this paragraph does not bar action for rent. Although each party should bring forward all demands existing at the time of bringing an action in a justice court which can be consolidated, and, upon failure so to do, shall be debarred from afterwards suing for any such demand, a landlord is not barred from bringing an action for rent, which was due at the time of bringing an action of unlawful detainer for the premises under this paragraph (b).

Demand for rent cannot be joined in action for possession of premises. The action of unlawful detainer is not a common-law action, but is purely statutory, and, in the absence of statutory provisions there for, a demand for damages or rent cannot be joined in an action for possession of the premises.

Nor is landlord's right to bring action of unlawful detention affected because tenant must bring action for forcible entry. The right to immediate possession being in the tenant, the action for forcible entry must be brought by her; but that by no means interferes with the right of the landlord to bring the action of unlawful detention upon the determination of the tenancy for any of the causes for which that action will lie under this section.

Complainant alleging tenancy and holding over cannot recover on evidence showing occupation under agreement to purchase. In an action of unlawful detainer where the complainant alleges a tenancy and a holding over, and there is evidence tending to show that the defendant is in occupation under an agreement to purchase, it was not error to instruct the jury that, if they should find the defendant went in under an agreement to purchase, the plaintiff could not recover.

#### **PARAGRAPH (c).**

Paragraph (c) relates only to cases of forfeiture by tenants for nonpayment of rent. *Getty v. Miller*, 10 Colo. App.

Tender of rent renders attempt to terminate lease ineffectual. A tender of rent due under the terms of a lease, if properly made and kept good, renders an attempt to terminate it for nonpayment of rent ineffectual, the tender being equivalent to payment so far as the term of the lease is concerned.

Tender must be sufficient. A tender of rent due on leased premises is ineffectual where the amount of the tender is insufficient to cover the amount in default.

Landlord may forfeit lease even if he has a deposit. Deposit of funds to be applied to the payment of rent for the last eight months of a five-year lease does not deprive the landlord of his right to forfeit the lease if currently accruing rent becomes overdue

Service of notice constituting election of remedies. Service of notice on a tenant in possession under lease to quit with a demand for possession, made for the express purpose of terminating the lease, constitutes an election of remedies and after such service the landlord has no right to ignore it or to bring an action based on any other theory than that the lease was terminated.

The general rule in Colorado is that a notice to pay or quit constitutes an election by the landlord to terminate the lease unless the notice is rendered ineffective by the tenant's payment of rent.

Bringing of suit for rent is an irrevocable election to waive the forfeiture.

A judgment in a forcible detainer suit cannot go beyond an adjudication of the right to possession as between the parties except when suit is brought under paragraph (c).

A dismissed unlawful detainer case is not *res judicata* (a matter already judged) as to the defendant in a

subsequent suit involving the same cause of action, and he is not bound by the position he took in the original case where the dismissal was without prejudice.

Complaint must show three days' notice in writing. A complaint under the forcible entry and detainer act, where the only breach is failure to pay rent, is deficient, if it does not show three days' notice in writing requiring in the alternative the payment of rent or possession of the premises.

Alternative demands required. A notice sent for alleged default in rental payment, under subsection (1)(d), must include in the alternative a demand for payment within three days or possession of the premises. If it does not include the alternative demands it is insufficient to work forfeiture for nonpayment of rent.

Waiver of notice. The notice requirement of subsection (1)(c) may be waived by lease provisions.

Sufficiency of service of notice. The posting of a notice pursuant to the provisions of § 13-40-108 was sufficient to satisfy the three-day notice requirement under paragraph (d) and provide jurisdiction for entry of the judgment for possession.

A failure to serve the demand three days before filing suit is not cured by the mere act of appending a copy of the demand to the complaint.

Statutory notice provision complied with where landlord did not file an unlawful detainer action until ten days after his demand notice was served upon lessee.

An unlawful detention action sounds in tort. Federal court predicted that the Colorado supreme court would conclude that an unlawful detention action under subsection (1)(c) sounds in tort. Plaintiff's action for unlawful detention is thus subject to the Federal Tort Claims Act and its administrative remedies, which must be exhausted before an action in district court may be filed.

**PARAGRAPH (d).**

Where the lessees failed to put the premises to the use required by the lease, the lessees were in breach of the lease and an unlawful detainer action was proper.

Return of rent matured and collected is not required. The landlord, declaring a forfeiture of the lease for the tenant's violation of its conditions, is not required to return any part of the rent matured and collected. The tenant violating the conditions of the lease loses both the term and the rent.

Landlord's acceptance of rent in ignorance of tenant's violation of conditions of lease is no waiver of the condition, or the breach of it.

Three-day notice required before commencement of unlawful detainer action.

Statutory notice provision complied with where landlord did not file an unlawful detainer action until ten days after his demand notice was served upon lessee.

**PARAGRAPH (e).**

Where grantor in trust deed does not unlawfully detain mortgaged premises after trustee's sale, the purchaser has no occasion to resort to the provisions of the forcible entry and detainer statute.

The recovery provided for in paragraph (e) was not intended as a **penalty** for the unlawful withholding of mortgaged premises by the owner after foreclosure sale, but as compensation for the use thereof.

Deed of trust, trustee's deed, and demand for possession with officer's return make prima facie case. In an action for possession under a foreclosure sale, when the plaintiff had introduced in evidence the deed of trust, the trustee's deed, and demand for possession with the officer's return on the demand, he had proven a prima facie case, and upon defendant's failure to offer any evidence, plaintiff was entitled to judgment.

Foreclosure and sale in violation of contract is a defense. It is a defense to an action for unlawful detention brought under paragraph (f) against the grantor of a deed of trust that it was foreclosed and a sale made there under in violation of a contract between him and the beneficiary that a foreclosure should not take place until the happening of certain contingencies, and then only in a certain manner.

**PARAGRAPH (f).**

It is immaterial whether the contract to convey is designated a "contract to purchase" or a "contract of purchase".

Vendor may sue for unlawful detainer. Unlawful detainer will lie where a vendee in possession under a contract to purchase withholds possession from the vendor after default and demand.

Vendee cannot question vendor's title. Where a vendee went into possession of real estate in pursuance of a contract of sale, he cannot be heard to question his vendor's title in an action by the vendor to recover the premises for a failure on the part of the vendee to comply with the contract, and a complaint that alleges such contract of sale and the failure of the vendee to comply therewith is sufficient as against a general demurrer without an allegation of ownership.

***Non-default termination by landlord or tenant*** (One year or more, 3 months before expiration; if 6 months, one month; if one month or longer but less than 6 months, 10 days; less than one month or tenancy at will, 3 days; less than one week, one day)

***Remarks*** - May terminate on 3 days notice without right to cure in case of "substantial violation."

## CONNECTICUT

A Connecticut eviction is a court action a landlord must use to remove a tenant from an apartment or room. Before a landlord can start an eviction in Connecticut, they must first give the tenant a NOTICE TO QUIT. This is usually a single piece of paper, signed by the landlord or his/her attorney, and delivered by a state marshal. It says that the tenant must leave the apartment by a certain day. It should give the reason for the eviction. You should contact a lawyer as soon as you receive the notice to quit.

The notice to quit is not a court paper; nothing will happen to you if you don't move by the date given in the notice to quit. However, if you don't move, the landlord may then start the court action by having the marshal give you a *SUMMONS AND COMPLAINT*. The summons and complaint are usually two or three pages of paper, signed by the landlord's attorney. The first paper, the summons, is an official court form. It explains the action against you and what you must do to protect your rights. **DO NOT IGNORE THE SUMMONS AND COMPLAINT.** Once they are delivered, the eviction action has begun. If you don't do anything, you will lose the case by default.

Remember, an eviction is a court action. Just because your landlord has started an eviction, it doesn't mean that they will win or that you won't be able to gain a few months time. You have important rights which you as the tenant can use if you act on time.

**NOTE:** If you are being evicted because your landlord claims that you broke a term in the lease (other than not paying your rent) or that you are creating a nuisance, you should receive a separate notice in addition to the notice to quit and the summons and complaint.

If your landlord locks you out of your apartment or tries to force you out without a court judgment, s/he is breaking the law. Contact the police at once.

- IF YOU HAVE A WRITTEN LEASE, your landlord can begin an eviction action only:
- If you don't move out at the end of your lease;
- If you don't pay your rent by 9 days after the date the lease says it is due;
- If you break a serious law like prostitution, or buying and/or selling drugs;
- If you commit a serious violation of your lease or are a nuisance.

*IF YOU DON'T HAVE A WRITTEN LEASE*, the law ordinarily treats you as having a month-to-month ORAL LEASE. This means that you have a new lease at the beginning of each month and that the lease ends at the end of each month.

If you pay by the week then you have a week-to-week ORAL LEASE. This means that you have a new lease at the beginning of each week and that the lease ends at the end of the week.

With a month-to-month oral lease your landlord may begin an eviction action against you:

- If you don't pay your rent by the 10th of the month (or by the 5th day of the week for a week-to-week lease);
- At the end of any month (or week if it's a week-to-week lease) for no reason at all if the landlord decides that s/he doesn't want you as a tenant.
- If you break a serious law like prostitution, or buying and/or selling drugs;
- If you commit a serious violation of your lease or are a nuisance.

But, even though a landlord may begin an eviction action against a tenant with an oral lease for no reason at all, a tenant has many rights which can be guaranteed in court. If the landlord doesn't follow each step in the eviction law carefully, the court may throw out the case.

***Nonpayment of rent (3 days non curable, served after default of nine days after grace period, if any) and Breach of lease other than rent (3 days non curable, served after default of nine days after grace period, if any)***

**Notice to quit possession or occupancy of premises.**

(a) When the owner or lessor, or the owner's or lessor's legal representative, or the owner's or lessor's attorney-at-law, or in-fact, desires to obtain possession or occupancy of any land or building, any apartment in any building, any dwelling unit, any trailer, or any land upon which a trailer is used or stands, and (1) when a rental agreement or lease of such property, whether in writing or by parole, terminates for any of the following reasons: (A) By lapse of time; (B) by reason of any expressed stipulation therein; (C) violation of the rental agreement or lease or of any rules or regulations adopted in accordance with section 47a-9 or 21-70; (D) nonpayment of rent within the grace period provided for residential property in section 47a-15a or 21-83; (E) nonpayment of rent when due for commercial property; (F) violation of section 47a-11 or subsection (b) of section 21-82; (G) nuisance, as defined in section 47a-32, or serious nuisance, as defined in section 47a-15 or 21-80; or (2) when such premises, or any part thereof, is occupied by one who never had a right or privilege to occupy such premises; or (3) when one originally had the right or privilege to occupy such premises but such right or privilege has terminated; or (4) when an action of summary process or other action to dispossess a tenant is authorized under subsection (b) of section 47a-23c for any of the following reasons: (A) Refusal to agree to a fair and equitable rent increase, as defined in subsection (c) of section 47a-23c, (B) permanent removal by the landlord of the dwelling unit of such tenant from the housing market, or (C) bona fide intention by the landlord to use such dwelling unit as such landlord's principal residence; or (5) when a farm employee, as described in section 47a-30, or a domestic servant, caretaker, manager or other employee, as described in subsection (b) of section 47a-36, occupies such premises furnished by the employer and fails to vacate such premises after employment is terminated by such employee or the employer or after such employee fails to report for employment, such owner or lessor, or such owner's or lessor's legal representative, or such owner's or lessor's attorney-at-law, or in-fact, shall give notice to each lessee or occupant to quit possession or occupancy of such land, building, apartment or dwelling unit, at least three days before the termination of the rental agreement or lease, if any, or before the time specified in the notice for the lessee or occupant to quit possession or occupancy.

(b) The notice shall be in writing substantially in the following form: "I (or we) hereby give you notice that you are to quit possession or occupancy of the (land, building, apartment or dwelling unit, or of any trailer or any land upon which a trailer is used or stands, as the case may be), now occupied by you at (here insert the address, including apartment number or other designation, as applicable), on or before the (here insert the date) for the following reason (here insert the reason or reasons for the notice to quit possession or occupancy using the statutory language or words of similar import, also the date and place of signing notice). A.B.". If the owner or lessor, or the owner's or lessor's legal representative, attorney-at-law or attorney-in-fact knows of the presence of an occupant but does not know the name of such occupant, the notice for such occupant may be addressed to such occupant as "John Doe", "Jane Doe" or some other alias which reasonably characterizes the person to be served.

(c) A copy of such notice shall be delivered to each lessee or occupant or left at such lessee's or occupant's place of residence or, if the rental agreement or lease concerns commercial property, at the place of the commercial establishment by a proper officer or indifferent person. Delivery of such notice may be made on any day of the week.

(d) With respect to a month-to-month or a week-to-week tenancy of a dwelling unit, a notice to quit possession based on nonpayment of rent shall, upon delivery, terminate the rental agreement for the month or week in which the notice is delivered, convert the month-to-month or week-to-week tenancy to a tenancy at sufferance and provide proper basis for a summary process action notwithstanding that such notice was delivered in the month or week after the month or week in which the rent is alleged to be unpaid.

(e) A termination notice required pursuant to federal law and regulations may be included in or combined with the notice required pursuant to this section and such inclusion or combination does not thereby render the notice required pursuant to this section equivocal, provided the rental agreement or lease shall not terminate until after the date specified in the notice for the lessee or occupant to quit possession or occupancy or the date of completion of the pre-termination process, whichever is later. A use and occupancy disclaimer may be included in or combined with such notice, provided that such disclaimer does not take effect until after the date specified in the notice for the lessee or occupant to quit possession or occupancy or the date of the completion of the pre-termination process, whichever is later. Such inclusion or combination does not thereby render the notice required pursuant to this section equivocal. Such disclaimer shall be in substantially the following form: "Any payments tendered after the date specified to quit possession or occupancy, or the date of the completion of the pre-termination process if that is later, will be accepted for use and occupancy only and not for rent, with full reservation of rights to continue with the eviction action."

***Non-default termination by landlord or tenant*** (Notice to quit served at least three days before end of periodic term)

## DELAWARE

The Delaware Landlord-Tenant Code lists all of the laws and rules describing when and how a landlord can evict a tenant.

Some reasons for which a landlord can **NEVER** evict a tenant:

- The tenant complained about problems in the apartment or house
- Race, religion, sex, marital status, national origin, disability, age, or occupation
- The tenant has children

A landlord can legally evict a tenant for several reasons:

- Failure to pay rent or Violating an important part of the lease or the Delaware Landlord-Tenant Code
- holding-over (staying after the lease ends without permission)
- Conviction of a Class A misdemeanor or felony that threatens person or property

If your landlord has gone to court to evict you, the court will notify you and tell you when and where to go to court. You will be notified in one of two ways:

By certified mail, return receipt requested:

If you get a card from the Post Office telling you to pick up some certified mail, **GET IT!** If you do not, the court will evict you anyway and you will not get a chance to defend yourself.

By Constable:

A Constable will try to deliver the notice to you in person. If you are not home, he may tape it to your door. Normally, the court date will be 2 to 4 weeks after the date your landlord files their case. (It can be more or less.) The date depends on the court schedule.

### IF YOU LOSE IN COURT

If you lose in court and your landlord has asked for "possession" of your apartment or house, the court will order you to move out. If there was a complete trial on the summary possession and you lose, you will only have 5 days to appeal. On the other hand, if a "default judgment" is entered (most likely if you did not appear for court), you will only have 10 days to file a "motion to vacate".

If you do not appeal *and* ask for a "stay of proceedings," the court will issue a 24 hour eviction notice to the Constable who will most likely post it on your door within a week after the time to appeal is up. Also, to prevent execution on the judgment during the time of the appeal, you must provide a bond or otherwise demonstrate your ability to pay all court costs, money damages and rent, if you lose the appeal 24 Hours

The 24 hour eviction notice means that the Constable will be back in a minimum of 24 hours. If you are still there, he will make you leave. The constables only work during daylight hours, Monday through Friday. So, if the 24 hour notice is posted on Friday, you will have at least until Monday morning.

If you do not have all of your belongings out of the house by the time the Constable comes back, you will have to leave them behind.

The landlord can remove your belongings and store them or leave them where they are for 7 days. If the landlord wants to, he can charge you for storing your property.

If, at the end of 7 days, you have not claimed your property, the landlord can do whatever he wants with your property including keep it, sell it, or leave it on the street. He cannot hold your property hostage until you pay the rent but he can ask for his storage costs.

### **Nonpayment of rent (5 days)**

*See Non-default termination by tenant for explanation*

***Breach of lease other than rent (7 days)***

*See Non-default termination by tenant for explanation*

***Non-default termination by landlord or tenant (60 days)***

*See Non-default termination by tenant for explanation*

**§ 5501. Tenant obligations; rent.**

(a) The landlord and tenant shall agree to the consideration for rent. In the absence of such agreement, the tenant shall pay to the landlord a reasonable sum for the use and occupation of the rental unit.

(b) Rent shall be payable at the time and place agreed to by the parties. Unless otherwise agreed, the entire rent shall be payable at the beginning of any term for 1 month or less, while 1 month's rent shall be payable at the beginning of each month of a longer term.

(c) Except for purposes of payment, rent shall be uniformly apportioned from day to day.

(d) Where the rental agreement provides for a late charge payable to the landlord for rent not paid at the agreed time, such late charge shall not exceed 5 percent of the monthly rent. A late charge is considered as additional rent for the purposes of this Code. The late charge shall not be imposed within 5 days of the agreed time for payment of rent. The landlord shall, in the county in which the rental unit is located, maintain an office or other permanent place for receipt of payments, where rent may be timely paid. Failure to maintain such an office, or other permanent place of payment where rent may be timely paid, shall extend the agreed on time for payment of rent by 3 days beyond the due date.

(e) If a landlord accepts a cash payment for rent, the landlord shall, within 15 days, give to the tenant a receipt for that payment. The landlord shall, for a period of 3 years, maintain a record of all cash receipts for rent.

**§ 5502. Landlord remedies for failure to pay rent.**

(a) A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

(b) A landlord or the landlord's agent may bring an action for rent alone at any time after the landlord has demanded payment of past-due rent and has notified the tenant of the landlord's intention to bring such an action. This action may include late charges, which have accrued as additional rent.

(c) If a tenant pays all rent due before the landlord has initiated an action against the tenant and the landlord accepts such payment without a written reservation of rights, the landlord may not then initiate an action for summary possession or for failure to pay rent.

(d) If a tenant pays all rent due after the landlord has initiated an action for nonpayment or late payment of rent against the tenant and the landlord accepts such payment without a written reservation of rights, then the landlord may not maintain that action for past due rent.

**§ 5503. Tenant obligations relating to rental unit; waste.**

A tenant shall:

(1) Comply with all obligations imposed upon tenants by applicable provisions of all municipal, county and state codes, regulations, ordinances and statutes;

(2) Keep that part of the premises which the tenant occupies and uses as clean and safe as the conditions of the premises permit;

(3) Dispose from the rental unit all ashes, rubbish, garbage and other organic or flammable waste, in a clean and safe manner;

(4) Keep all plumbing fixtures used by the tenant as clean and safe as their condition permits;

- (5) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating and other facilities and appliances in the premises;
- (6) Not willfully or wantonly destroy, deface, damage, repair or remove any part of the structure or rental unit or the facilities, equipment or appurtenances thereto, nor permit any person on the premises with the tenant's permission to do any such thing; and
- (7) Comply with all covenants, rules, requirements and the like which are in accordance with §§ 5511 and 5512 of this title; and which the landlord can demonstrate are reasonably necessary for the preservation of the property and persons of the landlord, other tenants or any other person.

**§ 5504. Defense to an action for waste.**

(a) It shall be a complete defense to any action, suit or proceeding for waste if the tenant alleges and establishes that the tenant notified the landlord a reasonable time in advance of the repair, alteration or replacement and that such repair, alteration or replacement:

- (1) Is one which a prudent owner of an estate in fee simple absolute of the affected property would be likely to make in view of the conditions existing on or in the neighborhood of the affected property; or
- (2) Has not reduced the market value of the reversion or other interest of the plaintiff; and
- (3) If the conditions set forth in paragraph (a)(1) or (a)(2) of this section exist, and the landlord makes a demand that the tenant posts security to protect against a failure to complete the proposed work, and against any responsibility for expenditures incident to the making of such proposed repairs, alterations or replacements as the court demands.

(b) This section shall not be interpreted to bar an action for damages for breach of a written rental agreement nor bar an action or summary proceeding based on breach of a written rental agreement.

**§ 5505. Tenant's obligation relating to defective conditions.**

(a) Any defective condition of the premises which comes to the tenant's attention, and which the tenant has reason to believe is the duty of the landlord or of another tenant to repair, shall be reported in writing by the tenant to the landlord as soon as is practicable. The tenant shall be responsible for any liability or injury resulting to the landlord as a result of the tenant's failure to timely report such condition.

(b) A tenant on whom a complaint an action against the premises is served shall immediately notify the landlord in writing.

(c) The provisions of this section shall not apply where the landlord has actual notice of the defective condition.

**§ 5506. Tenant obligation; notice of extended absence.**

The landlord may require in the rental agreement that the tenant notify the landlord in writing of any anticipated extended absence from the premises no later than the 1st day of such absence.

**§ 5507. Landlord remedies for absence or abandonment.**

(a) If the rental agreement provides for notification to the landlord by the tenant of an anticipated extended absence as defined in this Code or in the rental agreement, and the tenant fails to comply with such requirement, the tenant shall indemnify the landlord for any harm resulting from such absence.

(b) The landlord may, during any extended absence of the tenant, enter the rental unit as is reasonably necessary for inspection, maintenance and safekeeping.

(c) Unless otherwise agreed to in the rental agreement, the tenant shall use the rental unit only as the tenant's abode. A violation of this covenant shall constitute the breach of a rule under § 5511 of this title, and shall entitle the landlord to proceed as specified elsewhere in this chapter.

(d) If the tenant wrongfully quits the rental unit and unequivocally indicates by words or deeds the tenant's intention not to resume tenancy, such action by the tenant shall entitle the landlord to proceed as specified elsewhere in this chapter and the tenant shall be liable for the lesser of the following for such abandonment:

- (1) The entire rent due for the remainder of the term and expenses for actual damages caused by the tenant (other than normal wear and tear) which are incurred in preparing the rental unit for a new tenant; or
- (2) All rent accrued during the period reasonably necessary to re-rent the premises at a fair rental; plus the difference between such fair rental and the rent agreed to in the prior rental agreement; plus expenses incurred to re-rent; repair damage caused by the tenant (beyond normal wear and tear); plus a reasonable commission, if

incurred by the landlord for the re-renting of the premises. In any event, the landlord has a duty to mitigate damages.

(e) If there is no appeal from a judgment granting summary possession under subsection (c) or (d) of this section, the landlord may immediately remove and store, at the tenant's expense, any and all items left on the premises by the tenant. Seven days after the appeal period has expired, the property shall be deemed abandoned and may be disposed of by the landlord without further notice or liability.

**§ 5508. Landlord remedies; restrictions on subleasing and assignments.**

(a) Unless otherwise agreed in writing, the tenant may sublet the premises or assign the rental agreement to another.

(b) The rental agreement may restrict or prohibit the tenant's right to assign the rental agreement in any manner. The rental agreement may restrict the tenant's right to sublease the premises by conditioning such right on the landlord's consent. Such consent shall not be unreasonably withheld.

(c) In any proceeding under this section to determine whether or not consent has been unreasonably withheld, the burden of showing reasonableness shall be on the landlord.

**§ 5509. Tenant obligation to permit reasonable access.**

(a) The tenant shall not unreasonably withhold consent for the landlord to enter into the rental unit in order to inspect the premises, make necessary repairs, decorations, alterations or improvements, supply services as agreed to or exhibit the rental unit to prospective purchasers, mortgagees or tenants. A tenant shall have the right to install a new lock at the tenant's cost, on the condition that:

(1) The tenant notifies the landlord in writing and supplies the landlord with a key to the lock;

(2) The new lock fits into the system already in place; and

(3) The lock installation does not cause damage to the door.

(b) The landlord shall not abuse this right of access nor use it to harass a tenant. The landlord shall give the tenant at least 48 hours' notice of landlord's intent to enter, except for repairs requested by the tenant, and shall enter only between 8:00 a.m. and 9:00 p.m. As to prospective tenants or purchasers only, the tenant may expressly waive in a signed addendum to the rental agreement or other separate signed document the requirement that the landlord provide 48 hours' notice prior to the entry into the premises. In the case of an emergency the landlord may enter at any time.

(c) The tenant shall permit the landlord to enter the rental unit at reasonable times in order to obtain readings of meters or appliances for measurement of utility consumption in accordance with § 5312 of this title.

**§ 5510. Landlord remedy for unreasonable refusal to allow access.**

(a) The tenant shall be liable to the landlord for any harm proximately caused by the tenant's unreasonable refusal to allow access. Any court of competent jurisdiction may issue an injunction against a tenant who has unreasonably withheld access to the rental unit.

(b) The landlord shall be liable to the tenant for any theft, casualty or other harm proximately resulting from an entry into the rental unit by landlord, its employees or agents or with landlord's permission or license:

(1) When the tenant is absent and has not specifically consented to the entry;

(2) Without the tenant's actual consent when tenant is present and able to consent; and

(3) In any other case, where the harm suffered by the tenant is due to the landlord's negligence.

(c) Repeated demands for unreasonable entry or any actual entry which is unreasonable and not consented to by the tenant may be treated by the tenant as grounds for termination of the rental agreement. Any court of competent jurisdiction may issue an injunction against such unreasonable demands on behalf of 1 or more tenants.

(d) Every agreement or understanding between a landlord and a tenant which purports to exempt the landlord from any liability imposed by this section, except consent to a particular entry, shall be null and void.

**§ 5511. Rules and regulations; tenant obligations.**

(a) The tenant and all others in the premises with the consent of the tenant shall obey all obligations or restrictions, whether denominated by the landlord as "rules," "regulations," "restrictions" or otherwise, concerning

the tenant's use, occupation and maintenance of the rental unit, appurtenances thereto and the property of which the rental unit is a part, if:

- (1) Such obligations and restrictions promote the health, safety, quiet, private enjoyment or welfare, peace and order of the tenants; promote the preservation of the landlord's property from abuse; and promote the fair distribution of services and facilities provided for all tenants generally; and
  - (2) Such obligations and restrictions are brought to the attention of the tenant at the time of the tenant's entry into the agreement to occupy the rental unit; and
  - (3) Such obligations and restrictions are reasonably related to the purpose for which they are promulgated; and
  - (4) Such obligations and restrictions apply to all tenants of the property in a fair manner; and
  - (5) Such obligations and restrictions are sufficiently explicit in the prohibition, direction or limitation of the tenant's conduct to fairly inform tenant of what tenant must or must not do to comply; and
  - (6) Such obligations or restrictions, if not made known to the tenant at the commencement of tenancy, are brought to the attention of the tenant and if said obligations work substantial modifications of the lease agreement they have been consented to in writing by tenant.
- (b) All tenants and other guests of the premises with the consent of tenant shall conduct themselves in a manner that does not unreasonably interfere with the peaceful enjoyment of the other tenants.

**§ 5512. Rules and regulations relating to certain buildings; landlord remedies.**

Any provision of the Landlord-Tenant Code [Chapters 51 through 59 of this title] to the contrary notwithstanding, all rental agreements for the rental of single rooms in certain buildings may be terminated immediately upon notice to the tenant for a tenant's material violation of a regulation which has been given to a tenant at the time of contract or lease, and the landlord shall be entitled to bring a proceeding for possession where:

- (1) The building is the primary residence of the landlord; and
- (2) No more than 3 rooms in the building are rented to tenants; and
- (3) No more than 3 tenants occupy such building.

**§ 5513. Landlord remedies relating to breach of rules and covenants.**

(a) If the tenant breaches any rule or covenant which is material to the rental agreement, the landlord shall notify the tenant of such breach in writing, and shall allow at least 7 days after such notice for remedy or correction of the breach. This section shall not apply to late payment of rent which is covered under § 5502 of this title.

(1) Such notice shall substantially specify the rule allegedly breached and advise the tenant that, if the violation continues after 7 days, the landlord may terminate the rental agreement and bring an action for summary possession. Such notice shall also state that it is given pursuant to this section, and if the tenant commits a substantially similar breach within 1 year, the landlord may rely upon such notice as grounds for initiating an action for summary possession. The issuance of a notice pursuant to this section does not establish that the initial breach of the rental agreement actually occurred for purposes of this section.

(2) If the tenant's breach can be remedied by the landlord, as by cleaning, repairing, replacing a damaged item or the like, the landlord may so remedy the tenant's breach and bill the tenant for the actual and reasonable costs of such remedy. Such billing shall be due and payable as additional rent, immediately upon receipt.

(3) If the tenant's breach of a rule or covenant also constitutes a material breach of an obligation imposed upon tenants by a municipal, county or state code, ordinance or statute, the landlord may terminate the rental agreement and bring an action for summary possession.

(b) When a breach by a tenant causes or threatens to cause irreparable harm to any person or property, or the tenant is convicted of a class A misdemeanor or felony during the term of the tenancy which caused or threatened to cause irreparable harm to any person or property, the landlord may, without notice, remedy the breach and bill the tenant as provided in subsection (a) of this section; immediately terminate the rental agreement upon notice to the tenant and bring an action for summary possession; or do both.

(c) Upon notice to tenant, the landlord may bring an action or proceeding for waste or for breach of contract for damages suffered by the tenant's willful or negligent failure to comply with tenant's responsibilities under the preceding section. The landlord may request a forthwith summons.

**§ 5514. Security deposit.**

(a)(1) A landlord may require the payment of security deposit.

(2) No landlord may require a security deposit in excess of 1 month's rent where the rental agreement is for 1 year or more.

(3) No landlord may require a security deposit in excess of 1 month's rent (with the exception of federally-assisted housing regulations), for primary residential tenancies of undefined terms or month to month where the tenancy has lasted 1 year or more. After the expiration of 1 year, the landlord shall immediately return, as a credit to the tenant, any amount in excess of 1 month's rent.

(4) The security deposit limits set forth above shall not apply to furnished rental units.

(b) Each security deposit shall be placed by the landlord in an escrow bank account in a federally-insured banking institution with an office that accepts deposits within the State. Such account shall be designated as a security deposits account and shall not be used in the operation of any business by the landlord. The landlord shall disclose to the tenant the location of the security deposit account. The security deposit principal shall be held and administered for the benefit of the tenant, and the tenant's claim to such money shall be prior to that of any creditor of the landlord, including, but not limited to, a trustee in bankruptcy, even if such money is commingled.

(c) The purpose of the security deposit shall be:

(1) To reimburse the landlord for actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning; and/or

(2) To pay the landlord for all rental arrearage due under the rental agreement, including late charges and rental due for premature termination or abandonment of the rental agreement by the tenant; and/or

(3) To reimburse the landlord for all reasonable expenses incurred in renovating and re-renting the premises caused by the premature termination of the rental agreement by the tenants, which includes termination pursuant to § 5314 of this title, providing that reimbursement caused by termination pursuant to § 5314 of this title shall not exceed 1 month's rent.

(d) Where a tenant is required to pay a fee to determine the tenant's credit worthiness, such fee is an application fee. A landlord may charge an application fee, not to exceed the greater of either 10 percent of the monthly rent for the rental unit or \$50, to determine a tenant's credit worthiness. The landlord shall, upon receipt of any money paid as an application fee, furnish a receipt to the tenant for the full amount paid by the tenant, and shall maintain for a period of at least 2 years, complete records of all application fees charged and amounts received for each such fee. Where the landlord unlawfully demands more than the allowable application fee, the tenant shall be entitled to damages equal to double the amount charged as an application fee by the landlord.

(e) If the landlord is not entitled to all or any portion of the security deposit, the landlord shall remit the security deposit within 20 days of the expiration or termination of the rental agreement.

(f) Within 20 days after the termination or expiration of any rental agreement, the landlord shall provide the tenant with an itemized list of damages to the premises and the estimated costs of repair for each and shall tender payment for the difference between the security deposit and such costs of repair of damage to the premises. Failure to do so shall constitute an acknowledgment by the landlord that no payment for damages is due. Tenant's acceptance of a payment submitted with an itemized list of damages shall constitute agreement on the damages as specified by the landlord, unless the tenant, within 10 days of the tenant's receipt of such tender of payment, objects in writing to the amount withheld by the landlord.

(g) Penalties. --

(1) Failure to remit the security deposit or the difference between the security deposit and the amount set forth in the list of damages within 20 days from the expiration or termination of the rental agreement shall entitle the tenant to double the amount wrongfully withheld.

(2) Failure by a landlord to disclose the location of the security deposit account within 20 days of a written request by a tenant or failure by the landlord to deposit the security deposit in a federally-insured financial institution with an office that accepts deposits within the State, shall constitute forfeiture of the security deposit by the landlord to the tenant. Failure by the landlord to return the full security deposit to the tenant within 20 days from the effective date of forfeiture shall entitle the tenant to double the amount of the security deposit.

(h) All communications and notices, including the return of any security deposit under this section, shall be directed to the landlord at the address specified in the rental agreement and to the tenant at an address specified in the rental agreement or to a forwarding address, if provided in writing by the tenant at or prior to the termination of the rental agreement. Failure by the tenant to provide such address shall relieve the landlord of

landlord's responsibility to give notice herein and landlord's liability for double the amount of the security deposit as provided herein, but the landlord shall continue to be liable to the tenant for any unused portion of the security deposit; provided, that the tenant shall make a claim in writing to the landlord within 1 year from the termination or expiration of the rental agreement.

(i) Pet deposits. --

(1) A landlord may require a pet deposit. Damage to the rental unit caused by an animal shall first be deducted from the pet deposit. Where the pet deposit is insufficient, such damages may be deducted from the security deposit. A pet deposit is subject to subsections (b), (e), (f), (g) and (h) of this section.

(2) No landlord may require a pet deposit in excess of 1 month's rent, regardless of the duration of the rental agreement.

(3) A landlord may require an additional deposit from a tenant with a pet, but shall not require any pet deposit from a tenant if the pet is a duly certified and trained support animal for a disabled person who is a resident of the rental unit.

(j) If the rental agreement so specifies, a landlord may increase the security deposit commensurate with the rent. If the increase of the security deposit will exceed 10 percent of the monthly rent, payment of the increased security deposit shall be prorated over the term of the rental agreement, except in the case of month-to-month tenancy, in which case payment of the increase shall be prorated over a period of 4 months.

#### **§ 5515. Landlord's remedies relating to holdover tenants.**

(a) Except as is otherwise provided in this Code, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease.

(b) Whenever the term of the rental agreement expires, as provided herein or by the exercise by the landlord of a right to terminate given the landlord under any section of this Code, if the tenant continues in possession of the premises after the date of termination without the landlord's consent, such tenant shall pay to the landlord a sum not to exceed double the monthly rental under the previous agreement, computed and pro-rated on a daily basis, for each day the tenant remains in possession for any period. In addition, the holdover tenant shall be responsible for any further losses incurred by the landlord as determined by a proceeding before any court of competent jurisdiction.

#### **§ 5516. Retaliatory acts prohibited.**

(a) Retaliatory acts are prohibited.

(b) A retaliatory act is an attempt on the part of the landlord to: pursue an action for summary possession or otherwise cause the tenant to quit the rental unit involuntarily; demand an increase in rent from the tenant; or decrease services to which the tenant is entitled after:

(1) The tenant has complained in good faith of a condition in or affecting the rental unit which constitutes a violation of a building, housing, sanitary or other code or ordinance to the landlord or to an authority charged with the enforcement of such code or ordinance; or

(2) A state or local government authority has filed a notice or complaint of such violation of a building, housing, sanitary or other code or ordinance; or

(3) The tenant has organized or is an officer of a tenant's organization; or

(4) The tenant has pursued or is pursuing any legal right or remedy arising from the tenancy.

(c) If the tenant proves that the landlord has instituted any of the actions set forth in subsection (b) of this section within 90 days of any complaints or act as enumerated above, such conduct shall be presumed to be a retaliatory act.

(d) It shall be a defense to a claim that the landlord has committed a retaliatory act if:

(1) The landlord has given appropriate notice under a section of this part which allows a landlord to terminate early;

(2) The landlord seeks in good faith to recover possession of the rental unit for immediate use as landlord's own residence;

(3) The landlord seeks in good faith to recover possession of the rental unit for the purpose of substantially altering, remodeling or demolishing the premises;

(4) The landlord seeks in good faith to recover possession of the rental unit for the purpose of immediately terminating, for at least 6 months, use of the premises as a rental unit;

- (5) The complaint or request of the landlord relates to a condition or conditions caused by the lack of ordinary care by the tenant or other person in the household, or on the premises with the tenant's consent;
  - (6) The rental was, on the date of filing of tenant's complaint or request or on the date of appropriate notice prior to the end of the rental term, in full compliance with all codes, statutes and ordinances;
  - (7) The landlord has in good faith contracted to sell the property and the contract of sale contains a representation by the purchaser conforming to paragraph (d)(2), (3) or (4) of this section;
  - (8) The landlord is seeking to recover possession of the rental unit on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant prior to the complaint or request;
  - (9) The condition complained of was impossible to remedy prior to the end of the cure period;
  - (10) The landlord has become liable for a substantial increase in property taxes or a substantial increase in other maintenance or operating costs not associated with the landlord complying with the complaint or request, and such liability occurred not less than 4 months prior to the demand for the increase in rent, and the increase in rent does not exceed the pro-rata portion of the net increase in taxes or cost;
  - (11) The landlord has completed a substantial capital improvement of the rental unit or the property of which it is a part, not less than 4 months prior to the demand for increased rent, and such increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, pro-rated among the rental units benefited by the improvement; or
  - (12) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar rental units in the same complex, or the landlord can establish that the increase in rent is not directed at the particular tenant as a result of any retaliatory acts.
- (e) Any tenant from whom possession of the rental unit has been sought, or who the landlord has otherwise attempted to involuntarily dispossess, in violation of this section, shall be entitled to recover 3 months' rent or treble the damages sustained by tenant, whichever is greater, together with the cost of the suit but excluding attorneys' fees.

**§ 5517. Preference of rent in cases of execution.**

Liability of goods levied upon for 1 year's rent:

- (1) If goods, chattels or crops of a tenant being upon premises held by the tenant by demise under a rent of money are seized by virtue of any process of execution, attachment or sequestration, the goods and chattels shall be liable for 1 year's rent of the premises in arrear, or growing due, at the time of the seizure, in preference to such process; accordingly the landlord shall be paid such rent, not exceeding 1 year's rent, out of the proceeds of the sale of such goods and chattels, before anything shall be applicable to such process.
- (2) The sheriff, or other officer, who sells the goods and chattels of a tenant upon process of execution, attachment or sequestration shall at least 10 days before such sale give written notice of the time and place thereof to the landlord, if residing in the county, and if not, to any known agent of the landlord in the county.

## **DISTRICT OF COLUMBIA**

### **When can I sue in Landlord and Tenant Court?**

A landlord or other person can sue in Landlord and Tenant whenever a person or company is in possession of property but does not have a legal right to be there. Tenants may lose their right to possession by failing to pay rent, violating the lease, violating the housing code, running a "drug-haven," or for certain other reasons recognized by the law. Cases can also be filed to evict trespassers, squatters, and others who do not have a legal right to possess the property.

### **What to bring to file the suit:**

You should bring a copy of the Notice to Correct and/or Vacate in English and Spanish, for cases brought against tenants for any reason, except non-payment of rent cases and drug haven cases. (A landlord may be required to give a tenant a notice to quit prior to filing a non-payment of rent case, but you are not required to bring it to court to file the lawsuit. If you are not sure whether you are required to serve a notice to quit, you should seek legal advice or information from a private attorney or the Landlord and Tenant Resource Center.) The Landlord and Tenant Clerk's Office supplies the complaint form, which is filled out once you arrive at the courthouse.

### **How soon is a landlord and tenant case heard after it is filed?**

You will be given your court date, usually about 3-4 weeks out, when you file your complaint. The landlord is responsible for making sure that the tenant receives notice of the lawsuit. The landlord must use a process server to serve the tenant with a copy of the complaint. The tenant must be served at least 7 days, not counting Sundays and legal holidays, before the court date

### **What happens on the court date?**

Court begins at 9:00 a.m., when the judge makes announcements about what will happen in court and the parties' rights. After these announcements, the courtroom clerk calls roll and parties must answer that they are "present" and state their names. Failure of a tenant to appear may result in a default. Failure of landlord to appear may result in a dismissal. When both parties appear, they may attempt to resolve their differences by entering into a written agreement. These agreements may include payment schedules for past due rent, a schedule for the landlord to make repairs, or other terms that the parties believe are in their best interest. If parties are not able to resolve their differences, the case will be called before the judge.

### **If I am a tenant, how can I get the landlord to make repairs to my home?**

If a landlord fails to make repairs after a tenant notifies the landlord, the tenant has several options. Tenants may have other legal options, such as filing a lawsuit in another branch of the court (such as the Civil Actions Branch or Small Claims) requesting a court order for repairs to be made or seeking damages against the landlord for not making repairs. If the landlord has sued the tenant for unpaid rent, the tenant may raise these repairs as a defense to the lawsuit by telling the judge about these problems. The tenant could also include repairs in an agreement that settles a Landlord and Tenant lawsuit. Circumstances vary.

### **May I pay my rent into the court registry until the repairs are made?**

If your landlord has sued you in Landlord and Tenant Court, you can ask the court to allow you to pay your rent into the registry of the court until the case is over or as part of an agreement settling the case. The Court's Registry is a court-monitored bank account set aside for tenants to make rental payments. If you do not have a case in Landlord and Tenant Court, you cannot pay your rent into the court registry

### **What will happen if the landlord does not agree on the dates when I can pay the rent, when repairs will be made, or other items?**

If you cannot reach an agreement with your landlord, you can ask a court-trained mediator to help you work out an agreement. You also have the right to take your case in front of the judge. The judge cannot force the landlord to accept payment dates or other terms that the landlord does not agree to. But, if you have defenses to the

landlord's claims, you can ask the court for a trial. However, if you do not have any defenses, the judge may enter a judgment against you. If you are not sure whether you have defenses, you should talk to an attorney in the Landlord and Tenant Resource Center, Law Students in Court, or another attorney to make sure that you are making the best decision for your case. If you need more time to talk to a lawyer, you can ask the judge for a continuance.

**What should I do if I cannot meet a payment plan that I agreed to?**

You can contact the landlord and ask for an extension of time. If you are not able to work something out with the landlord, you can ask the court to give you more time. However, in most cases a judge will not change the dates that payments are due in a written payment plan, even if you have a very good reason for why you cannot pay on time?

**What may the landlord do if the tenant fails to make his or her rental payments according to a consent judgment agreement approved by the judge or interview and judgment officer?**

If the tenant fails to make a payment according to a consent judgment agreement, the landlord may obtain an application to terminate the stay of execution from the Landlord and Tenant Clerk's Office. If a stay is terminated, it subjects the tenant to eviction procedures.

**What may the landlord do if the tenant fails to make his or her rental payments according to a settlement agreement?**

If the tenant fails to make a payment according to a payment schedule in a settlement agreement, the landlord can file a motion in the Landlord and Tenant's Clerk's office asking that the court enter a judgment so that the landlord can evict the tenant. The cost for the motion is \$10.

**What is a judgment for possession?** A judgment for possession entitles the landlord to evict the tenant.

I have a judgment or a default against my tenant. What next? You must use court process to evict the tenant. To do this, you must wait at least forty-eight hours after entry of a judgment or a default before you return to the Landlord and Tenant Clerk's Office to file a writ of restitution, which orders the eviction of the tenant. If you have a "default," you must turn the "default" into a "judgment" by filing a Soldiers and Sailors affidavit with the court certifying that the tenant is not on active duty with the military or other government service. You can file the affidavit at the same time that you file the writ. The filing fee for the writ is \$100 (clerk's fee is \$10, U.S. Marshals Service fee is \$90). If you received a judgment (rather than a default), you are not required to file the Soldiers and Sailors affidavit. The first time I heard anything about a lawsuit against me was when I received a writ of restitution (eviction notice) in the mail. What can I do? If you do not believe that you should be evicted, you can come to court immediately and file an Application to Stay Execution of the Writ of Restitution in the Landlord and Tenant Clerk's Office. You may also want to file a motion to ask the court to vacate the judgment so that you can present defenses you have to the case. The cost for the motion is \$10.

**Is there anything I can do to stop my landlord from evicting me after a judgment is entered?** You can ask the court to stop the eviction by filing an Application to Stay Execution of the Writ of Restitution in the Landlord and Tenant Clerk's Office. If the reason the landlord sued you is because you owe rent, you can avoid eviction by paying the landlord all of the rent and court costs that you owe as of the day that you make the payment. (This includes the rent that has come due since the time the landlord filed the lawsuit.) If you bring your account current with the landlord, the landlord cannot evict you unless he or she brings a new lawsuit.

**How may I get monies released from the court registry?**

You must file a motion in the Landlord and Tenant Clerk's Office at 510 4th Street, N.W., Bldg. B, Room 110, Washington, D.C. 20001. The clerk's office has a standard motion form. The cost is \$10.

**What is a money judgment?** If the landlord sues the tenant for possession because the tenant owes rent, the landlord can also request that the tenant be required to pay the back rent and any other monies due, such as late fees. If the landlord makes this kind of request, he or she is asking for a money judgment.

**How may I get a money judgment?** First, the tenant must be served personally with a copy of the summons. If you get a default at roll call, ask the clerk to send the case before the judge. Ask the judge to grant you a money judgment. If your cases go to trial and you win, you can ask the judge to enter a money judgment at the trial. How much time do I have to execute or follow through on the money judgment? If the judgment is unrecorded (that is, not recorded with the D.C. Recorder of Deeds) you have three years, and if the judgment is recorded, you have twelve years.

**What may be done if the landlord fails to complete repairs on time?**

If your landlord agreed to make repairs as part of a consent judgment agreement or settlement agreement, you can contact the landlord to find out what is causing the delay and attempt to work out additional terms. If you cannot work the problem out yourself, you can go to the Clerk's Office at least one day after the repairs were scheduled to be completed. The clerk will give you a form to complete instructing the landlord to return to court because of the lack of repairs.

**May I sue the landlord for damage to property?**

If you are already involved in a non-payment of rent case in Landlord and Tenant, you can file a counterclaim, recoupment, or setoff to collect money from your landlord for part or all of the rent that you paid in the past when the apartment or house was in need of repair. You can also collect money to reimburse you for the costs of repairs that you have personally made to the apartment or house. Other suits for damages for personal injuries or damage to a tenant's personal property must be filed in the Small Claims and Conciliation Branch, if the amount is \$5,000 or less. Suits for damages more than \$5,000 must be filed in the Civil Actions Branch.

**How may I evict a tenant who is suspected of selling drugs?**

You must use normal landlord and tenant eviction procedures. This type of case is heard within two weeks after filing of the complaint instead of three weeks. Let the clerk know that it is a "drug haven" case.

Why must I pay an additional \$100 eviction fee when I have already filed a writ of restitution to evict the tenant? (Rates subject to change) After the writ of restitution has been filed in the Landlord and Tenant Clerk's Office and the U.S. Marshals Service has not evicted the tenant within the applicable 75 days, the writ expires. You must re-file the writ, and the U.S. Marshals Service charges an additional \$90 and the Clerk requires \$10 for processing the writ (eviction notice) again. The U.S. Marshals Service has an office on the C level of the Moultrie Courthouse. Only a Landlord and Tenant judge may set aside the \$10 clerk's fee. The party may request that the fee be set aside.

**How may I make a late protective order payment (payment made to the court registry) to the court?** Contact the landlord for consent to make a late payment. If the landlord will not agree, file a motion in the Landlord and Tenant Clerk's Office to make a late protective order payment. The cost is \$10.

What can I do if my tenant misses a protective order payment?

You can file a motion with the court asking the court to enter a judgment for possession against the tenant. The cost for the motion is \$10.

If you can't afford to pay the fees: You can file an Application to Proceed without Prepayment of Costs in the Landlord and Tenant Clerk's Office. You will be required to provide information about your income and expenses, and a judge will review the application to see if you qualify.

***Nonpayment of rent (30 days)***

***Breach of lease other than rent (30 days)***

***Non-default termination by landlord ("Just cause" only, notice period varies with cause. See statute.)***

***Non-default termination by tenant (30 days)***

## FLORIDA

**Step I. Three-Day Notice to Tenant(s)** - The statutory, three-day Notice to Tenant(s) must be served by mail, hand delivered or posted prior to filing an Eviction Action.

### **Step II. Paperwork and Filing Fee Needed for Filing Eviction after Giving Tenant(s) the Three-Day Notice**

- Complaint for Tenant Eviction (form may be obtained from Clerk)
- Copy of the three-day, statutory Notice to Tenant (defendant)
- Lease/Rental Agreement (if applicable)
- Filing Fee of (Check with your County Clerk) in form of cash, check, MasterCard or Visa, certified check, or money order payable to (Check with your county clerk).
- Service of Summons Fee for each tenant (defendant) in form of check or money order and payable to SHERIFF OF YOUR COUNTY, plus a self-addressed stamped envelope with sufficient postage.

### **The following copies must be submitted with the documents from Step II:**

- Original Complaint for Tenant Eviction and two copies for each tenant (defendant). Please verify on the Complaint, the Eviction address, the apartment number and spelling of the street address for correctness, in order for the County Sheriff's Office to serve the Five (5) day summons without delay.
- Copy of the Statutory Notice to Tenant and Lease/Rental Agreement, along with two additional copies for each tenant (defendant).
- Two legal size (#10) envelopes for each tenant (defendant) and one for you (plaintiff). Envelopes must be addressed to each tenant (defendant), yourself (plaintiff) and contain sufficient postage to mail copies of the complaint, three-day notice, lease/rental agreement (if applicable) and summonses.

**Step III. Copies and Other Attachments** - Make copies of all forms and related documents for your records.

**Step IV. Filing and Service of Summons** - You may file your case with the Clerk of the Court either in person or by mail, at any of the locations listed. The clerk will handle the service of your Complaint only if the Eviction is in Palm Beach County.

### **Fees:**

- Make sure to have cash, check, MasterCard or Visa, certified check, or money order payable to YOUR CLERK, Clerk & Comptroller, in the amount of \$(Verify amount) and
- Certified check or money order payable to the Sheriff of YOUR County in the amount of \$20.00 (Verify Amount)

**Step V. What to Expect After Filing** - Once you have filed your Complaint with the Clerk of Court, and after the other party (defendant) has been served, he or she has 5 (five) business days to respond to the Complaint, excluding the day the Summons is served, Saturdays, Sundays and Legal Holidays. You may contact the Clerk of Court, County Court Civil Division by telephone to verify if the tenant(s) has responded to the Complaint. If the Tenant(s) fails to respond, you may continue with the following steps:

### **Step VI. Paperwork Required to Obtain Judgment for Eviction**

- Motion for Default (form may be obtained from Clerk)
- Final Judgment (form may be obtained from Clerk)

### **Step VII. Originals, Copies and Attachments**

- One original completed Motion for Default.
- One original completed Final Judgment: one copy for each tenant (defendant) and one copy for you.
- One stamped legal size (#10) envelope for each tenant and one stamped/addressed to you.

**NOTE:** If the Tenant (defendant) does not vacate after Final Judgment has been entered, you will need to obtain a Writ of Possession from the Clerk.

**Step VIII. Obtaining a Writ of Possession**

- Contact the Clerk in person or mail and request the issuance of the Writ of Possession.
- The Sheriff will require a fee of \$(CHECK AMOUNT) for service of the Writ of Possession in form of check, cashier's check or money order, payable to SHERIFF OF YOUR COUNTY.
- Self-addressed stamped envelope.
- Completed Sheriff Information Sheet. (Form may be obtained from the Clerk).

***Nonpayment of rent (3 days)***

***Breach of lease other than rent (7 days)***

***Non-default termination by landlord or tenant (Year to year, 60 days; quarter to quarter, 30 days; month to month, 15 days; week to week, 7 days, all prior to the end of any rental period)***

***Remarks - Tenant may terminate tenancy by delivery of 7 day notice to do necessary repairs to landlord.***

## GEORGIA

As in most states, the basis for evicting a tenant in Georgia includes:

- Non-payment of rent,
- Failure to surrender the premises at the end of the lease term, or
- Breach of the lease, including any rules that are part of the lease, if the lease provides such breach entitles the landlord to terminate the lease.

Before contacting the court to initiate eviction proceedings, the landlord should read the lease and be familiar with its provisions and comply with its terms regarding notice and termination. Once the terms of the lease have been followed, Georgia law requires a landlord to go through court to remove a tenant.

First, before going to court, the landlord must demand that the tenant immediately give up possession and vacate.

This demand is best made in writing. If the tenant refuses or fails to give up possession, the landlord or the landlord's agent or attorney must go to the magistrate court and file a dispossessory affidavit under oath. The affidavit states:

- The name of the landlord,
- The name of the tenant,
- The grounds for the eviction,
- Verifies that the landlord has demanded possession of the property and has been refused
- The amount of rent or other money owed, if any.

The magistrate court will issue a summons to the sheriff where the property is located. There are three ways in which the summons can be served:

- Delivered personally to the tenant at home;
- If the tenant is not home, it will be delivered to an adult who resides at the home and understands the importance of the summons; or
- The summons will be tacked on the door of the home and on the same day sent by first class mail to the tenant's address. This type of service is appropriate only if no one is at home when the sheriff attempts personal service.

The summons requires the tenant to answer either orally or in writing within seven (7) days from the date that the summons is served. If the seventh day is a Saturday, Sunday, or a legal holiday, the answer is required the next day that is not a Saturday, Sunday, or a legal holiday. The summons should indicate the last day to file an answer and the court in which the answer should be filed.

If the tenant fails to respond at the end of the seventh day, as listed on the summons, the lawsuit is in default. The court can then grant the landlord a writ of possession and the sheriff can remove the tenant immediately.

If the tenant answers the summons, a trial of the issues will be held in accordance with the procedures of the appropriate court. The tenant is allowed to remain in possession of the premises. The landlord may request that the court order the tenant to pay rent into the registry of the court. If payment is ordered, non-payment of rent into the registry could result in the court issuing a writ of possession and the tenant becoming subject to eviction.

Once an answer has been filed, and a hearing has been held, the court will issue its decision. If the court rules for the landlord, the tenant will be ordered to move after ten days and may be ordered to pay the past due rent. After July 1, 1998, a tenant has only seven (7) days to move.

If the dispossessory warrant was served by tack and mail, and the tenant did not file an answer, the court may not award rent or other damages to the landlord. The court can still order the tenant to move.

A tenant whose landlord has filed a dispossessory affidavit because of non-payment of rent may be able to avoid being evicted by paying all that the landlord alleges is due plus court costs. This amount should be stated on the dispossessory summons served on the tenant. The tenant must offer payment within seven (7) days of receiving the summons. The landlord is required to accept such payment from the tenant only once in a twelve month period.

If a landlord refuses to accept an offer of tender, the tenant should file an answer to the dispossessory affidavit stating that tender was offered, but refused. After July 1, 1998, if a court finds that a landlord refused a proper tender, the court can order the landlord to accept payment of rent, late fees and court costs and require that the landlord allow the tenant to remain in possession, if the payment is made within three days of the court's order. If the court finds that the landlord refused a proper tender and orders the landlord to accept payment, that payment will not count as use of the tender defense which can only be used once every twelve months.

***Nonpayment of rent*** (Landlord may proceed to dispossessory proceedings immediately upon tenant's failure to surrender possession upon demand, but tenant may redeem by tendering rent within 7 days of service of summons)

***Breach of lease other than rent*** (No Statute)

***Non-default termination by landlord*** (60 days)

***Non-default termination by tenant*** (30 days)

## HAWAII

### ***Nonpayment of rent (5 days)***

Landlord's remedies for failure by tenant to pay rent. (a) A landlord or the landlord's agent may, any time after rent is due, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in the notice, not less than five business days after receipt thereof, the rental agreement will be terminated. If the tenant cannot be served with notice as required, notice may be given the tenant by posting the same in a conspicuous place on the dwelling unit. If the tenant remains in default, the landlord may thereafter bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession.

(b) A landlord or the landlord's agent may bring an action for rent alone at any time after the landlord has demanded payment of past due rent and notified the tenant of the landlord's intention to bring such an action.

#### Case Notes

In action for summary possession for tenant's failure to pay rent, tenant may assert breach of implied warranty of habitability as defense.

### ***Breach of lease other than rent (10 days)***

Landlord's remedies: for tenant's waste, failure to maintain, or unlawful use. (a) If the tenant is in material noncompliance with section 521-51, the landlord, upon learning of any such noncompliance and after notifying the tenant in writing of the noncompliance and allowing a specified time not less than ten days after receipt of the notice, for the tenant to remedy the noncompliance:

(1) May terminate the rental agreement and bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession if the tenant is in material noncompliance with section 521-51(1); or

(2) May remedy the tenant's failure to comply and bill the tenant for the actual and reasonable cost of such remedy if the noncompliance can be remedied by the landlord by cleaning, repairing, replacing a damaged item, or the like, which bill shall be treated by all parties as rent due and payable on the next regular rent collection date or, if the tenancy has terminated, immediately upon receipt by the tenant.

No allowance of time to remedy noncompliance shall be required when noncompliance by the tenant causes or threatens to cause irreparable damage to any person or property. If the tenant cannot be served with notice as required, notice may be given the tenant by posting the same in a conspicuous place on the dwelling unit.

(b) The landlord may terminate the rental agreement and bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession for any material noncompliance with section 521-51 by a roomer or boarder if the roomer or boarder fails to comply within the time specified in the notice.

(c) The landlord may bring an action or proceeding for waste or for breach of contract for damage suffered by the tenant's willful or negligent failure to comply with the tenant's obligations under section 521-51.

#### Case Notes

Where no evidence that tenant's failure to replace damaged tiles constituted a violation of applicable building and housing laws materially affecting health and safety under §521-51(1), landlord was not authorized under subsection (a) to terminate tenant's lease.

### ***Non-default termination by landlord (Month to month; 45 days, less than month to month; one week)***

### ***Non-default termination by tenant (28 days)***

§521-71 Termination of tenancy; landlord's remedies for holdover tenants. (a) When the tenancy is month-to-month, the landlord may terminate the rental agreement by notifying the tenant, in writing, at least forty-five days

in advance of the anticipated termination. When the landlord provides notification of termination, the tenant may vacate at any time within the last forty-five days of the period between the notification and the termination date, but the tenant shall notify the landlord of the date the tenant will vacate the dwelling unit and shall pay a prorated rent for that period of occupation.

(b) When the tenancy is month-to-month the tenant may terminate the rental agreement by notifying the landlord, in writing, at least twenty-eight days in advance of the anticipated termination. When the tenant provides notice of termination, the tenant shall be responsible for the payment of rent through the twenty-eighth day.

(c) Before a landlord terminates a month-to-month tenancy where the landlord contemplates voluntary demolition of the dwelling units, conversion to a condominium property regime under chapter 514A or 514B, or changing the use of the building to transient vacation rentals, the landlord shall provide notice to the tenant at least one hundred twenty days in advance of the anticipated demolition or anticipated termination. If notice is revoked or amended and reissued, the notice period shall begin from the date it was reissued or amended. Any notice provided, revoked, or amended and reissued shall be in writing. When the landlord provides notification of termination pursuant to this subsection, the tenant may vacate at any time within the one-hundred-twenty-day period between the notification and the termination date, but the tenant shall notify the landlord of the date the tenant will vacate the dwelling unit and shall pay a prorated rent for that period of occupation.

(d) When the tenancy is less than month-to-month, the landlord or the tenant may terminate the rental agreement by notifying the other at least ten days before the anticipated termination.

(e) Whenever the term of the rental agreement expires, whether by passage of time, by mutual agreement, by the giving of notice as provided in subsection (a), (b), (c), or (d) or by the exercise by the landlord of a right to terminate given under this chapter, if the tenant continues in possession after the date of termination without the landlord's consent, the tenant may be liable to the landlord for a sum not to exceed twice the monthly rent under the previous rental agreement, computed and prorated on a daily basis, for each day the tenant remains in possession. The landlord may bring a summary proceeding for recovery of the possession of the dwelling unit at any time during the first sixty days of holdover. Should the landlord fail to commence summary possession proceedings within the first sixty days of the holdover, in the absence of a rental agreement, a month-to-month tenancy at the monthly rent stipulated in the previous rental agreement shall prevail beginning at the end of the first sixty days of holdover.

## IDAHO

### **A tenant can be evicted in Idaho if they:**

- violate the terms of the lease agreement
- is behind in paying the rent
- rents month-to-month and is given 30 days notice asking him/her to move
- engages in the unlawful use, delivery, or production of a controlled substance on the premises of the leased property during the tenancy

### **A tenant cannot be evicted if they have:**

- Paid the rent and the eviction is in retaliation for the exercise of a legal right such as requesting repairs be made or organizing a tenants' association.

### **An Idaho tenant must be given notice by a landlord prior to the eviction. The notice can be a 3 or 30 day notice.**

- A 3 day written notice is permissible only if the Idaho tenant is behind in the rent; violated the terms of the lease agreement; or engaged in the unlawful delivery, production, or use of a controlled substance on the premises of the leased property during the tenancy. The 3 day notice must include the amount of rent the tenant owes (if s/he is behind), the lease provisions the tenant has violated, or that s/he has engaged in the unlawful delivery, production, or use of a controlled substance on the premises, and advise the tenant that s/he has 3 days to either pay the rent, cure the lease violation, or leave. There is no opportunity to cure for engaging in illegal drug activity. If the tenant complies within the 3 day period, the landlord may not evict him/her. A landlord cannot use the 3 day notice where the tenant is current in the rent and has complied with the terms of the lease, and the landlord simply wants to rent to another person.
- A 30 day written notice is permissible when a tenant is renting for an open-ended period of time.
- A lease can provide for notice other than the 3 or 30 day time as long as it is reasonable. The requirement of notice cannot be waived.
- If a tenant is living in government subsidized or public housing, or receives government housing assistance, and s/he receives a 30-day notice, it must be for good cause. See Idaho Legal Aid Services' Public Housing brochure.
- If the tenant owns a mobile home and rents the space, they should consult Idaho Legal Aid Services' Mobile Home brochure regarding their rights.

### **If the tenant feels they are being treated unfairly or illegally evicted, consult an attorney immediately.**

- Once a tenant receives a legal 3 or 30 day written notice, a landlord may commence a legal proceeding called an "unlawful detainer" action to regain possession of the premises and/or collect the rent which is due.
- Expedited Proceedings. In those cases where the rent is past due or the tenant is or has been engaged in the unlawful delivery, production, or use of a controlled substance on the premises of the leased property, a summary trial procedure is available to the landlord to regain possession only from 5 to 12 days after the tenant receives notice of the court action. However, the tenant may also be required to pay the landlord's attorney fees if the eviction notice states that attorney fees will be awarded, and the landlord wins.
- Regular Eviction Proceedings. In those cases where the landlord serves the tenant a 30-day notice or a 3-day notice for violating the lease, the landlord will serve the tenant a Summons and Complaint. The tenant has 20 days to file an Answer with the Court. This eviction process is not quick. However, the

tenant may be ordered to pay damages if s/he should lose and attorney's fees and costs provided the notice asks for attorney's fees.

- If the tenant is served with legal papers for any court action, consult an attorney immediately.
- If the tenant does not move by the court-ordered time after the eviction proceeding, the Sheriff, through a Writ of Restitution, may remove the tenant and his/her property from the premises.

If the landlord does not give the tenant written, legal notice and does not have a court order to have the Sheriff move him/her, the landlord cannot evict him/her by turning the utilities off, changing the locks, or any other adverse act to force him/her to leave. These types of self-help evictions are illegal under Idaho law.

If the landlord does use self-help to evict the tenant, the tenant may have a cause of action against the landlord. In that case, seek the assistance of an attorney immediately.

***Nonpayment of rent (3 days)***

***Breach of lease other than rent (3 days)***

***Non-default termination by landlord or tenant (30 days)***

55-208.TERMINATION OF TENANCY AT WILL. A tenancy or other estate at will, however created, and may be terminated:

- (1) By the landlord's giving notice in writing to the tenant, in the manner prescribed by the code of civil procedure, to remove from the premises within a period of not less than one (1) month, to be specified in the notice; or
- (2) By the tenant giving notice in writing to the landlord that the tenant will be vacating the premises, on a date as specified in the notice, but not less than one (1) month from the date of notice.

## ILLINOIS

**Premises Described:** The notice must describe premises well enough so it may be identified.

**Notice of Termination:** The notice must say that the tenancy will be terminated. It does not have to use the word “terminated”, but it must make clear that at the end of the notice period, the tenant will lose rights to the home.

**Certificate of Service:** The affidavit of service does not need to be completed on the copy given to the tenant. After the tenant is served, the landlord should complete the affidavit of service and sign in front of a notary. A copy of the notice with a completed affidavit of service and a notary’s signature must be filed with the court file.

**Dates: Date of Service:** Notices may not be served until after the default, if the notice is based on a default. Regardless of the date on the notice, the notice period does not begin to run until after service.

**Date of Termination:** Notices do not have to give the date on which the tenancy will terminate. They must give the number of days after service of the notice that the tenancy will terminate. The landlord may give more days than the statutory requirement. Even after the tenancy is terminated, the landlord still must proceed with a court order for the eviction. It is the termination of the tenancy that gives the landlord the right to file a court action seeking eviction. Until the full notice period given for the notice runs, the landlord cannot file in court for an eviction action.

**How to Count the Period:** The notice period is counted starting with the day after the notice is served. The last day of the period is also excluded if it falls on a Saturday, Sunday, or holiday. If the tenant was served by mail, the notice period starts from the day after the tenant actually received the notice.

**What Rent Is Due:** The notice can only ask for the rent that is actually due at the point the notice is issued. The notice must give a definite amount of rent as due and owing. Only rent can be included in the notice. If the Tenant Owes Less than Demanded If the tenant owes less money than the landlord has demanded, the tenant needs only to pay the actual rent money due and owing to defeat the eviction notice. The tenant must pay all that is due, however; payment of less than what is due will not defeat the eviction, even if the landlord demands more than what is owed.

**Payment of Rent Due Tender:** If the tenants can pay the rent due, they should tender the money. Tender is when a tenant offers the rent due to the landlord. Ideally, tender should be made in the presence of witnesses. The tenant should get a receipt if the landlord accepts the money. Tender must be made before the five days are up. Tender will defeat the eviction action even if the landlord refuses the money. Full payment if the notice does not contain language saying only full payment will waive the notice, and then the landlord’s acceptance of even partial payment can be argued to reinstate the tenancy.

### ***Nonpayment of rent (5 days)***

**Written Notices Required:** Illinois law generally requires a written eviction notice. The landlord must serve the tenant with the written notice before filing a court case. There are two exceptions, a lease can waive the right to notice:

- If the lease sets a fixed time for its expiration, no written notice is required
- If the landlord gives a notice anyway, it must comply with the statute. Local ordinances can also require a written notice, as is the case in Chicago.

**Service of Notices Services** may be tendered in one of three ways in most cases:

- Personal service on the tenant;
- Personal service on someone at the tenant’s home, more than 12 years old;

- Mailing to the tenant by certified or registered mail, with a return receipt from the tenant. If no one is living at the tenant's house, the landlord may post the notice.

If the tenant gets the notice, improper service may be waived. Proof of non-receipt can be difficult if the service of notice is proper on its face. Sometimes the landlord acknowledges improper service, by, for example, posting the notice when the tenant is in possession.

***Breach of lease other than rent (10 days)***

Landlord's 10-Day Eviction Notice A 10 day notice is given for violating any lease provision. There is no right to cure a 10 day notice under state law. There is a right to cure under *some* ordinances. Acceptance of rent for a period after the notice is issued can waive the notice.

***Non-default termination by landlord and tenant (30 days month to month, 7 days week to week)***

Landlord's 30-Day Eviction Notice where there is a month-to-month tenancy, the landlord may terminate it at any time by giving a thirty day notice. The landlord does not need to give any reason for terminating the tenancy.

## INDIANA

The general steps in an Indiana eviction:

1. The landlord tells the tenant the landlord wants the tenant to move out.
2. The landlord files a case against the tenant.
3. The tenant receives notice of the lawsuit by certified mail or by the Sheriff.
4. The first hearing is to decide who has the right to possession of the apartment. If the tenant is in violation of the contract (for example, if the tenant is behind in rent), the landlord will have the right to possession and the court will order that the tenant be out by a certain date. (This is usually within a few days of the court hearing; you don't get much time to move). If the court finds the tenant hasn't violated the lease, then the case is over and the tenant does not have to move.
5. There is often a second hearing for the court to decide if the tenant owes the landlord any money. The tenant can also tell the court if the tenant thinks the landlord owes the tenant any money.

***Nonpayment of rent (10 days)***

***Breach of lease other than rent (Reasonable time to cure breach)***

***Non-default termination by landlord or tenant (One month)***

## IOWA

**1. Notice for Non-Payment of Rent** - If rent is not paid when due, the landlord must deliver a "NOTICE TO CURE OR QUIT" (Three-Day Notice form) to the tenant. This notice must state that the rent is due but unpaid, and the landlord intends to terminate the Rental Agreement in three (3) days if the rent is not paid.

**2. Notice to Terminate Tenancy for Any Other Reasons** - If the landlord wishes to terminate tenancy for any other reason and is not familiar with applicable landlord tenant laws, THEY SHOULD SEEK LEGAL ADVICE.

**3. Forcible Entry & Detainer** - All notices to terminate must be followed up by serving a FORCIBLE ENTRY NOTICE which is obtained from the local Clerk of Court. This sets a court date for the landlord and the tenant to appear in court. The landlord will be requesting an immediate eviction. The landlord must have all copies of previous notices in the court file to have them available to present at court. IF THE PLACE OF SERVICE HAS A LOCKED SECURITY DOOR, THE SHERIFF WILL NEED A KEY TO MAKE SERVICE.

**4. Writ of Possession** - When the Clerk of Court receives a ruling on a Forcible Entry & Detainer action in your favor; you will need to request that the Clerk issue a Writ of Possession to the Sheriff.

The Sheriff's Office will be delivering a copy of the Writ along with a posting order stating the date of the eviction to the address of the defendant. We require that this be done at least some time during the day before the eviction. It is not necessary to serve this order on the defendant, as they will post it on the door if no one is available. The day of the eviction, the sheriff will expect the plaintiff or his agent to check the location to see if the defendant has vacated voluntarily. Please call your local Sheriff's office to either confirm or cancel the eviction.

If you discover that the defendant has vacated prior to the eviction date, let your local Sheriff know. If the defendant vacates voluntarily, it is up to the plaintiff to decide if they want to have our office stand by while any remaining property is removed. If the eviction procedure is canceled, the plaintiff accepts any liability for property left behind.

### ***Nonpayment of rent (3 days) and Breach of lease other than rent (7 days)***

1. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with section 562A.17 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 seven days after receipt of the notice if the breach is not remedied in seven days, and the rental agreement shall terminate as provided in the notice subject to the provisions of this section. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least seven days' written notice specifying the breach and the date of termination of the rental agreement.

2. 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 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.

3. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for noncompliance by the tenant with the rental agreement or section 562A.17 unless the tenant demonstrates affirmatively that the tenant has exercised due diligence and effort to remedy any noncompliance, and that the tenant's failure to remedy any noncompliance was due to circumstances beyond the tenant's control. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

4. In any action by a landlord for possession based upon nonpayment of rent, proof by the tenant of the following shall be a defense to any action or claim for possession by the landlord, and the amounts expended by the claimant in correcting the deficiencies shall be deducted from the amount claimed by the landlord as unpaid rent:

- a. That the landlord failed to comply either with the rental agreement or with section 562A.15; and
- b. That the tenant notified the landlord at least seven days prior to the due date of the tenant's rent payment of the tenant's intention to correct the condition constituting the breach referred to in paragraph "a" at the landlord's expense; and
- c. That the reasonable cost of correcting the condition constituting the breach is equal to or less than one month's periodic rent; and
- d. That the tenant in good faith caused the condition constituting the breach to be corrected prior to receipt of written notice of the landlord's intention to terminate the rental agreement for nonpayment of rent.

5. Notwithstanding any other provisions of this chapter, a municipal housing agency established pursuant to chapter 403A may issue a thirty-day notice of lease termination for a violation of a rental agreement by the tenant when the violation is a violation of a federal regulation governing the tenant's eligibility for or continued participation in a public housing program. The municipal housing agency shall not be required to provide the tenant with a right or opportunity to remedy the violation or to give any notice that the tenant has such a right or opportunity when the notice cites the federal regulation as authority.

***Non-default termination by landlord or tenant (Week to week; 10 days, month to month; 30 days periodic rental date, longer than month to month; 30 days before next expiration date)***

1. The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least ten days prior to the termination date specified in the notice.
2. The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice.
3. The landlord or the tenant may terminate a tenancy having a term longer than month-to-month by a written notice given to the other at least thirty days prior to the end of the first or subsequent term of the tenancy specified in the notice.
4. 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 and if the tenant's holdover is willful and not in good faith the landlord, in addition, may recover the actual damages sustained by the landlord and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, section 562A.9, subsection 4 applies.

## KANSAS

1. **Notice to Vacate** - Written three (3) day notice to vacate, given to the tenant from the landlord notifying the tenant to leave the premises. Notice must be given at least three days prior to initiation of the lawsuit for rent and possession.

2. **Forcible Detainer** - This is an official court document consisting of a Summons and Petition. The petition outlines the particulars or facts of the action filed by the landlord (plaintiff) against the tenant (defendant) and will list what the plaintiff is asking the court to do (judgment). This document is filed with the Clerk of the District Court. The Clerk of the District Court will assign a case number and court date.

3. **Trial** - The judgment will depend upon what was listed in the Petition. Usually this will be for any back rent (money) and possession of the specific premises. The defendant has five (5) days after judgment is entered to file an appeal. A supersedes bond must be posted with the appeal. KSA 61-3906. If after the expiration of the five days and no appeal and supersedes bond have been filed a Writ of Restitution may be issued by the court.

4. **Writ of Restitution** - This is an official court document that directs and orders the Sheriff's Office to immediately remove the occupants of the specific premises, inventory the property located therein and turn possession of the property to the Plaintiff\*. Entry may be by whatever means necessary to affect the court order including the use of a locksmith. Cost for entry will be paid by the plaintiff. All property on the premises will be inventory by court order. The Sheriff's Office will also video tape the property. When filing the Writ of Restitution a Journal Entry must also be filed. The Journal Entry is a summary of the judgment entered at the trial (court hearing).

**Note:** Johnson County District Court does not use the state form. This form is unique to Johnson County. Copies of this form can be obtained from the Johnson County Sheriff's Office - Field Operations Unit located in the Courthouse. a. The Sheriff's Office has ten (10) calendar days from the date the Writ of Restitution is received to complete the eviction. b. Prior to the Sheriff executing the Writ of Restitution a notice is delivered to the defendant or posted to the premises stating that the Sheriff's Office has a court order to evict the defendant. The notice states a specific date that the Sheriff's Office will affect the Court Order. This is a courtesy only as a notice is not required by law. This notice is given to allow the defendant one last chance to move on their own. c. The Eviction or Writ of Restitution can only be canceled by the Courts, the plaintiff or the plaintiff's attorney. The defendant cannot cancel the action.

\* The landlord is responsible to move and store the tenant's property. The landlord should check with their attorney for the length of time they are required to store the property. \*

**Nonpayment of rent** (On tri-monthly period; 10 days, on less than tri-monthly period, 3 days)

**Breach of lease other than rent** (14 days)

**Non-default termination by landlord** (Week to week; 7 days, month to month; 30 days)

**Non-default termination by tenant** (Week to week; 7 days, month to month; 30 days, but only 15 days if tenant is in military service)

## KENTUCKY

Withholding your rent can be considered nonpayment and may subject you to eviction. If you fail to pay rent on time or break any rules of the landlord or provision of the lease, the Kentucky landlord can go to court and may get an eviction notice.

### **KENTUCKY EVICTION NOTICE**

**THIRTY DAY NOTICE:** The landlord must give you notice 30 DAYS that they want you to vacate (move out) prior to the **SUMMONS AND COMPLAINT BEING DELIVERED**. (Most Cases this is the rule)

The landlord must inform you first of this intention. They may give notice by

Giving the notice to you

Giving it to any adult who lives in your home

Leaving it on your door.

Kentucky courts are able to stop an eviction (if your rent is \$2400 per month or less) for up to three months or longer if requested by the service member whose ability to pay rent has been materially affected by the active duty service.

### **KENTUCKY WARRANT OF POSSESSION**

If the Kentucky Tenant loses, the judge will make an eviction order.

The TENANT has 7 days to move out or fight (appeal) the judge's decision.

If you do not move out, your landlord can have the sheriff go to your home to make you leave.

Your landlord cannot make you leave unless the sheriff is there.

If a Kentucky Landlords wins the Eviction, the Judge signs a "set-out" Warrant. The Landlord and the Sheriff will agree on a date to have the Tenants property put outside the building. The "set-out" Warrant is hand delivered to the Tenant by the Sheriffs Deputies, or posted on the door. At the designated time the Landlords moving crew and Sheriffs Deputies will meet to evict the renters. A Kentucky landlord can then go to Small Claims Court and attempt to recover back rent .

### ***Nonpayment of rent (7 days) and Breach of lease other than rent (14 days)***

(1) Except as provided in KRS 383.505 to 383.715, if there is a material noncompliance by the tenant with the rental agreement or a material noncompliance with KRS 383.605 or 383.610, 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 fourteen (14) days after receipt of the notice. If the breach is not remedied in fifteen (15) days, the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the landlord may terminate the rental agreement upon at least fourteen (14) days' written notice specifying the breach and the date of termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within seven (7) days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(3) Except as provided in KRS 383.505 to 383.715, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or KRS 383.605 or 383.610. If the tenant's noncompliance is willful the landlord may recover actual damages and reasonable attorney's fees.

***Non-default termination by landlord or tenant (Week to week; 7 days, month to month; 30 days – each before periodic rental period)***

(1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least seven (7) days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty (30) days before the periodic rental date specified in the notice.

(3) The landlord or the tenant may terminate a tenancy begun upon the termination of a written lease by written notice given to the other at least ten (10) days before the termination date specified in the notice, except that if the tenant fails to pay rent within ten (10) days after the day it becomes due, the landlord may terminate the tenancy at any time without notice.

(4) 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 and if the tenant's holdover is willful and not in good faith the landlord may also recover an amount not more than three (3) months' periodic rent or threefold the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, KRS 383.565(3) applies.

## LOUISIANA

**Month-to-Month Tenants** - If you rent by the month and do not have an agreement as to how long your rental will last, you are a "month-to-month" tenant. If you are a month-to-month tenant, your landlord can evict you for "no cause" or reason. But the landlord must give you 10 days' notice in writing before the end of the current rental period. If the landlord does not give you the right notice, the judge should order the landlord to start the eviction process over - usually for the next month. Defenses to this 10 day "no cause" evictions are limited. If you do something to break your agreement, like not paying your rent, your landlord can generally evict you on 5 days' notice.

**Written Lease or Subsidized Housing** - If you have a written lease or if you live in subsidized housing, your landlord usually needs a good reason to evict you. For example, failure to pay rent is another violation of the lease. If your lease has run out you may be evicted without a good reason, unless you live in public housing or certain types of subsidized housing.

Your landlord cannot legally evict you until he gets a court order allowing the eviction. If your landlord tries to evict you **without getting a court judgment**, call the police. They should help you as long as there is no court order. As in most states, the landlord cannot legally change the locks, shut off your utilities or try to keep you out of your home.

A Notice to Vacate means that your landlord plans to file a lawsuit for your eviction if you don't move out by the end of the notice period. It is not a court order to move out. The landlord cannot get a court order for eviction until there has been a trial before a judge. If you get a Notice to Vacate, you should quickly decide what to do. If you want to stay, you should first try to work out a deal with the landlord. Some landlords just want their rent paid.

**Non-default termination by landlord** (*Month to month, 10 days before end of term; week to week, 5 days before end of term; less than one week, anytime before end of term*)

**Non-default termination by tenant** (*Month to month, 10 days before end of term; week to week, 5 days before end of term; less than one week, anytime before end of term*)

**Remarks** - <http://www.la-law.org/Downloads/Landlord-Tenant%20Law%20Outline.pdf>

## MAINE

A Maine landlord must give you a written Eviction Notice, sometimes called a "Notice To Quit." If you do not have a lease, the Notice will tell you that you have either 7 days or 30 days to move out. (An oral eviction notice is generally not legal). The Maine Eviction Notice is not the same thing as a court order. Your landlord cannot legally evict you until he gets a court order allowing the eviction.

If your landlord tries to evict you without getting a court judgment, call the police. They should help you as long as there is no court order. As in most states, the landlord cannot legally change the locks, shut off your utilities or try to keep you out of your home.

At the end of the time period given in your Eviction Notice (usually 7 days or 30 days), your landlord can serve you with court eviction papers. These are called a "Summons and Complaint".

Usually, the notice of a court date gives you only a short time to prepare (as little as 7 days). If you can find a lawyer quickly enough, provide this information to your Maine Eviction Lawyer as soon as possible:

- your eviction notice (sometimes called "Notice to Quit")
- your lease or rental agreement (if you have one)
- rent receipts or other evidence of payment (if issue is non-payment)
- Summons and Complaint.

***Nonpayment of rent*** (7 days, notice may only be served on rent which is already 7 days in arrears)

***Breach of lease other than rent*** (7 days, on failure to maintain or nuisance)

***Non-default termination by landlord or tenant*** (30 days, with exceptions)

Tenancies at will must be terminated by either party by a minimum of 30 days' notice, except as provided in subsection 2, in writing for that purpose given to the other party, but if the landlord or the landlord's agent has made at least 3 good faith efforts to serve the tenant, that service may be accomplished by both mailing the notice by first class mail to the tenant's last known address and by leaving the notice at the tenant's last and usual place of abode. In cases when the tenant has paid rent through the date when a 30-day notice would expire, the notice must expire on or after the date through which the rent has been paid. Either party may waive in writing the 30 days' notice at the time the notice is given, and at no other time prior to the giving of the notice. A termination based on a 30-day notice is not affected by the receipt of money, whether previously owed or for current use and occupation, until the date a writ of possession is issued against the tenant during the period of actual occupancy after receipt of the notice. When the tenancy is terminated, the tenant is liable to the process of forcible entry and detainer without further notice and without proof of any relation of landlord and tenant unless the tenant has paid, after service of the notice, rent that accrued after the termination of the tenancy. These provisions apply to tenancies of buildings erected on land of another party. Termination of the tenancy is deemed to occur at the expiration of the time fixed in the notice. A 30-day notice under this paragraph and a 7-day notice under subsection 2 may be combined in one notice to the tenant.

A notice to terminate under this section must include language advising the tenant that the tenant has the right to contest the termination in court. Failure to include language regarding the right to contest termination in the notice to terminate is not grounds to dismiss a forcible entry and detainer action. If the landlord fails to include language required by this paragraph in a notice to terminate and the tenant does not appear at the court hearing scheduled in any forcible entry and detainer action arising from the notice to terminate, the landlord's failure to include the required language in the notice to terminate constitutes sufficient grounds to set aside any default judgment entered against the tenant for failure to appear at the court hearing. This paragraph does not limit the

right of a tenant to raise as a defense in an action for forcible entry and detainer the landlord's failure to include language in the notice to terminate as required by a lease agreement or any federal or state statutes, regulations or rules affecting the tenancy.

1. Causes for 7-day notice of termination of tenancy. Notwithstanding any other provisions of this chapter, the tenancy may be terminated upon 7 days' written notice in the event that the landlord can show, by affirmative proof, that:

A. The tenant, the tenant's family or an invitee of the tenant has caused substantial damage to the demised premises that the tenant has not repaired or caused to be repaired before the giving of the notice provided in this subsection; [2009, c. 171, §2 (NEW).]

B. The tenant, the tenant's family or an invitee of the tenant caused or permitted a nuisance within the premises, has caused or permitted an invitee to cause the dwelling unit to become unfit for human habitation or has violated or permitted a violation of the law regarding the tenancy

C. The tenant is 7 days or more in arrears in the payment of rent. [

If a tenant who is 7 days or more in arrears in the payment of rent pays the full amount of rent due before the expiration of the 7-day notice in writing, that notice is void. Thereafter, in all residential tenancies at will, if the tenant pays all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually expended by the landlord before the issuance of the writ of possession as provided by section 6005, then the tenancy must be reinstated and no writ of possession may issue.

In the event that the landlord or the landlord's agent has made at least 3 good faith efforts to personally serve the tenant in-hand, that service may be accomplished by both mailing the notice by first class mail to the tenant's last known address and by leaving the notice at the tenant's last and usual place of abode.

Payment or written assurance of payment through the general assistance program, as authorized by the State or a municipality pursuant to Title 22, chapter 1161, has the same effect as payment in cash.

2. Ground for termination notice. A notice of termination issued pursuant to subsection 1 must indicate the specific ground claimed for issuing the notice.

A. If a ground claimed is rent arrearage of 7 days or more, the notice must also include a statement:

- Indicating the amount of the rent that is 7 days or more in arrears as of the date of the notice; and
- Setting forth the following notice: "If you pay the amount of rent due as of the date of this notice before this notice expires, then this notice as it applies to rent arrearage is void. After this notice expires, if you pay all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually paid by the landlord before the writ of possession issues at the completion of the eviction process, then your tenancy will be reinstated."

B. If the notice states an incorrect rent arrearage or contains any other clerical errors that do not significantly or materially alter the purpose or understanding of the notice, the notice cannot be held invalid if the landlord can show the error was unintentional.

3. Breach of warranty of habitability as an affirmative defense. In an action brought by a landlord to terminate a rental agreement on the ground that the tenant is in arrears in the payment of rent, the tenant may raise as a defense any alleged violation of the implied warranty and covenant of habitability, provided that the landlord or the landlord's agent has received actual or constructive notice of the alleged violation, and has unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition and the condition was not caused by the tenant or another person acting under the tenant's control. Upon finding that the dwelling unit is not fit for human habitation, the court shall permit the tenant either to terminate the rental agreement without prejudice or to reaffirm the rental agreement, with the court assessing against the tenant an amount equal to the reduced fair rental value of the property for the period during which rent is owed. The reduced amount of rent

thus owed must be paid on a pro rata basis, unless the parties agree otherwise, and payments become due at the same intervals as rent for the current rental period. The landlord may not charge the tenant for the full rental value of the property until such time as it is fit for human habitation.

## MARYLAND

Eviction is a legal procedure. To evict you, a Maryland landlord must go to district court to get a judgment against you. If he gets one, the court will issue an order of eviction and a sheriff will make you leave the home. A landlord who moves a tenant's belongings out of the home, changes the locks, or cuts off utilities without a court order may be criminally prosecuted and liable for damages. If this happens, tenants should call the police and an attorney or legal services organization.

A Maryland "notice to vacate" from your landlord *is not* a court order. This is the written notice that a landlord must give you at least one month before your lease ends, if he or she wants you to move out at the end of the lease. If you do not move out, your landlord can go to court to try to evict you.

### Reasons for Eviction

A landlord cannot evict you simply because you have filed a complaint or a lawsuit against him or her or have joined a tenant's association. This is called a "retaliatory eviction," and you may be able to stop an eviction by showing the court that your landlord is evicting you for one of these reasons.

A landlord *can* evict you for:

- Non-payment of rent. Your landlord can begin the eviction process as soon as your rent due date has passed and you have not paid the rent. In most instances, you can stop the eviction any time before the sheriff actually comes to evict you by paying the landlord the rent that is owed. Never try to force a landlord to make repairs to your home by withholding the rent. The landlord can evict you for non-payment of rent. Instead, go to your district court and ask to file a rent escrow complaint. A judge may allow you to pay your rent into court if your landlord fails to repair serious or dangerous defects, such as a lack of adequate heat or a condition that presents a fire hazard. The judge may return the money to you as compensation or appoint an administrator to ensure that the repairs are made.
- 'Holding over.' If you do not move out when your lease has ended, your landlord may evict you for "holding over." The landlord must prove that he or she gave you proper notice (at least one month's advance written notice) of the ending of your lease.
- Breach of lease. A landlord may also evict you for breaking some part of your lease (for example, by having more people living in the home than the lease permits). Before going to court, the landlord must give you one month's advance written notice ending the lease. The landlord will have to prove that you violated your lease and that the violation was a serious one.

The state's attorney, the county attorney, or community associations may bring an eviction action against tenants involved in illegal drug activities.

### Summons and Hearing

If your landlord begins an eviction proceeding, you will receive an official summons to attend a hearing. The summons may be served on you in person, but most often it is mailed and/or posted on the rental property. Don't ignore it. Go to the hearing and be on time! If you don't show up the landlord will probably win.

The hearing gives you the chance to tell your side of the story. For example, you may be able to prove that you did pay the rent, or that you tried to pay the rent but the landlord wouldn't accept it, or that the landlord didn't give you a month's written notice that you had violated your lease and had to move out.

If the judge finds the landlord's case more convincing, he or she will rule in favor of the landlord. Within five working days, the landlord can file for a court order for the eviction, called a "warrant of restitution," and arrange for a sheriff to oversee the eviction.

You may appeal an eviction judgment. The appeal must be made within four days of the date of judgment in non-payment of rent cases and 10 days in breach of lease or holding over cases. You may have to post a bond to cover the rent while waiting for the circuit court to decide the appeal.

**The Actual Eviction**

On the date of an eviction, the sheriff will come to the rental unit to order the tenant and everyone inside to leave. The landlord or the landlord's employees can then remove all property from the unit and put it on the public right-of-way while the sheriff supervises. Once the property is moved from the unit, it is the tenant's responsibility.

**Nonpayment of rent** (*Landlord may precede directly to District Court for order of repossession and tenant may redeem by tendering all rent and expenses*)

**Breach of lease other than rent** (*30 days non-curable, 14 days non-curable if imminent danger to health or safety*)

**Non-default termination by landlord or tenant** (*30 days*)

## MASSACHUSETTS

### ***Nonpayment of rent (14 days)***

Upon the neglect or refusal to pay the rent due under a written lease, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease, unless the tenant, on or before the day the answer is due, in an action by the landlord to recover possession of the premises, pays or tenders to the landlord or to his attorney all rent then due, with interest and costs of suit. If the neglect or refusal to pay the rent due was caused by a failure or delay of the federal government, the commonwealth or any municipality, or any departments, agencies or authorities thereof, in the mailing or delivery of any subsistence or rental payment, check or voucher other than a salary payment to either the tenant or the landlord, the court in any such action shall continue the hearing not less than seven days in order to furnish notice of such action to the appropriate agency and shall, if all rent due with interest and costs of suit has been tendered to the landlord within such time, treat the tenancy as not having been terminated.

### ***Breach of lease other than rent (No specific remedy by statute)***

***Non-default termination by landlord or tenant(3 months, but if the rent reserved is payable at periods of less than 3 months, the time of such notice is sufficient if it is equal to the interval between the days of payment or 30 days, whichever is longer)***

Estates at will may be determined by either party by three months' notice in writing for that purpose given to the other party; and, if the rent reserved is payable at periods of less than three months, the time of such notice shall be sufficient if it is equal to the interval between the days of payment or thirty days, whichever is longer. Such written notice may include an offer to establish a new tenancy for the same premises on terms different from that of the tenancy being terminated and the validity of such written notice shall not be affected by the inclusion of such offer. In case of neglect or refusal to pay the rent due from a tenant at will, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the tenancy; provided, that the tenancy of a tenant who has not received a similar notice from the landlord within the twelve months next preceding the receipt of such notice shall not be determined if the tenant, within ten days after the receipt thereof, pays or tenders to the landlord, the landlord's attorney, or the person to whom the tenant customarily pays rent, the full amount of any rent due. Every notice to determine an estate at will for nonpayment of rent shall contain the following notification to the tenant: "If you have not received a notice to quit for nonpayment of rent within the last twelve months, you have a right to prevent termination of your tenancy by paying or tendering to your landlord, your landlord's attorney or the person to whom you customarily pay your rent the full amount of rent due within ten days after your receipt of this notice." If any notice to determine an estate at will for nonpayment of rent shall fail to contain such notification, the time within which the tenant receiving the notice would be entitled to pay or tender rent pursuant to this section shall be extended to the day the answer is due in any action by the landlord to recover possession of the premises. Failure to include such notice shall not otherwise affect the validity of the said notice. If the neglect or refusal to pay the rent due was caused by a failure or delay of the federal government, the commonwealth or any municipality, or any departments, agencies or authorities thereof, in the mailing or delivery of any subsistence or rental payment, check or voucher other than a salary payment to either the tenant or the landlord, the court in any action for possession shall continue the hearing not less than seven days in order to furnish notice of such action to the appropriate agency and shall, if all rent due with interest and costs of suit has been tendered to the landlord within such time, treat the tenancy as not having been terminated.

## MICHIGAN

### ***Nonpayment of rent (7 days)***

(1) Except as provided otherwise in this section, an estate at will or by sufferance may be terminated by either party by giving 1 month's notice to the other party. If the rent reserved in a lease is payable at periods of less than 3 months, the time of notice is sufficient if it is equal to the interval between the times of payment. Notice is not void because it states a day for the termination of the tenancy that does not correspond to the conclusion or commencement of a rental period. The notice terminates the tenancy at the end of a period equal in length to the interval between times of payment.

(2) If a tenant neglects or refuses to pay rent on a lease at will or otherwise, the landlord may terminate the tenancy by giving the tenant a written 7-day notice to quit.

(3) A tenancy from year to year may be terminated by either party by a notice to quit, given at any time to the other party. The notice shall terminate the lease at the expiration of 1 year from the time of the service of the notice.

(4) If a tenant holds over after a lease is terminated pursuant to a clause in the lease providing for termination because the tenant, a member of the tenant's household, or other person under the tenant's control has manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises, the landlord may terminate the tenancy by giving the tenant a written 24-hour notice to quit. This subsection applies only if a formal police report has been filed by the landlord alleging that the person has unlawfully manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises. For purposes of this subsection, "controlled substance" means a substance or a counterfeit substance classified in schedule 1, 2, or 3 pursuant to sections 7211 to 7216 of the public health code, 1978 PA 368, MCL 333.7211 to 333.7216.

### ***Breach of lease other than rent (No specific remedy by statute) and Non-default termination by landlord or tenant (30 days)***

(1) Except as provided otherwise in this section, an estate at will or by sufferance may be terminated by either party by giving 1 month's notice to the other party. If the rent reserved in a lease is payable at periods of less than 3 months, the time of notice is sufficient if it is equal to the interval between the times of payment. Notice is not void because it states a day for the termination of the tenancy that does not correspond to the conclusion or commencement of a rental period. The notice terminates the tenancy at the end of a period equal in length to the interval between times of payment.

(2) If a tenant neglects or refuses to pay rent on a lease at will or otherwise, the landlord may terminate the tenancy by giving the tenant a written 7-day notice to quit.

(3) A tenancy from year to year may be terminated by either party by a notice to quit, given at any time to the other party. The notice shall terminate the lease at the expiration of 1 year from the time of the service of the notice.

(4) If a tenant holds over after a lease is terminated pursuant to a clause in the lease providing for termination because the tenant, a member of the tenant's household, or other person under the tenant's control has manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises, the landlord may terminate the tenancy by giving the tenant a written 24-hour notice to quit.

**Remarks** – *Tenant may terminate on 60 day notice if he becomes eligible for subsidized housing and is no longer able to live independently.*

## MINNESOTA

**Unlawful Detainer Actions:** Minnesota Landlords cannot forcibly remove tenants. In order to evict a tenant, a landlord must first bring an “Eviction Action,” or what used to be called “Unlawful Detainer” action against the tenant. This is a legal proceeding conducted in district court.

To bring such an action the landlord must have a legitimate reason. According to state law, legitimate reasons can be nonpayment of rent, other breach of the lease or cases where the tenant has refused to leave after notice to vacate has been properly served and the tenancy’s last day has passed. In general, if a tenant does not pay rent on the day it is due, the landlord may immediately bring an Eviction Action, unless the lease provides otherwise.

With proper written notice a landlord can end a month-to-month tenancy unless the landlord is limiting a tenant’s right to call the police for emergency assistance, or retaliating or discriminating against the tenant. (See pages 13, 25 and 28 for definitions of these terms.) Definite term leases can only be ended according to the notice specified in the lease, or if there has been a significant breach of the lease and the lease allows eviction for breach.

There are a number of steps both landlords and tenants must take in a Minnesota Eviction Action:

- The landlord must file a complaint against the tenant in district court. At least seven days before the court date the landlord must have someone else serve the tenant with a summons ordering the tenant to appear in court.
- A court hearing must take place within seven to 14 days after the court issues the summons. At the hearing, both tenant and landlord will be asked to give their sides of the story.
- The judge will then deliver a decision. If the judge decides the tenant has no legal reason for refusing to leave or pay the rent, the judge will order the tenant to vacate the rental unit. If necessary, the judge will order a law enforcement officer to force the tenant out. If the tenant can show immediate eviction will cause substantial hardship, the court shall allow the tenant a reasonable period of time - up to one week - in which to move. A tenant may not seek or receive a delay based on hardship if the tenant is causing a nuisance or seriously endangering the safety of other residents, their property, or the landlord’s property.

If the Eviction Action has been brought only because the tenant owes rent and the landlord wins, the tenant can still “pay and stay.” To pay and stay, the tenant must pay the rent that is past due (in arrears) plus interest (if charged), plus a \$5 attorney fee if an attorney represented the landlord, and finally, any “costs of the action.” Costs of the action means the filing fee (now about \$245) plus the process server fee, plus witness fees if one was subpoena (called) for trial; costs do not include other legal or similar fees for handling/processing the case as those are capped at \$5 (subject to change).

The court may give the tenant up to a week to pay the court costs. If a tenant has paid the landlord or the court the amount of rent owed, but is unable to pay the interest, costs and attorney’s fees, the court may permit the tenant to pay these amounts during the time period the court delays issuing a Writ of Recovery (eviction order). If the Minnesota Eviction Action has been brought because the tenant has withheld the rent due to disrepair, the judge may order the tenant to deposit the rent with the court. If the tenant wins, the judge may order that the rent be abated (reduced), in part or completely. (See page 16 for a description of withholding rent.)

Following a motion by the tenant, the court may find that the landlord’s eviction case is without merit. The judge may then decide to expunge (remove) the eviction case from the courts record. If a tenant screening service (see Page 7 for an explanation of tenant reports) knows that an eviction case file has been expunged, the tenant screening service must remove any reference to that file from data it maintains or disseminates.

It should be understood that only a law enforcement officer can physically evict a tenant. The landlord cannot do this. A Writ of Recovery - which is issued at the time the decision is handed down - must be posted on the premises at least 24 hours before the actual eviction. The law enforcement officer can show up to perform the eviction anytime after the 24 hours have expired.

A landlord may not obtain a judgment for unpaid rent in an Eviction Action. To obtain a judgment for unpaid rent, a landlord must bring a separate action in Conciliation Court or District Court.

**Nonpayment of rent (14 days)**

a) A tenancy at will may be terminated by either party by giving notice in writing. The time of the notice must be at least as long as the interval between the times rent is due or three months, whichever is less.

(b) If a tenant neglects or refuses to pay rent due on a tenancy at will, the landlord may terminate the tenancy by giving the tenant 14 days notice to quit in writing.

**Breach of lease other than rent (No Specific remedy by statute) and Non-default termination by landlord or tenant (Notice must be at least as long as the rent period or 3 months, whichever is less, e.g., month to month, one month; week to week, one week)**

a) A tenancy at will may be terminated by either party by giving notice in writing. The time of the notice must be at least as long as the interval between the times rent is due or three months, whichever is less.

(b) If a tenant neglects or refuses to pay rent due on a tenancy at will, the landlord may terminate the tenancy by giving the tenant 14 days notice to quit in writing.

## MISSISSIPPI

The Mississippi Eviction process begins after non-payment of rent by the tenant. The Landlord may serve the tenant with a 3-day notice. If the tenant fails to pay within the 3 day period, the Landlord may proceed with the Eviction process in the local court where the property is located. The landlord may not lock-out or evict the tenant without going through the Mississippi Eviction Proceeding.

### ***Nonpayment of rent (3 days)***

A tenant or lessee at will or at sufferance, or for part of a year, or for one or more years, of any houses, lands, or tenements, and the assigns, under-tenants, or legal representatives of such tenant or lessee, may be removed from the premises by the judge of the county court, any justice of the peace of the county, or by the mayor or police justice of any city, town, or village where the premises, or some part thereof, are situated, in the following cases, to wit:

- First: Where such tenant shall hold over and continue in possession of the demised premises, or any part thereof, after the expiration of his term, without the permission of the landlord.
- Second: After any default in the payment of the rent pursuant to the agreement under which such premises are held, and when satisfaction of the rent cannot be obtained by distress of goods, and three days' notice, in writing, requiring the payment of such rent or the possession of the premises, shall have been served by the person entitled to rent on the person owing the same

### ***Breach of lease other than rent (30 days)***

(1) If there is a material noncompliance by the tenant with the rental agreement or the obligations imposed by Section 89-8-25, the landlord may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.

(2) If there is a material noncompliance by the landlord with the rental agreement or the obligations imposed by Section 89-8-23, the tenant may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.

(3) The non-breaching party may deliver a written notice to the party in breach specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice if the breach is not remedied within a reasonable time not in excess of thirty (30) days; and the rental agreement shall terminate and the tenant shall surrender possession as provided in the notice subject to the following:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise, and the breaching party adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate;

(b) In the absence of a showing of due care by the breaching party, if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the non-breaching party may terminate the rental agreement upon at least fourteen (14) days' written notice specifying the breach and the date of termination of the rental agreement;

(c) Neither party may terminate for a condition caused by his own deliberate or negligent act or omission or that of a member of his family or other person on the premises with his consent.

(4) If the rental agreement is terminated, the landlord shall return all prepaid and unearned rent and security recoverable by the tenant under Section 89-8-21.

(5) Notwithstanding the provisions of this section or any other provisions of this chapter to the contrary, if the material noncompliance by the tenant is the nonpayment of rent pursuant to the rental agreement, the landlord shall not be required to deliver thirty (30) days' written notice as provided by subsection (3) of this section. In such

event, the landlord may seek removal of the tenant from the premises in the manner and with the notice prescribed by Chapter 7, Title 89, Mississippi Code of 1972.

***Non-default termination by landlord or tenant (30 days if month to month, 7 days if week to week)***

- (1) Unless the rental agreement fixes a definite term a tenancy shall be week to week in case of a tenant who pays weekly rent and in all other cases month to month.
- (2) The landlord or the tenant may terminate a week-to-week tenancy by written notice given to the other at least seven (7) days prior to the termination date.
- (3) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty (30) days prior to the termination date.
- (4) Notwithstanding the provisions of this section or any other provision of this chapter to the contrary, notice to terminate a tenancy shall not be required to be given when the landlord or tenant has committed a substantial violation of the rental agreement or this chapter that materially affects health and safety.

## MISSOURI

A Missouri landlord may not evict a tenant without a court order. The landlord may begin eviction proceedings if a tenant:

- Damages property.
- Fails to pay rent.
- Violates terms of the lease.
- Injures the lessor or another tenant.
- Allows drug-related criminal activity on the premises.
- Fails to vacate at the end of the lease term.
- Gambles illegally on the property.

The tenant will receive a notice that an eviction lawsuit has been filed and will have the opportunity to be heard in court before any eviction.

To legally evict you, your landlord must file a lawsuit in court. If sued, you should receive a Petition and Summons, telling you when and where to appear in court and what your landlord is demanding. Do not ignore the lawsuit. If you do nothing, a default judgment may be entered against you.

Typically the judge will hear your case on the first court date and not continue it. If you have a claim against your landlord, you must file it in writing with the court by the court date. If the summons was only posted on your property (not hand-delivered to you or your family by a process server), your landlord may only be able to get a judgment for "possession," but no rent. Possession means possession of the apartment or house, not your property.

Contact an attorney as soon as you are sued or notified that your landlord plans to evict you.

A landlord is prohibited from illegally evicting you without a court order, i.e., by locking you out, removing doors to your home, shutting off your utilities, or removing you or your property.

***Nonpayment of rent*** (Landlord may have summons upon failure to pay after demand, but tenant may redeem and pay rent in arrears up to date of trial)

Upon the return of the summons executed, the judge shall set the case on the first available court date and shall proceed to hear the cause, and if it shall appear that the rent which is due has been demanded of the tenant, lessee or persons occupying the property, and that payment has not been made, and if the payment of such rent, with all costs, shall not be tendered before the judge, on the hearing of the cause, the judge shall render judgment that the landlord recover the possession of the premises so rented or leased, and also the debt for the amount of the rent then due, with all court costs and shall issue an execution upon such judgment, commanding the officer to put the landlord into immediate possession of the property leased or rented, and to make the debt and costs of the goods and chattels of the defendant. No money judgment shall be granted to the plaintiff if the defendant is in default and service was by the posting procedure provided in section 535.030 unless the defendant otherwise enters an appearance. The officer shall deliver possession of the property to the landlord within five days from the time of receiving the execution, and the officer shall proceed upon the execution to collect the debt and costs, and return the writ, as in the case of other executions.

2. Except for willful, wanton, or malicious acts or omissions, neither the landlord nor his or her successors, assigns, agents, nor representatives shall be liable to any tenant or subtenant for loss or damage to any household goods, furnishings, fixtures, or any other personal property left in or at the dwelling by the tenant or subtenant of such dwelling, by the reason of the landlord's removal or disposal of the property under a court-ordered execution for possession of the premises.

3. Notwithstanding the provisions of subsection 2 of this section, if, after the sheriff has completed the court-ordered execution, property is left by the tenant in or at the dwelling bearing a conspicuous permanent label or

marking identifying it as the property of a third party, the landlord shall notify the third party by certified mail with a return receipt requested. The third party shall be given an opportunity to recover such property within five business days of the date such notice is received. If the landlord is unable to notify the third party, the landlord may remove or dispose of such property and shall incur no liability for any loss or damage thereto.

***Breach of lease other than rent (10 days)***

If any tenant violates the provisions of section 441.020 or 441.030, the landlord, or person holding under the landlord, after giving ten days' notice to vacate the premises, shall have a right to reenter the premises and take possession of the premises, or to oust the tenant, subtenant or under tenant of any person on the premises with the permission of the lessee, sub lessee or under lessee by the procedure specified by law. The landlord shall have the burden to prove that the premises were being used for the illegal possession, sale or distribution of controlled substances under a petition filed for that reason, but the landlord shall not be liable for any damages resulting from the landlord's reliance on written notification to the landlord by a law enforcement authority that the premises are being used for the illegal conduct

***Non-default termination by landlord or tenant (30 days ending on or before a periodic rental date)***

1. A tenancy at will or by sufferance, or for less than one year, may be terminated by the person entitled to the possession by giving one month's notice, in writing, to the person in possession, requiring the person in possession to vacate the premises.

2. An occupancy limitation of two persons per bedroom residing in a dwelling unit shall be presumed reasonable for this state. The two-person limitation shall not apply to a child or children born to the tenants during the course of the lease.

3. Except as otherwise provided by law, all contracts or agreements for the leasing, renting or occupation of stores, shops, houses, tenements or other buildings in cities, towns or villages, and of stores, shops, houses, tenements or other buildings except when such leasing, renting or occupation is as tenant of real estate used or rented for agricultural purposes, other than garden purposes, not made in writing, signed by the parties thereto, or their agents, shall be held and taken to be tenancies from month to month, and all such tenancies may be terminated by either party thereto, or the party's agent, giving to the other party, or the party's agent, one month's notice, in writing, of the party's intention to terminate such tenancy.

4. (1) Except as provided in subdivision (2), 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 one month after the receipt of the notice.

(2) When a person occupies and has an ownership interest in a mobile home and is leasing the land or the lot upon which the mobile home is located, a tenancy for less than one year may be terminated by the landlord by giving written notice to the tenant that the tenancy shall terminate not sooner than sixty days from the date the rent payment next becomes due, notwithstanding any written lease provision regarding earlier lease termination to the contrary.

5. If after the rendition of a judgment and a request for an execution on any judgment rendered in an action pursuant to chapter 524, RSMo, chapter 534, RSMo, chapter 535, RSMo, or this chapter and there is no stay of execution, the service officer fails to deliver possession of the premises to the landlord within seven days of the delivery of the writ to such officer, the landlord may, within sixty days of the date of the judgment, in the presence of a municipal or county law enforcement officer of the jurisdiction in which the premises are located, without breach of the peace, break and remove locks, enter and take possession of the premises and remove any household goods, furnishings, fixtures or any other personal property left in or at the premises, provided the law

enforcement officer is first presented a true copy of the judgment and order of execution, and the law enforcement officer acknowledges in writing such presentation, and such acknowledgment is filed in court by the plaintiff within five days following taking possession of the premises.

6. Except for negligent, willful or wanton acts or omissions of the landlord, or failure to both timely obtain and file the law enforcement officer acknowledgment described in the preceding subsection, the landlord shall have no liability for loss or damage to any household goods, furnishings, fixtures or any other personal property left in or at the dwelling unit, by reason of the landlord's removal of the property in accordance with the provisions of this section.

## MONTANA

If a landlord wishes to remove a tenant from a rental unit, the steps s/he can take are limited to terminating the rental agreement, asking the tenant to leave, and finally, taking the tenant to court to get an eviction order. In no instance can the landlord physically remove either the tenant or her/his possessions from the dwelling, nor may s/he change the locks or turn off the tenant's power or other services in order to force the tenant out. Doing so entitles the tenant, whether in the rental unit wrongfully or not, to collect three month's rent from the landlord. Before the landlord can bring an "action for possession" (a legal claim for the tenant's removal from the rental unit), they must first terminate the rental agreement. The landlord can terminate the rental agreement in the following ways:

1. on Three (3) days, after notifying the tenant in writing if:

- Rent is unpaid when due. If the rent is paid within the three days then the notice is void. The three day time is increased to fifteen days for situations requiring the tenant to move a mobile home from rented space
- The tenant has physically destroyed, defaced, damaged, impaired or removed any part of the premises. The landlord does not have to give the tenant the opportunity to remedy the situation in cases of property damage.
- The tenant is keeping an "unauthorized pet", (one not allowed by the rental agreement) on the premises. The rental agreement terminates if the pet is not removed from the premises within those three days. If the pet is removed then the notice is void. If this breach of the rental agreement occurs again within six months, the landlord may terminate on five (5) days written notice, with no opportunity for the tenant to correct the situation.
- There are unauthorized people (people other than are on the contract, or that the landlord has not authorized) residing in the rental. The rental agreement terminates if the unauthorized person is not removed within those three days. If the unauthorized person does leave within three days, the notice is void . If this breach of the rental agreement occurs again within six months, the landlord may terminate on **five (5) days written** notice with no opportunity for the tenant to remedy the situation.

\* These conditions do not apply to rental agreements where a tenant rents space in a mobile home park but owns the mobile home\*

2. On Fourteen (14) days after notifying the tenant in writing if there has been a non-compliance with the terms of the rental agreement. If the tenant does whatever is necessary to remedy the non-compliance within the 14 day period, the notice is void. This can happen in just five days if the same act of non compliance occurred within the previous six months. Non-compliance involving unauthorized pets or persons in the rental, only require a 3 day notice

3. On thirty (30) days in the case of a month to month agreement after notifying the tenant in writing that he/she wishes to terminate the agreement. The landlord is not required to provide the tenant with a reason for the termination if they give the tenant 30 days notice of the termination. There is no law in Montana barring eviction during the winter. However termination of the rental agreement is not allowed regardless of the amount of notice given if the termination is retaliatory or discriminatory.

***Nonpayment of rent (3 days) and Breach of lease other than rent (14 days in general, 3 days for unauthorized pets or occupants)***

(1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the noncompliance and that the rental agreement will terminate upon a date specified in the notice not less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice, subject to the following:

(a) If the noncompliance is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate.

(b) If the noncompliance involves an unauthorized pet, the notice period is 3 days.

(c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is 3 days.

(d) If the noncompliance is not listed in subsection (1)(b) or (1)(c), the notice period is 14 days.

(e) If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the noncompliance and the date of the termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-24-321(2).

(4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, as evidenced by the tenant being arrested for or charged with an act that violates the provisions of 70-24-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-24-321(3).

(5) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection (6), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(6) Treble damages may not be recovered for the tenant's early termination of the tenancy.

(7) The landlord is not bound by this section in the event that the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441.

***Non-default termination by landlord or tenant (month to month, 30 days; week to week, 7 days)***

(1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportioned from day to day.

## NEBRASKA

### Notice to Quit

The first step in this process initiated by the landlord can be a three or thirty day notice. The landlord may desire to have the Sheriff's Office serve this writ. Fees for this are the same as standard service fees for other types of writs. However, there are no statutes that dictate a particular type of service or return day. Sheriff's Office policy is to attempt service as soon as practical, and service could be either personal, residential or may be accomplished by posting a notice at the residence. The Sheriff's Office does not provide forms for these notices, nor give advice as to their content.

### Summons

If the tenant fails to move, the landlord may then commence suit in one of the courts. The Summons, or notice of suit, may be sent to the Sheriff's Civil Division for service. It contains a time and date for trial and must be returned to the court within 5 days of its issuance. Service may be personal or residential. If the landlord prevails at trial, a Writ of Restitution may be issued.

### Writ of Restitution

A Writ of Restitution directs the Sheriff to remove the defendant and restore the premises to the plaintiff. It is the policy of the Sheriff's Office to execute such writs by attempting to obtain voluntary compliance from the defendant in a fashion which minimizes any unnecessary hardship. In the absence of compliance, the Office will execute the writ by removing the occupants personally and/or by changing the locks on the premises. The Office will remove personal property only when specifically directed to do so by court order.

The Writ of Restitution must be executed within ten days of issuance. Because of this relatively narrow window, it will be executed without delay. Service will not be made, however, until the plaintiff has deposited sufficient funds with the Sheriff's Office to cover the reasonably anticipated costs and fees. To expedite the process, the plaintiff should provide a contact name and phone number.

### Lockout Procedure

unless some other type of action is specified in the writ, a Writ of Restitution will be executed as follows:

- Deputies will contact the plaintiff or the plaintiff's attorney to set up a time/date for restoring the premises to the plaintiff. Deputies will determine whether the plaintiff desires to change the locks himself/herself or if the Sheriff's Office Civil Division will contact its locksmith to do the work. It is required that the plaintiff or its representative be present at the time of the lockout to take possession of the premises. Should the plaintiff choose to change the locks, the Sheriff's Office is not obligated to stand by while the residence is being secured.
- Deputies will go to the residence listed on the writ and serve the defendant's copy. This may be by personal, residential, or posting service. If no one is home or doesn't answer, the paper may be posted prominently on the residence, most often on the front door. In addition to the Writ, a separate form provided by the Sheriff's Office, or a hand written notice on the back of the Writ, will designate a lockout date/time and a brief explanation of consequences if compliance is not met.
- By Sheriff's Office policy, three day's notice, barring exigent circumstances, is given to allow the defendant time to vacate the premises with his/her property. Three days is generally recommended to prevent the plaintiff from having to dispose of property under the Disposition of Personal Property Landlord and Tenant Act. Generally, the Sheriff's Office will not execute Writs of Restitution on weekends or holidays.
- On the date/time of the lockout, the deputy will arrive at the location and remove any occupants from the premises. Occupants will be advised of trespassing violations they could be subject to if they return. Persons still having property in the residence will have to contact the plaintiff to arrange for removal of the property. Deputies will not take part in the disposal of property. Provisions for such are set out in the Disposition of Personal Property Landlord and Tenant Act.
- Whenever deputies have removed occupants from a premise, they shall supply the occupant with a short period of time to obtain vital personal effects, or obtain such effects for the occupant. Deputies will take

action to protect the person removed, if necessary, due to age, infirmity, mental or emotional condition, illness or disability as provided by law.

- If the premise involved is a rental property such as a house or an apartment, and the premises have been turned over to the plaintiff, the deputy has no further obligation. If the Sheriff's Office has arranged for a locksmith to change locks, a bill will be obtained from the locksmith before the deputy leaves. The plaintiff will have placed a deposit at the Sheriff's Office or have enough money in an attorney account to cover the lock change. The deposit is generally \$150.00.
- If the Writ is for a mobile home not owned by the mobile home park, a sale of the property will be set up. Keys for the mobile home will remain with the mobile home park in the event that emergency entry needs to be made during the time prior to the sale. In the sale of mobile homes, the bill of sale only reflects the transfer of the defendant's interest in the property, and is not an implied or actual title to the property

***Nonpayment of rent (3 days) and Breach of lease other than rent (14 days)***

(1) Except as provided in the Uniform Residential Landlord and Tenant Act, if there is a noncompliance with section 76-1421 materially affecting health and safety or a material noncompliance by the tenant with the rental agreement or any separate agreement, 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 thirty days after receipt of the notice if the breach is not remedied in fourteen days, and the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least fourteen days' written notice specifying the breach and the date of termination of the rental agreement.

(2) 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 his or her intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

(3) Except as provided in the Uniform 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 section 76-1421. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

***Non-default termination by landlord or tenant (week to week, 7 days; month to month, 30 days. Notice must expire on or before periodic rent payment date)***

(1) 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.

(2) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice.

(3) 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 and if the tenant's holdover is willful and not in good faith the landlord, in addition, may recover an amount not more than three months' periodic rent or threefold the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, subsection (4) of section 76-1414 applies.

## NEVADA

There are two ways to begin Eviction proceedings in Nevada:

- Filing and serving a formal, civil eviction known in Nevada as an UNLAWFUL DETAINER ACTION.
- Using a Summary Eviction contained in NRS 40.253 and NRS 40,254

All evictions must begin with a NOTICE. There are several types of notices to choose from. You may not always be able to use the quickest notice available. You must choose one that applies to the situation.

### 5 DAY PAY OR QUIT

This notice is used for non-payment of rent from tenant. If there is NO grace period, you can go forward with the notice the day AFTER rent is due. If you have a grace period, you must wait until that time has passed. If the tenant offers you the FULL rental amount, you MUST ACCEPT. You can refuse partial payment from tenant. If you should decide to accept partial payment, you can re-file a new notice for the balance of money due. There is NO other notice that follows this 5 Day Pay or Quit. When serving this 5 Day Pay or Quit Notice, you DO NOT count the day of service. Count 5 business days. The day after the 5 business days return to the Constable's office.

### 3 DAY NUISANCE NOTICE

Can be used for what you consider a nuisance. It requires a written reason and has absolutely nothing to do with rent money. You do not count the day of service. The defendant has 3 working days to fix the problem. You need to return to Constable's office **after the 3<sup>rd</sup> day** (return must be a business day). Need to follow-up with the **5 DAY**

### 7 DAY NOTICE

Notice is used for weekly rentals. It requires a written reason is required for eviction. DO NOT count the day of service. Count 7 business days. You need to return to Constable's office **after the 7<sup>th</sup> day** (return date must be a business day). Need to follow-up with the **5 DAY UNLAWFUL DETAINER**.

### 30 DAY NOTICE

Notice is used for reasons OTHER than Nuisance or Rent. DO NOT count the day of service--it runs consecutive through weekends and holidays. (Can not be used when a Lease is in effect). You need to return to the Constable's office **after the 30<sup>th</sup> day** (return date must be a business day).

### 5 DAY UNLAWFUL DETAINER

This is the follow-up notice to the 3-day, 7-day, and 30-day notice. Days are counted like a 5 day pay or quit notice (business days). There is an additional fee for this notice.

### EVICION STORAGE OF TENANT BELONGINGS

When an eviction is completed, the Landlord must store the tenant's property for 30 days. You may not charge back rent, but can charge a reasonable storage fee. The tenant has to make arrangements with the Landlord to pick up their property. The Landlord has to notify the tenant in writing, **prior to the last 14 days**, by **CERTIFIED MAIL**, that all items will be disposed of after the 30 day hold period. The landlord may not hold the items against the rent.

***Nonpayment of rent (5 days)***

***Breach of lease other than rent (5 days, but tenant has only 3 days after service to comply and redeem tenancy)***

***Non-default termination by landlord or tenant (week to week, 7 days; all other, 30 days)***

## NEW HAMPSHIRE

### ***Nonpayment of rent (7 days)***

1. If a nonresidential tenant neglects or refuses to pay rent due and in arrears, upon demand, 7 days' notice shall be sufficient; if the rent is payable more frequently than once in 3 months, whether such rent is due or not, a notice equal to the rent period shall be sufficient, and 3 months' notice shall be sufficient in all cases.
2. For all residential tenancies, 30 days' notice shall be sufficient in all cases; provided, however, that 7 days' notice shall be sufficient if the reason for the termination is as set forth in RSA 540:2, II(a), (b), or (d).
3. The eviction notice shall state with specificity the reason for the eviction.
4. If the eviction notice is based on nonpayment of rent, the notice shall inform the tenant of his or her right, if any, to avoid the eviction by payment of the arrearages and liquidated damages in accordance with RSA 540:9.
5. For the purpose of interpreting or enforcing any lease or rental agreement for residential tenants in effect on July 1, 2006, a notice to quit shall be deemed an eviction notice under this section.

### ***Breach of lease other than rent (30 days for causes specified in statute)***

1. The lessor or owner of non restricted property may terminate any tenancy by giving to the tenant or occupant a notice in writing to quit the premises in accordance with RSA 540:3 and 5.
2. The lessor or owner of restricted property may terminate any tenancy by giving to the tenant or occupant a notice in writing to quit the premises in accordance with RSA 540:3 and 5, but only for one of the following reasons:
  - (a) Neglect or refusal to pay rent due and in arrears, upon demand.
  - (b) Substantial damage to the premises by the tenant, members of his household, or guests.
  - (c) Failure of the tenant to comply with a material term of the lease.
  - (d) Behavior of the tenant or members of his family which adversely affects the health or safety of the other tenants or the landlord or his representatives, or failure of the tenant to accept suitable temporary relocation due to lead-based paint hazard abatement, as set forth in RSA 130-A:8-a, I.
  - (e) Other good cause.
  - (f) The dwelling unit contains a lead exposure-hazard which the owner will abate by:
    - (1) Methods other than interim controls or encapsulation;
    - (2) Any other method which can reasonably be expected to take more than 30 days to perform; or
    - (3) Removing the dwelling unit from the residential rental market.
3. If the grounds for eviction is other good cause as set forth in paragraph II(e) of this section, and such cause is based on the actions or inactions of the tenant, members of his family, or guests, the landlord shall, prior to the issuance of the eviction notice, provide the tenant with written notice stating that in the future such actions or inactions would constitute grounds for eviction. Such notice shall be served in accordance with RSA 540:5 or by certified mail.
4. A tenant's refusal to agree to a change in the existing rental agreement calling for an increase in the amount of rent shall constitute good cause for eviction under paragraph II(e) of this section, provided that the landlord provided the tenant with written notice of the amount and effective date of the rent increase at least 30 days prior to the effective date of the increase.

5. "'Other good cause" as set forth in paragraph II(e) of this section includes, but is not limited to, any legitimate business or economic reason and need not be based on the action or inaction of the tenant, members of his family, or guests.

6. No tenancy shall be terminated for nonpayment of rent if:

(a) The tenant was forced to take over the landlord's utility payments in order to prevent utility services, which the landlord agreed to provide, from being terminated;

(b) The amount of rent which the tenant is in arrears does not exceed the amount paid by the tenant to maintain utility service to the tenant's premises; and

(c) The tenant has receipts from the utility company or other proof of payment of the amount paid to maintain utility service.

***Non-default termination by landlord or tenant (30 days, 7 days in certain circumstances. Cause required in restricted properties)***

1. If a nonresidential tenant neglects or refuses to pay rent due and in arrears, upon demand, 7 days' notice shall be sufficient; if the rent is payable more frequently than once in 3 months, whether such rent is due or not, a notice equal to the rent period shall be sufficient, and 3 months' notice shall be sufficient in all cases.

2. For all residential tenancies, 30 days' notice shall be sufficient in all cases; provided, however, that 7 days' notice shall be sufficient if the reason for the termination is as set forth in RSA 540:2, II(a), (b), or (d).

3. The eviction notice shall state with specificity the reason for the eviction.

4. If the eviction notice is based on nonpayment of rent, the notice shall inform the tenant of his or her right, if any, to avoid the eviction by payment of the arrearages and liquidated damages in accordance with RSA 540:9.

5. For the purpose of interpreting or enforcing any lease or rental agreement for residential tenants in effect on July 1, 2006, a notice to quit shall be deemed an eviction notice under this section.

## NEW JERSEY

The New Jersey Eviction statute may require that one or more notices be served upon the tenant prior to proceeding with court action. With the exception of a tenant's non-payment of rent, or failure to pay rent after a reasonable increase (which requires a separate notice unto itself), a landlord is required to serve notice upon a tenant prior to the institution of court action.

No judgment of possession shall be entered for any premises covered by section 2 of this act, (2A:18-61.1) except in the nonpayment of rent under subsection a. or f. of section 2, unless the landlord has made written demand and given written notice for delivery of possession of the premises. The following notice shall be required:

- a. For an action alleging disorderly conduct under subsection b. of section 2, or injury to the premises under subsection c. of section 2, or any grounds under subsection m., n., o. or p. of section 2, three days' notice prior to the institution of the action for possession;
- b. For an action alleging continued violation of rules and regulations under subsection d. of section 2, or substantial breach of covenant under subsection e. of section 2, or habitual failure to pay rent, one month's notice prior to the institution of the action for possession; (Like rowdy tenants, college rentals)
- c. For an action alleging any grounds under subsection g. of section 2, three months' notice prior to the institution of the action;
- d. For an action alleging permanent retirement under subsection h. of section 2, 18 months' notice prior to the institution of the action and, provided that, where there is a lease in effect, no action may be instituted until the lease expires;
- e. For an action alleging refusal of acceptance of reasonable lease changes under subsection i. of section 2, one month's notice prior to institution of action;
- f. For an action alleging any grounds under subsection l. of section 2, two months' notice prior to the institution of the action and, provided that where there is a written lease in effect no action shall be instituted until the lease expires;
- g. For an action alleging any grounds under subsection k. of section 2, three years' notice prior to the institution of action, and provided that where there is a written lease in effect, no action shall be instituted until the lease expires.
- h. PUBLIC HOUSING under the control of a public housing authority or redevelopment agency, for an action alleging substantial breach of contract under paragraph (2) of subsection e. of section 2, the period of notice required prior to the institution of an action for possession shall be in accordance with federal regulations.

The notice in each of the foregoing instances shall specify in detail the cause of the termination of the tenancy and shall be served either personally upon the tenant or lessee or such person in possession by giving him a copy, or by leaving a copy at their usual place of living with a member of the family over the age of 14, or by certified mail; if the certified letter is not claimed, notice shall be sent by regular mail. (Suggest both methods of mailing).

## NEW MEXICO

### How does the eviction process begin?

The eviction process starts with a written notice from the Landlord to the Tenant. There are four basic types of notices:

- A 30-day notice tells the Tenant to move on a specific date at least 30 days after the beginning of a rental period. No reason is needed to evict the Tenant in a month-to-month tenancy or if allowed by a written rental agreement.
- A 7-day notice is used to correct violations of the rental agreement or to enforce obligations imposed on tenants by law. The Landlord must give the Tenant two 7-day notices within a 6-month period before proceeding with eviction.
- A 3-day notice is used when rent is not paid on time.
- A 3-day notice is also used when the Tenant knowingly commits a substantial violation of the law.

The total number of days set out in the notice must have passed before the Landlord can file a lawsuit. If the total number of days has not passed or if the Tenant pays the rent or corrects the violations in the time set out in the 3- or 7-day notice, then the judge may not order the eviction.

After the time in the 3-day, 7-day and/or 30-day notice has expired, the Landlord can file a Petition by Owner for Restitution, sometimes called a Complaint in Forcible Entry or Unlawful Detainer. If the Landlord files a Petition by Owner for Restitution before the time set forth in the notice has expired, the judge cannot allow the Landlord to evict the Tenant.

### What does a landlord need to file an eviction case?

When filing an eviction case, a Landlord will need to bring the following to the Clerk of the Court's office:

- A completed Petition by Owner for Restitution form.
- A copy of the 3-day, 7-day and/or 30-day written notice(s) for the court and one copy for each Tenant.
- A copy of the Lease/Agreement for the court and one copy for each tenant (if you forget the Lease a copy must be provided at the trial).
- The court filing fee.

When the Landlord files a Petition by Owner for Restitution, the Clerk of the Court will prepare a Service Packet, which includes the trial date, time and the assigned judge.

The court date will generally be set for 7 to 10 days after the date the Landlord files the Petition with the court.

### How does the tenant get notice of the court date?

The Landlord is responsible for proper delivery (service) of the Service Packet to the Tenant. The Tenant must be properly served as notification that a lawsuit has been filed against him/her.

The Service Packet cannot be delivered or served by the Landlord or any employee of the Landlord.

The Service Packet can be delivered by:

- the County Sheriff's Office (there is a fee for the service); or
- a private process server (prices vary); or
- Any person 18 years of age or older who is not a party in the lawsuit.

There are certain specific rules that must be followed to give proper notice to the Tenant. The three basic ways are as follows:

- The process server can give the Service Packet directly to the Tenant (personal service); or
- The process server can post the Service Packet at the Tenant's residence. If the Service Packet is posted, a complete copy of the Service Packet also must be mailed to the Tenant (posting and mailing); or
- The process server can give the Service Packet to someone who lives with the Tenant and is 15 years of age or older (substitute service).

The Tenant must be served the Service Packet no less than 7 days prior to the court date.

After the process server delivers (serves) the Service Packet to the Tenant, the process server needs to complete the Return of Service on the back of the original Summons (the one with the court seal).

It is very important that the original Summons be returned to the Clerk of the Court for filing prior to the court date. If the Return of Service is not returned to the court prior to the court date, the judge will not take any action and the case will be delayed.

#### **Who will be the judge?**

In courts with more than one judge, cases are randomly assigned to a judge at the time the case is filed. In an eviction case, the time limit for the Landlord or the Tenant to disqualify or excuse a judge is 3 days after service of the Petition.

If either the Landlord or the Tenant disqualifies a judge, a new judge will be assigned. The court date and time may remain the same with the new judge.

#### **When does the tenant have to file an Answer?**

The Tenant has until the court date to file a written Answer. The Tenant also may file a counterclaim for damages against the Landlord. The Answer or counterclaim is not proof; it is only a statement of what the Tenant hopes to prove at trial. The Tenant must appear at trial to prove his/her case.

#### **Can the court date be changed?**

To change a court date, a party must make a written request before the scheduled date. The judge will decide whether or not to change the court date.

#### **When does the tenant have to move?**

If the judge awards a Judgment for Restitution in favor of the Landlord, the judge will set an eviction date, usually 3 to 7 days after the court date.

#### **What if the tenant does not move by the required date?**

If the Tenant does not move by the date set by the judge, the Landlord can ask the clerk to issue a Writ of Restitution ordering the Sheriff to remove the Tenant. After the clerk issues the Writ of Restitution, the Landlord may deliver the Writ to the Sheriff's Department. The Sheriff will then go to the property and evict the Tenant.

**Note:** The Sheriff's Department is the only office authorized by the court to evict a Tenant (there is a fee for this service).

**What action can the tenant take against the landlord?**

If a Tenant believes the property being rented is dangerous or unhealthy, the Tenant can give the Landlord a written 7-day notice requesting repairs. If the Landlord does not complete the repairs within 7 days, the Tenant can:

- terminate the lease agreement and leave the property without penalty; or
- reduce (abate) the rent, usually by 1/3 of the pro rata daily rate, until the repairs are finished; or
- make a claim for damages due to the condition of the property; or
- File a Petition by Resident for Relief and proceed through the court process.

If a Landlord illegally locks out a Tenant, meaning either that the Tenant does not have access to the rental property or the utilities are wrongfully disconnected, the Tenant can claim he/she is entitled to damages. The Tenant can ask the judge to order him/her to be allowed to move back into the rental property and to penalize or fine the Landlord due to the Landlord's illegal or wrongful actions.

***Nonpayment of rent (3 days)***

***Breach of lease other than rent (7 days, but 3 days for unauthorized occupant)***

***Non-default termination by landlord or tenant (week to week, 7 days; month to month, 30 days)***

## NEW YORK

To evict a tenant, the landlord, or their attorney, must prepare a petition requesting a court hearing, which must be served on the tenant and filed with the court. Following appropriate notice, a landlord may bring a summary non-payment court proceeding to evict a tenant who fails to pay the agreed rent when due and to recover outstanding rent. A landlord may also bring a summary holdover eviction proceeding if, for example, a tenant significantly violates a substantial obligation under the lease, such as using the premises for illegal purposes, committing or permitting a nuisance, or staying beyond the lease term without permission.

Only a sheriff, marshal or constable can carry out a court ordered warrant to evict a tenant. Before a marshal may conduct an eviction, he or she must first request that the court issue a Warrant of Eviction. In New York City, city marshals and deputy sheriffs are the only public officers authorized to request a Warrant of Eviction from the court. A landlord may not take the law into his/her own hands and evict a tenant by use of force or unlawful means. For example, a landlord cannot use threats of violence, remove a tenant's possessions, lock the tenant out of the apartment, or willfully discontinue essential services such as water or heat.

When a tenant is evicted, the landlord may not retain the tenant's personal belongings or furniture. Also, if you are evicted, take ALL your belongings.

In an eviction, the tenant's belongings are moved under the supervision of the marshal and stored at a private warehouse. In a legal possession, the tenant's personal property remains under the care and control of the landlord until the tenant can arrange to transport the property to another location.

A tenant who is put out of his/her apartment in a forcible or unlawful manner is entitled to recover triple damages in a legal action against the wrongdoer. Landlords in New York City who use illegal methods to force a tenant to move are also subject to both criminal and civil penalties. Further, the tenant is entitled to be restored to occupancy.

### **TENANT APPEAL (New York Order to Show Cause)**

The tenant may ask a court to issue an Order to Show Cause (OSC) and a Stay, an order staying, or delaying, the eviction until the issues raised by the tenant are addressed on a hearing date set by the court. If the marshal is served with a signed OSC that stays the eviction, he or she is legally bound by the directions of the court, but if the court does not stay the eviction, the marshal must go forward with it. Unless otherwise directed by the court, the marshal, after being served with an OSC that stays the eviction, must serve an additional Notice of Eviction by regular mail before conducting the eviction or legal possession

### ***Non-default termination by landlord or tenant (30 days)***

Termination of tenancies at will or by sufferance, by notice. A tenancy at will or by sufferance, however created, may be terminated by a written notice of not less than thirty days given in behalf of the landlord, to the tenant, requiring him to remove from the premises; which notice must be served, either by delivering to the tenant or to a person of suitable age and discretion, residing upon the premises, or if neither the tenant nor such a person can be found, by affixing it upon a conspicuous part of the premises, where it may be conveniently read. At the expiration of thirty days after the service of such notice, the landlord may re-enter, maintain an action to recover possession, or proceed, in the manner prescribed by law, to remove the tenant, without further or other notice to quit.

**Remarks -** [http://www.oag.state.ny.us/bureaus/real\\_estate\\_finance/pdfs/tenants\\_rights\\_guide.pdf](http://www.oag.state.ny.us/bureaus/real_estate_finance/pdfs/tenants_rights_guide.pdf)

## NORTH CAROLINA

As in all states, North Carolina does not permit landlords to use "self-help" eviction. That is, a landlord cannot change the locks or otherwise impede the tenant's ability to enter the premises (except in order to maintain or repair the premises), even if the tenant fails to pay the rent.

**In order to evict the tenant**, the landlord must obtain a court order through a process called "summary ejectment".

The landlord cannot evict a tenant in retaliation for certain protected actions. These protected actions include:

- (1) Complaints made to the landlord, his employee, or his agent about conditions or defects in the premises that the landlord is obligated to repair;
- (2) complaints to a government agency about a landlord's alleged violation of any health or safety laws;
- (3) attempts to exercise rights described in the lease in state or federal law; and
- (4) attempts to become involved with any tenants' rights groups. If the tenant has undertaken any of these actions in good faith and in the six months before the eviction proceeding, the tenant should bring this to the court's attention.

If a landlord wants to evict a tenant who will not leave voluntarily, then he must file a Magistrate's Summons and Complaint in Summary Ejectment in Small Claims (Magistrate's) Court. The tenant must be served with the Summons and Complaint by the Sheriff's Office, either personally or by posting. The Summons will state the date, time, and place for the court hearing. Small Claims Court hearings are informal, but both parties may have an attorney, present evidence, and subpoena witnesses.

The tenant may have defenses to the eviction action depending upon which basis for eviction the landlord sets out in the Complaint. The tenant may also file written counterclaims against the landlord. Examples of such counterclaims include: 1) a rent abatement for the landlord's failure to make repairs for which he was responsible, after having been properly notified by the tenant; and 2) money damages if the landlord attempted to evict the tenant illegally and damaged him in some way.

Either party has ten days in which to appeal the magistrate's decision to District Court for a new trial. During this ten-day appeal period, the landlord cannot make the tenant move. If the tenant properly appeals the judgment to District Court and pays the rent when due to the Clerk of Superior Court, then he can retain possession of the premises. The tenant may also be required to pay any undisputed past-due rent to the Clerk of Court, unless he files the appeal as an indigent.

If the eviction is based upon nonpayment of rent and the judgment is entered more than five working days before the day when the next rent payment is due under the lease, then the tenant must also pay the pro-rated rent for that time period to stay execution of the magistrate's judgment for possession pending trial.

If the tenant does not appeal the magistrate's judgment within ten days or loses on appeal, then the landlord may evict the tenant by obtaining a Writ of Possession of Real Property issued by the Clerk of Court. The writ directs the Sheriff to physically remove the tenant and his personal property from the premises. The Sheriff, not the landlord, is the only one who can remove the tenant and/or his personal property from the rental premises. The landlord cannot force the tenant to move at any stage of the eviction process.

***Nonpayment of rent (10 days)***

In all verbal or written leases of real property of any kind in which is fixed a definite time for the payment of the rent reserved therein, there shall be implied a forfeiture of the term upon failure to pay the rent within 10 days after a demand is made by the lessor or his agent on said lessee for all past due rent, and the lessor may forthwith enter and dispossess the tenant without having declared such forfeiture or reserved the right of reentry in the lease.

***Breach of lease other than rent (unspecified demand for possession if provided by written lease)***

Tenant holding over may be dispossessed in certain cases.

(a) Any tenant or lessee of any house or land, and the assigns under the tenant or legal representatives of such tenant or lessee, who holds over and continues in the possession of the demised premises, or any part thereof, without the permission of the landlord, and after demand made for its surrender, may be removed from such premises in the manner hereinafter prescribed in any of the following cases:

(1) When a tenant in possession of real estate holds over after his term has expired.

(2) When the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.

(3) When any tenant or lessee of lands or tenements, who is in arrear for rent or has agreed to cultivate the demised premises and to pay a part of the crop to be made thereon as rent, or who has given to the lessor a lien on such crop as a security for the rent, deserts the demised premises, and leaves them unoccupied and uncultivated.

(b) An arrearage in costs owed by a tenant for water or sewer services pursuant to G.S. 62-110(g) shall not be used as a basis for termination of a lease under this Chapter. Any payment to the landlord shall be applied first to the rent owed and then to charges for water or sewer service, unless otherwise designated by the tenant.

***Non-default termination by landlord or tenant (week to week, 2 days; month to month, 7 days; year to year, one month; all given at least that long before end of period)***

A tenancy from year to year may be terminated by a notice to quit given one month or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of seven days; a tenancy from week to week, of two days. Provided, however, where the tenancy involves only the rental of a space for a manufactured home as defined in G.S. 143-143.9(6), a notice to quit must be given at least 60 days before the end of the current rental period, regardless of the term of the tenancy

## NORTH DAKOTA

If the tenancy is:

- **Month-to-Month:** If there is no provision in the month-to-month periodic lease stating how much advance notice must be given to end the lease (written or verbal), either party may terminate the lease by giving at least 30 days written notice at any time.
- **Fixed Term:** Terminates automatically at the end of the lease period without the need of any notice from either landlord or tenant unless otherwise specified within the lease.

**Please Note:** NOTICE TO TERMINATE LEASE- 60 DAY NOTICE Requirement

where an advance 60 day notice to end or renew the tenancy is specified in the lease, the landlord must provide a space for the resident to initial next to the notice requirement. If that notice requirement is not initialed by the resident, the lease can be terminated by either party with at least one calendar months notice to take effect on the last day of the month.

- If a Month-to-Month lease from the inception requires a 60 day notice to terminate, that termination clause must be also initialed by the resident.
- After August 1, 2007, if the term lease is going to convert on a Month-to-Month basis, the landlord will no longer be allowed to require 60 days notice to terminate from the resident, even if the resident initialed such language.

**How long does the eviction process take?**

As with any legal matter, exact timing is almost impossible as it depends on many factors. Overall, with no complications, the eviction process usually takes approximately 4-5 weeks.

***Non-default termination by landlord or tenant*** (at least as long before end of rental period as the length of the rental period, not to exceed 30 days. Month to month tenancy may be terminated at any time on 30 days notice)

**Remarks - <http://www.legis.nd.gov/cencode/t47c16.pdf>**

## OHIO

Landlords can evict tenants for the following reasons:

- Tenants' failure to pay rent when due.
- Tenants' false complaints to a governmental agency about housing violations which were really caused by the tenants or guests.
- The landlord's compliance with housing laws would require alteration or demolition of the building which would deprive the tenant of effective use of the premises.
- The lease has expired.
- Tenants' violations of important terms of the lease.
- Tenants' failure to comply with proper notice to correct situations which materially affect health or safety.
- Tenants' refusal to permit landlords reasonable access to the unit, unless the landlord hasn't given prior 24 hour notice (Landlord Tenant and the Ohio Law 12).
- Holding over beyond the term of the rental agreement.

To bring an Ohio eviction action, the landlord must first serve the tenant with a three (3) day notice to vacate. This notice must set forth the reason for the demand to vacate and also notify the tenant that:

"You are being asked to leave the premises. If you do not leave, an eviction may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance."  
Example:

The three (3) day period, for purposes of this notice, does NOT INCLUDE the day upon which the notice is given or intervening Saturdays, Sunday or holidays. After the three (3) days pass, on the following day, the landlord may file the complaint for forcible entry and detainer. In the Court the filing fee for an eviction may vary for the first adult defendant named and additional fee for each additional adult defendant named in the complaint. A hearing will be scheduled approximately two (2) weeks after the day on which the case is filed. This first hearing will determine the landlord's right to regain control of the premises. The landlord should prepare by bringing copies of all notices, the written rental agreement and other documents that may be relevant to the case. If the court grants the eviction, the landlord may then ask the court to issue a Writ of Restitution.

This authorizes the court to send a bailiff out to the property to remove the tenant and their belongings from the unit. The bailiff will witness the changing of the locks on the unit and will inventory any tenant belongings left behind. The landlord cannot hold the tenant's belongings in lieu of rent. The court recommends that the landlord provide for storage of the property in a garage, attic or through a storage company for a reasonable length of time. (Generally thirty days.)

### Eviction: Money Damages, the Second Cause

A second hearing will be scheduled about a month after the eviction action is initially filed. This "second cause of action hearing" is set to determine what monies are owed by the tenant to the landlord. The tenant may answer the complaint within 28 days of receiving the complaint in the mail. Failure to file an answer within the 28 day time limit will result in a Default Judgment against the tenant. A Default Judgment will prevent the tenant from later objecting to the amount of damages the Court may award to the landlord. The tenant has the right to counterclaim for money damages; to deny the landlord's charges; and/or assert a reduction in value of the rental unit. The tenant has the right to have these costs offset against any security deposit that is being held by the landlord. Not all cases will include a "second cause" for money damages. If there is only a claim for eviction, the case will be terminated until the landlord recovers a money judgment against the tenant or the case is dismissed through settlement or court action. The tenant, therefore, must notify the Clerk of Courts in writing of his or her new address. Failure to leave a written forwarding address with the Clerk may result in your not receiving notice of the hearing on a "second cause."

Self-help Evictions are Illegal. A landlord can only legally regain the use of the premises by properly filing for and obtaining judgment for an eviction, and then requesting that the Court issue a Writ of Restitution. The COURT will then send a bailiff out to the premises to oversee the changing of the locks on the unit. Whether or not a tenant's right to continued use of the premises has ended, a landlord may not shutoff utilities; change locks or seize a tenant's personal property. (ORC section 5321.15) Even if a court has held for an eviction, the landlord must allow the bailiff to remove the tenant from the premises. If a landlord does any of the above, the tenant may contact an attorney and seek immediate action from the court. The landlord will be liable for all actual damages to the tenant and for any reasonable attorney's fees.

***Nonpayment of rent (3 days) and Breach of lease other than rent (3 days)***

(A) Except as provided in division (B) or (C) of this section, a party desiring to commence an action under this chapter shall notify the adverse party to leave the premises, for the possession of which the action is about to be brought, three or more days before beginning the action, by certified mail, return receipt requested, or by handing a written copy of the notice to the defendant in person, or by leaving it at the defendant's usual place of abode or at the premises from which the defendant is sought to be evicted.

Every notice given under this section by a landlord to recover residential premises shall contain the following language printed or written in a conspicuous manner: "You are being asked to leave the premises. If you do not leave, an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance."

(B) The service of notice pursuant to section 5313.06 of the Revised Code constitutes compliance with the notice requirement of division (A) of this section. The service of the notice required by division (C) of section 5321.17 of the Revised Code constitutes compliance with the notice requirement of division (A) of this section.

(C) If the adverse party in an action under this chapter is a deceased resident of a manufactured home park, the notice required by division (A) of this section shall be left at the premises from which the defendant is sought to be evicted and also shall be sent by ordinary mail to the following persons if their names and addresses are known to the park operator:

(1) If a probate court has granted letters testamentary or of administration for the estate of the adverse party in accordance with Title XXI of the Revised Code, the executor or administrator appointed by the probate court;

(2) The deceased resident's spouse and any other members of the deceased resident's immediate family.

***Non-default termination by landlord or tenant (week to week, 7days; month to month, 30 days)***

(A) Except as provided in division (C) of this section, the landlord or the tenant may terminate or fail to renew a week-to-week tenancy by notice given the other at least seven days prior to the termination date specified in the notice.

(B) Except as provided in division (C) of this section, the landlord or the tenant may terminate or fail to renew a month-to-month tenancy by notice given the other at least thirty days prior to the periodic rental date.

(C) If a tenant violates division (A)(9) of section 5321.05 of the Revised Code and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the residential premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(i) of section 1923.02 of the Revised Code, the landlord shall terminate the week-to-week tenancy, month-to-month tenancy, or other rental agreement with the tenant by giving a notice of termination to the tenant in accordance with this division. The notice shall specify that the tenancy or other

rental agreement is terminated three days after the giving of the notice, and the landlord may give the notice whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in division (A)(6)(a)(i) of section 1923.02 of the Revised Code. If the tenant fails to vacate the premises within three days after the giving of that notice, then the landlord promptly shall comply with division (A)(9) of section 5321.04 of the Revised Code. For purposes of this division, actual knowledge or reasonable cause to believe as described in this division shall be determined in accordance with division (A)(6)(a)(i) of section 1923.02 of the Revised Code.

(D) This section does not apply to a termination based on the breach of a condition of a rental agreement or the breach of a duty and obligation imposed by law, except that it does apply to a breach of the obligation imposed upon a tenant by division (A)(9) of section 5321.05 of the Revised Code.

***Remark*** – Landlord may also terminate on 3 days notice in case of illegal activities and failure to maintain the premises.

## OKLAHOMA

If rent is unpaid when due, the landlord may bring an action for recovery of the rent at any time thereafter or the landlord may wait until the expiration of the period allowed for curing a default by the tenant, as prescribed in subsection B of this section, before bringing such action.

A landlord may terminate a rental agreement for failure to pay rent when due, if the tenant fails to pay the rent within five (5) days after written notice of landlord's demand for payment. The notice may be given before or after the landlord files any action authorized by subsection A of this section. Demand for past due rent is deemed a demand for possession of the premises and no further notice to quit possession need be given by the landlord to the tenant for any purpose.

***Nonpayment of rent*** (5 days, which may be served before or after dispossession proceedings have started)

***Breach of lease other than rent*** (10 days if landlord elects to enter at the expiration of notice and cure breach himself; 15 days if the landlord elects to declare a forfeiture if the tenant fails to cure within 10 days; notice required if tenant fails to repair condition that affects health and safety as soon as possible)

***Non-default termination by landlord or tenant*** (30 days if month to month; 7 days if less than month to month)

### **Who deemed tenant at will.**

Any person in the possession of real property, with the assent of the owner, is presumed to be a tenant at will, unless the contrary is shown, except as herein otherwise provided.

### **Tenant holding over as tenant at will - Expiration of unwritten contract.**

When premises are let for one or more years, and the tenant, with the assent of the landlord, continues to occupy the premises after the expiration of the term, such tenant shall be deemed to be a tenant at will; provided, that no lease or rental contract of premises shall be continued, unless the original contract was in writing, and all other lease or contracts shall expire by limitation with the calendar year, without notice.

### **Tenant holds from one period to another, when.**

When rent is reserved, payable at intervals of three (3) months or less, the tenant shall be deemed to hold from one period to another, equal to the intervals between the days of payment, unless there is an express contract to the contrary.

### **Time of notice to terminate tenancy.**

Thirty (30) days' notice in writing is necessary to be given by either party before he can terminate a tenancy at will, or from one period to another, of three (3) months or less; but where in any case rent is reserved, payable at intervals of less than thirty (30) days, the length of notice need not be greater than such interval between the days of payment.

### **Termination of tenancy from year to year.**

All tenancies from year to year, may be determined by at least three (3) months' notice, in writing, given to the tenant prior to the expiration of the year.

### **Notice to quit where rent not paid.**

If a tenant, for a period of three (3) months or longer, neglect or refuse to pay rent when due, ten (10) days' notice in writing to quit, shall determine the lease, unless such rent be paid before the expiration of said ten (10) days.

### **Notice when rent not paid under tenancy for less than three (3) months.**

If a tenant, for a period of less than three (3) months, shall neglect or refuse to pay rent when due, five (5) days' notice, in writing, to quit, shall determine the lease, unless such rent be paid before the expiration of said five (5) days.

**Notice to quit not required, when.**

When 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.

**Service of notice - Termination of tenancy.**

The notice to terminate the tenancy required in this chapter may be served on the tenant, or, if he cannot be found, by delivering the same to some person over the age of twelve (12) years, residing on the premises, having first made known to such person the contents thereof; or, if service cannot be made by the use of reasonable diligence on the tenant or on any person over the age of twelve (12) years residing on the premises, the same may be served by posting said notice at some conspicuous place on the building on said premises and if there be no buildings on said premises then said notice shall be posted at some conspicuous place on said premises and if said notice is posted, a copy of said notice shall be mailed to the tenant at his last-known address by registered mail and such notice shall operate to terminate the tenancy at the end of the period after the date of such posting and mailing that it would have been terminated by personal service of such notice on the date of such posting and mailing; provided, that in no event shall such posting and mailing terminate any tenancy within a period of less than ten (10) days from the date of such posting and mailing.\

*No tenant for a term not exceeding two (2) years, or at will, or by sufferance, shall assign or transfer his term or interest, or any part thereof, to another, without the written assent of the landlord*

**Landlord may reenter after unauthorized assignment.**

If any tenant shall violate the provisions of the preceding section, the landlord, or person holding under him, after giving ten (10) days' notice to quit possession, shall have a right to reenter the premises and take possession thereof, and dispossess the tenant, subtenant or under tenant.

## OREGON

The Oregon landlord must go to court to force you to leave. The landlord cannot change the locks, shut off the utilities, remove your furniture or take any other action outside the courthouse to force you to move. This is true in most states. There are only three ways that an Oregon landlord can get a rented place back legally:

- The tenant can move and return the keys to the landlord.
- The tenant can move away, abandoning the unit without telling anyone of plans to come back.
- The landlord can go to court and get an order, after a hearing, to have the sheriff force the tenant to move out.

### OREGON EVICTION NOTICES

#### **No-Cause:**

If the tenant rents month-to-month, you may give a 30-day notice (33 days if mailed) to leave without giving a reason. If they rent week-to-week, a no-cause eviction notice can be given after 10 days (13 days if mailed). If they live in a Oregon mobile home park or any kind of federally subsidized housing, you must use a for-cause eviction notice.

#### **For-Cause:**

If the tenant rents month-to-month in Oregon, you may give you a 30-day notice (33 days if mailed) for cause with the opportunity to fix the problem within 14 days. If the tenant correct the problem listed as the cause within 14 days, they may stay.

If the tenant cause the same problem within six months after receiving a 30-day notice for cause with a 14-day opportunity to fix the problem, you may give a 10-day notice (13 days if mailed) without any time to fix the problem.

**If the tenant rent week-to-week**, a for-cause eviction notice may be given after 7 days, with an opportunity to fix the problem in 4 days. If the tenants cause the same problem within six months, you may give you a 4-day notice without any time to fix the problem.

**Pets:** If the tenants are keeping a pet in violation of the rental agreement, the landlord may give the tenant a 10-day notice to remove the pet or move (13 days if mailed and not posted).

**Late Rent:** If the tenant rent month-to-month and are more than 7 days late in paying rent, the landlord can give the tenant a 72-hour notice to pay or move. (If the tenant rent week-to-week, the notice can be given if the tenant rent is more than 4 days late.) If the tenant written agreement permits, the landlord may post this notice on door and then mail a copy. The service is then complete on the day it is put in the mail. The landlord must give three more days for the tenant to pay or move if the notice is mailed. If the tenant pay, the money is due by 11:59 p.m. of the third day.

**Personal Injury, Threats, And Substantial Damage:** If the tenant, or their pet, or someone in the tenant control:

- inflicts substantial personal injury upon the landlord, other tenants, neighbors, or others on the premises by permission; or
- threatens immediately to inflict personal injury upon the landlord or other tenants; or
- causes major damage to the unit, the landlord may give the tenant a 24-hour notice (add 3 days if mailed and not posted)

**Extremely Outrageous Acts:** The landlord may give the tenant a 24-hour notice (add 3 days if mailed and not posted) if the tenant or someone in the tenant control commits an act that is outrageous in the extreme on, or very near, the premises. "Outrageous acts" include (but aren't limited to) drug manufacturing or delivery, gambling, prostitution activity, burglary, or intimidation.

**Unlawful Occupant:** If the original tenant has moved and the new tenants are subleasing in violation of a written rental agreement that prohibits subleasing, and the landlord has not knowingly accepted rent from the tenant, the landlord may give a 24-hour notice (add 3 days if mailed and not posted).

**Employee Termination:** If the tenant live in a place as part of their employment in or around the rental building (for example, a resident manager), the tenant can be given a 24-hour eviction notice (add 3 days if mailed and not posted. If you live in federally subsidized housing, you have additional rights.

**How does a landlord give an eviction notice?** The landlord must hand-deliver the eviction notice, mail it to the tenant address, or, in some cases, put the notice on the tenant door and mail the tenant a copy. If the notice is handed to the tenant the notice period starts to run immediately. If it is mailed to the tenant, the landlord must add 3 days to length of notice time and state in the notice that three days have been added for mailing. If it is posted and mailed (24-hour and 72-hour notices where the written rental agreement allows this kind of service), the notice starts to run when the landlord mails the notice.

All eviction notices must be in writing.

**Can a tenant be evicted for nonpayment if they paid part of the rent this month?** If the landlord accepted part of the rent on the second day of the month or later, the landlord may not evict the tenant during that month for nonpayment of rent, unless the tenant agreed to pay the balance on a certain day and then did not pay. If the landlord accepted part of the rent after serving a 72-hour eviction notice, it is even harder for the landlord to evict the tenant

**Can the tenant be evicted if they have paid rent?** Even if the tenant paid rent, they can be evicted for other reasons.

If the tenant has been given a 30-day no-cause eviction notice and the landlord accepts a rent payment that covers more than the 30 days, the tenant can still be evicted after the 30 days. But, to be able to evict the tenant the landlord must return the extra rent to the tenant within 4 days of receiving it. (Example: The landlord gives the tenant a 30-day notice on July 15th and accepts a full month's rent payment from the tenant on August 1st. On August 5th the landlord returns the rent that the tenant paid that covers the time from August 16th to August 30th. The tenant can be evicted after August 15th.

**What happens if the tenant doesn't move out after getting an eviction notice?** The landlord must go to court to legally force the tenant to move. The landlord will file a lawsuit called an FED, forcible entry and detainer. The sheriff or someone serving the court papers (FED Summons and FED Complaint) will hand them to whoever answers the door at the tenant home or will tape them to the door and mail a copy later. The papers will tell the tenant when and where to appear for court for what is called first appearance. The date will be less than 7 days away in most counties. Call the legal services office as soon as the tenant get the papers.

**Nonpayment of rent** (when the tenancy is a week to week tenancy, at least 72 hours written notice of nonpayment and the landlords intention to terminate the rental agreement if the rent is not paid within the period. The landlord may give this notice no sooner than on the fifth day of the rental period including the first day the rent is due. For all other tenancies, at least 72 hours written notice of nonpayment and the landlord's intent to terminate the rental agreement if the rental is not paid within that period. The landlord may give this notice no sooner than on the eighth day of the rental period including the first day the rent is due; or at least 144 hours written notice of nonpayment and the landlord intent to terminate the rental agreement if the rental is not paid within that period the landlord may give this notice no sooner than the fifth day of the rental period including the first day the rent is due.)

**Breach of lease other than rent** (A designated date at least 14 days after delivery of notice to cure)

**Non-default termination by landlord or tenant** (year to year, 60 days; month to month, 30 days)

## PENNSYLVANIA

**KNOWING AND** using your rights as a tenant might be the difference between keeping or losing your home.

**Landlord Trouble:** Speak with your landlord. Try to work out the problem in a way that is fair to both you and your landlord. Many Pennsylvania communities have mediation programs that can help landlords and tenants resolve their disputes.

**How you can be evicted:** Pennsylvania's Landlord and Tenant law says that you can be evicted if:

You don't pay rent;

You don't live up to your end of the written or oral lease agreement

The time for which you rented your dwelling is up, and the landlord wants you to move.

If you have a written lease, you have a right to stay in the residence until the end of the lease term, as long as you live up to your end of the lease. If you do not have a written lease, in most circumstances the law considers you to have an oral month-to-month lease. Either you or your landlord can terminate the lease at the end of any month, for any reason or for no reason.

**A Pennsylvania landlord cannot evict you:**

Because of your race, color, religion, ancestry, national origin, sex, or age, or that of a household member

Because you or a household member or an acquaintance is disabled or uses a guide dog or other support animal;

Because you or a household member is pregnant or has children

In addition, you cannot be evicted for exercising your legal rights (for example, complaining about bad housing conditions to local housing code officials) if your landlord is retaliating (getting back at you) by evicting you.

You also may be able to prevent an eviction if you can prove that you didn't pay rent because the rented premises were unfit to live in. You will have to prove that you complained to your landlord about serious defects, but your landlord refused to make repairs. All complaints should be done in writing.

**For a Landlord to evict you in Pennsylvania: They must go to court,** which usually involves these important steps:

**1. Written notice.** Unless your lease says otherwise, your landlord must give you a written notice before filing an eviction case against you. The notice tells you when the landlord wants you to move. The amount of time the eviction notice gives you to move depends on the length of your lease and the reason you are being asked to move. If you are being evicted because you did not pay rent, your landlord must give you a written notice at least 10 days before filing an eviction case.

If you are being asked to move for any reason other than nonpayment of rent, your landlord must give you a written notice

15 days before filing an eviction case, if your lease is for one year or less; or

30 days before filing an eviction case, if your lease is for more than one year.

Your lease can provide for a longer or shorter notice or no notice at all.

If you have not moved out by the date stated on the eviction notice your landlord gave you, your landlord cannot just throw you out. He or she must still file a landlord/tenant complaint and go to court, as described below.

**2. Court hearings.** The eviction hearing will usually be before a Magisterial District Justice. Your landlord cannot just move you out, lock you out or take your personal property on his or her own. You have the right to appear at the hearing before the Magisterial District Justice with any witnesses or other evidence you have. Since eviction cases move quickly, it is a good idea to get legal advice before your eviction hearing. The landlord must appear at the hearing and present testimony as to why you should be evicted. If the landlord fails to appear, you should ask that the case be dismissed.

**3. Appeal.** If you lose at this hearing but have a good defense, you have only 10 days to appeal to a higher court. To stay in your home during the appeal, you must pay into court when you file the appeal either the amount of rent in the judgment or 3 months' rent, whichever is less; and if the Magisterial District Justice decided that you owed back rent, you must pay that amount into court, or post a bond for that amount, when you file the appeal. (You only have to pay three months of back rent into court, however, even if you owe more.)

***Nonpayment of rent (10 days)***

***Breach of lease other than rent (15 days if lease for less than one year or periodic, 30 days if lease for one year or more)***

***Non-default termination by landlord (15 days if lease for less than one year or periodic, 30 days if lease for one year or more)***

## RHODE ISLAND

### ***Nonpayment of rent or tenant (5 days served no sooner than 15 days after rent is arrears)***

**Eviction for nonpayment of rent.** – (a) If any part of the stipulated rent is due and in arrears for fifteen (15) days, the landlord shall send a written notice, in a form substantially similar to that provided in § 34-18-56(a), specifying the amount of the rent which is fifteen (15) days in arrears, making demand for the rent, and notifying the tenant that unless he or she cures the breach within five (5) days of the date of mailing of the notice, the rental agreement shall terminate, and the landlord shall commence an eviction action in the appropriate district court or housing court.

(b) If the tenant fails to cure his or her breach by paying the stipulated rent in arrears within five (5) days of the date of mailing of the notice, the landlord may commence an eviction action against the tenant, which shall be filed no earlier than the sixth (6th) day after mailing of the written demand notice. The action shall be commenced by filing a "Complaint for Eviction for Nonpayment of Rent" in the appropriate court in the form provided in § 34-18-56(d).

(c) The summons for eviction for nonpayment of rent shall specify the date for hearing and be in the form provided in § 34-18-56(g). The summons shall specify that the defendant may file and serve his or her answer prior to or at the time of hearing, and that if he or she fails to answer or appear at the hearing, he or she shall be defaulted.

(d) If the defendant files his or her answer and commences discovery prior to the hearing, and it appears, for good cause shown, that the defendant will not be able to conduct his or her defense without the benefit of discovery, the court may continue the hearing to allow a reasonable time for the completion of discovery. In the case of such a continuance, the court may, in its discretion, order interim rent, or other remedy, to be paid to preserve the status quo pending hearing. Except as provided in this chapter, the landlord may recover possession and actual damages. In cases where the tenant had received a demand notice pursuant to subsection (a) within the six (6) months immediately preceding the filing of the action, and the tenant's nonpayment was willful, the landlord may also recover a reasonable attorney's fee.

(e) The tenant shall have the right to cure his or her failure to pay rent by tendering the full amount of rent prior to commencement of suit. If the tenant has not received a notice pursuant to subsection (a) of this section within the six (6) months immediately preceding the filing of the action, the tenant shall have the right to cure his or her failure to pay rent after commencement of suit by tendering the full amount of rent in arrears, together with court costs, at the time of hearing.

### ***Breach of lease other than rent (a notice specifying the breach and demanding cure within 20 days of the date of mailing or forfeiture to occur not less than 21 days from date of mailing)***

**Eviction for noncompliance with rental agreement.** – (a) Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with § 34-18-24 materially affecting health and safety, the landlord shall deliver a written demand notice to the tenant, in a form substantially similar to that provided in § 34-18-56(b), specifying:

- (1) The acts and/or omissions constituting the breach of the rental agreement or of § 34-18-24;
- (2) The acts, repairs, or payment of damages, which are necessary to remedy the breach; and

(3) That unless the breach is remedied within twenty (20) days of mailing of the notice the rental agreement shall terminate upon a specified date, which shall not be less than twenty-one (21) days after the mailing of the notice.

(b) Unless it is a violation of § 34-18-24(8), (9), or (10), if the tenant adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate. If the breach is not remedied, the landlord may commence an eviction action, which shall be filed no earlier than the first day following the termination date specified in the written demand notice. The action shall be initiated by filing a "Complaint for Eviction for Reason Other Than for Nonpayment of Rent" in the appropriate court according to the form in § 34-18-56(e).

(c) The summons shall be in the form provided in § 34-18-56(h) and shall specify that the tenant has twenty (20) days from the date of service in which to file his or her answer to the complaint, and that if he or she fails to file his or her answer within that time, he or she will be defaulted. The matter may be assigned for hearing in accordance with the rules of procedure of the appropriate court.

(d) Except as provided in this chapter, the landlord may recover possession, actual damages and obtain injunctive relief for noncompliance by the tenant with the rental agreement or § 34-18-24. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

(e) If substantially the same act or omission which constituted a prior noncompliance, of which good faith notice was given, recurs within six (6) months, the landlord may terminate the rental agreement upon at least twenty (20) days' written notice, specifying the breach and the date of termination of the rental agreement. No allowance of time to remedy noncompliance shall be required.

(f) If the tenant has violated § 34-18-24(8), (9), or (10), or if the tenant (i) is a seasonal tenant occupying the premises pursuant to a written lease agreement which commences no earlier than May 1st of the occupation year and expires no later than October 15th of the occupation year, or commences no earlier than September 1st and expires no later than June 1st of the next subsequent year, with no right of renewal or extension beyond the above dates; and (ii) has been charged with violating a municipal ordinance or has otherwise violated the terms of the rental agreement pertaining to legal occupancy or excessive noise or other disturbance of the peace, the landlord shall not be required to send a notice of noncompliance to the tenant and may immediately file a complaint for eviction in a form substantially similar to that provided in § 34-18-56(e) and seek the relief set forth in subsection (d).

***Non-default termination by landlord (week to week, served at least 10 days before date specified for termination; month to month, served at least 30 days before date specified for termination)***

**Termination of periodic tenancy.** – (a) The landlord or the tenant may terminate a week-to-week tenancy by a written notice, in a form substantially similar to that provided in § 34-18-56(c), delivered to the other at least ten (10) days before the termination date specified in the notice.

(b) The landlord or the tenant may terminate a month-to-month tenancy or any periodic tenancy for more than a month or less than a year by a written notice, in a form substantially similar to that provided in § 34-18-56(c), delivered to the other at least thirty (30) days before the date specified in the notice.

(c) The landlord or tenant may terminate a year-to-year tenancy by written notice, in a form substantially similar to that provided in § 34-18-56(c), delivered to the other at least three (3) months prior to the expiration of the occupation year.

## SOUTH CAROLINA

This information outlines the South Carolina Eviction Process and discusses a tenant's remedies for unlawful eviction. The law on this subject is set forth in the South Carolina Residential Landlord and Tenant Act, which will be referred to as the "Landlord and Tenant Act", and may not apply to commercial or business leases.

Generally, a South Carolina landlord may evict a tenant and take possession of the rental unit for any one of the following reasons:

- nonpayment of rent;
- breach of the terms of the rental agreement (which may be verbal or written);
- failure of tenant to maintain the dwelling unit in a healthy and safe manner;
- abandonment of the rental unit by the tenant; or
- when the lease term has ended.

1. If the rent is not paid when due, the landlord may end the rental agreement and start eviction proceedings if the landlord has given 5 days written notice, and the rent is not paid within that time. However, the landlord only has to give written notice that the rent is past due one time during the lease term.

The Landlord does not have to give this written notice if the rental agreement, or lease, is in writing and it says very clearly that no written notice will be given if rent is past due.

2. If the tenant fails to live by terms of the rental agreement, other than the requirement to pay rent, the landlord may terminate the rental agreement and begin eviction proceedings. The landlord must give written notice specifying what the tenant did that violated the rental agreement. If the tenant does not remedy or live by the terms of the rental agreement within 14 days after receiving written notice, eviction can begin. If compliance or remedy cannot be completed within 14 days, but is begun within that period and is finished in good faith within a reasonable time, the rental agreement cannot be terminated.

3. The landlord may terminate the rental agreement and begin eviction proceedings if the tenant does not properly take care of the dwelling unit, as required by the Landlord and Tenant Act, and endangers health and safety. The tenant must comply as quickly as conditions require, in case of emergency. If it is not an emergency, the tenant must comply within 14 days after written notice by the landlord specifying what the tenant is doing wrong and requesting that the tenant fix the problems within that period of time. If this is not done, the landlord may end the rental agreement and begin eviction proceedings.

4. The landlord can take possession of a rental unit if there is an unexplained absence of a tenant from a dwelling unit for a period of 15 days after the rent was due and not paid. This is considered as abandonment, and the landlord can take possession. This is not considered an eviction. The rental agreement may be considered ended, or the landlord may consider the rental agreement to still be in effect, in which case the landlord must try to rent the dwelling unit at a fair price. If it is rented before the end of the rental agreement, the tenant's responsibility under the rental agreement ends when the new rental agreement is effective.

5. When the lease term of the rental agreement has ended, and the tenant refuses to move out, the landlord may bring an action in court to evict the tenant.

Where there is no definite term in a rental agreement, the landlord may end the rental agreement. If a tenant pays weekly rent, the Landlord may demand that the tenant move out only after giving the tenant at least 7 days written notice. In all other cases where there is no definite rental term, the landlord must give at least 30 days written notice that the tenant must move out.

After the rental agreement is terminated for any of the reasons described, the landlord has a right to possession of the rental unit and rent. The Landlord may bring a separate claim for damages for breach of the rental agreement, and can ask the court to make the tenant pay reasonable attorney's fees.

***Nonpayment of rent (5 days)***

***Breach of lease other than rent (14 days)***

***Non-default termination by landlord or tenant (week to week, 7 days; month to month, 30 days)***

## **SOUTH DAKOTA**

### ***Nonpayment of rent (3 days)***

Notice to quit required before commencement of proceedings--Service and return. In all cases arising under subdivisions 21-16-1(4), (5), and (6), three days' written notice to quit must be given to the lessee, subtenant, or party in possession, before proceedings can be instituted, and may be served and returned in like manner as a summons is served and returned. On the second service attempt, at least six hours after the previous service attempt, the notice to quit may be posted in a conspicuous place on the property, and also delivered to a person there residing, if such person can be found; and also sent by first class mail addressed to the tenant at the place where the property is situated.

### ***Breach of lease other than rent (Reasonable notice to cure)***

Termination of lease by landlord before end of agreed term--Use of premises by tenant contrary to agreement--Neglect of tenant to make repairs. A landlord may terminate a lease and reclaim the premises before the end of the agreed term:

- (1) When the tenant uses or permits a use of the premises in a manner contrary to the lease agreement;
- (2) When the tenant does not within a reasonable time after request make such repairs as he may be bound to make.

### ***Non-default termination by landlord or tenant (notice at least as long before the conclusion of each rental period as the length of the period itself)***

Renewal of hiring of real property presumed unless notice given of termination. A hiring of real property for a term not specified by the parties is deemed to be renewed as stated in § 43-32-14 at the end of the term implied by law unless one of the parties gives notice to the other of his intention to terminate the same at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

## TENNESSEE

If the tenant is gone for 30 days without paying rent and without notifying you, you may consider the property abandoned. In addition, if you have a written lease, it could require the tenant to tell you if the tenant is going to be gone more than seven days.

When the tenant abandons the dwelling and leaves personal property behind, you have certain rights to dispose of the property. However, you also have certain duties; so it would be a good idea to consult a lawyer before destroying or selling the property.

You may not take a tenant's personal property just because the tenant owes you money, unless the tenant signs a document under the Uniform Commercial Code and you record that document, or unless the tenant gave you the property to hold as collateral.

You cannot discontinue "essential services" to your tenant. First, what is an "essential service"? "Essential services" means utility service (such as heat and electricity) and anything else that you promised to provide--if it materially affects the tenant's health and safety.

You may not evict a tenant or interrupt essential services just because you are having a dispute with the tenant.

You must get a court order before you can forcibly evict a tenant.

If you evict a tenant or cut off services without a court order, the tenant may sue you for damages--and you might have to pay the tenant's lawyer.

If the tenant violates the lease, you may send the tenant notice of the problem and give the tenant 30 days to correct the problem. If the tenant does not correct the problem, you may sue for possession at the time set in the notice. However, if you know about the problem and accept rent from the tenant without complaining, you cannot later evict the tenant for violating the lease for that reason--at least until you tell the tenant that the tenant must start following the rules again. You should give the tenant this notice in writing.

If the tenant corrects the problem, but it happens again within six months, you may cancel the lease after 14 days' notice.

Unless you have a written lease that says otherwise, you cannot evict a tenant for non-payment of rent unless you give the tenant written notice that the tenant failed to pay the rent.

If the tenant cancels the lease before it is over, the tenant will owe the balance due under the lease. However, you must try to rent the property to someone else to offset your damages.

If you are renting on a month-to-month basis, you may cancel the lease by giving the tenant 30 days' notice. The 30 days begins to run after the rent is due for the next month after the tenant receives the notice. For instance, suppose that rent is due on the first of the month, and you give the tenant notice to leave on March 10. The next rent payment is due on April 1, so the 30 days' notice begins to run on April 1; and the tenant does not have to leave until May 1.

If you are renting on a week-to-week basis, you may cancel the lease by giving the tenant ten days' notice.

If the tenant does not leave at the time required, you may sue for possession of the property and for damages and your attorney fees.

You only have to give a tenant three days' notice to leave if the tenant (or the tenant's guests) commit an act that is violent or dangerous to others; but even in this situation, you may not evict the tenant by force without a court order and may not cut off essential services to force the tenant to leave.

You may sue to evict a tenant in General Sessions Court. If you do not have a lawyer, the court clerk can give you information about the procedure. If you lose, you have ten days to appeal; likewise, if the tenant loses, the tenant has ten days to appeal the eviction after the judge issues the order.

***Nonpayment of rent*** (14 days notice to cure and termination on 30<sup>th</sup> day after service is not cured)

***Breach of lease other than rent*** (14 days notice to cure and termination on 30<sup>th</sup> day after service is not cured)

***Non-default termination by landlord or tenant*** (week to week, 10 days; month to month, 30 days)

## TEXAS

**Evictions in Texas** MUST be filed in the county and precinct where the property is located. Complete the "Eviction form for Texas" and have it notarized or sign it in front of one of the Court Clerks. Bring a copy of your "Notice to Vacate" along with the eviction form and any copies that you would like to have for your own records. You'll be given a court date when you file your eviction with the Texas Court.

There are basically four steps in the Texas Eviction process:

- The notice to vacate
- Filing the Suit
- Going to Court
- Writ of Possession

**1. The notice to vacate** - If a landlord alleges a tenant is not paying rent, the Landlord is required by law to give the tenant *written* notice to vacate the premises. This notice can be delivered to the tenant personally with a witness, by certified mail (return receipt requested) or by any other method allowed by law. Unless your lease specifically states otherwise, the law requires you to deliver the written notice, and then wait three days before filing your suit in Justice Court. This is a legal requirement which must be met and cannot be overlooked.

**2. Filing the Suit** - You must file an original petition with the Court and pay court costs of \$72 (subject to change). These court costs pay for filing your suit, your court hearing, and for the Constable to serve the citation. The citation is the notice to the tenant that you are attempting to evict him.

**3. Going to Court** - You must go to Court and prove your case by a preponderance of the evidence. Simply filing a suit does not necessarily mean you will win your suit. You should bring all documents and other evidence with you to Court in a well organized fashion. At the hearing, you will have to present evidence to show that you are entitled to possession of the premises.

**4. Writ of Possession** - If you have won your suit in Court, and the mandatory five day appeal period has passed, and the other party is still in the premises, you can file a Writ of Possession in Court. A Writ of Possession is a Court order to the Constable to place you in possession of the property. The Writ of Possession will cost you an additional \$155 (subject to change), and may be requested at the JP office where the judgment is. The Constable of your particular Precinct can answer your questions about this Writ.

How long does it take to evict someone in Texas? From start to finish approximately three weeks.

3 days from notice to vacate to filing of suit

8-10 days to serve the citation- The law requires the defendant have six days notice before the hearing.

5 days to appeal the suit following the hearing required by law.

2 days- The Constable is required by law to post a 24 hour vacate notice on the Writ of Possession

20-23 days is the minimum amount of time to evict someone in any County in Texas. It must also be noted that any eviction suit is subject to appeal to the County Courts-at-Law.

**Is there a faster way to evict someone?** There is a remedy that can shorten the time period from 23 days to ten days if you prevail in Court. This is known as a Bond for Immediate Possession and includes a Notice to Defendant of the Bond for Immediate Possession. By filing a bond for immediate possession, the eviction process could be shortened provided the defendant does not request a trial or post a counter bond.

In a Bond for Immediate Possession, you are putting up a bond for surety or cash. If you lose your suit, you could lose all or part of your bond. It must also be noted that any eviction suit judgment may be appealed to the County Courts-At-Law. However, if the defendant requests a trial or files a counter bond, the length of time involved in a Bond For Immediate Possession will be about the same as in a normal Eviction suit.

**Nonpayment of rent** (3 days. If lease provides for time to cure, such time must be provided before eviction notice may be given)

**Breach of lease other than rent** (3 days. If lease provides for time to cure, such time must be provided before eviction notice may be given)

**Non-default termination by landlord or rental** (month to month, 30 days; other rental periods, notice as long as the rental period itself)

**NOTICE FOR TERMINATING CERTAIN TENANCIES.** (a) A monthly tenancy or a tenancy from month to month may be terminated by the tenant or the landlord giving notice of termination to the other.

(b) If a notice of termination is given under Subsection (a) and if the rent-paying period is at least one month, the tenancy terminates on whichever of the following days is the later:

- (1) the day given in the notice for termination; or
- (2) one month after the day on which the notice is given.

(c) If a notice of termination is given under Subsection (a) and if the rent-paying period is less than a month, the tenancy terminates on whichever of the following days is the later:

- (1) the day given in the notice for termination; or
- (2) the day following the expiration of the period beginning on the day on which notice is given and extending for a number of days equal to the number of days in the rent-paying period.

(d) If a tenancy terminates on a day that does not correspond to the beginning or end of a rent-paying period, the tenant is liable for rent only up to the date of termination.

(e) Subsections (a), (b), (c), and (d) do not apply if:

- (1) a landlord and a tenant have agreed in an instrument signed by both parties on a different period of notice to terminate the tenancy or that no notice is required; or
- (2) there is a breach of contract recognized by law.

## UTAH

First, the Utah landlord must actually end the tenancy, by delivering to the tenant a "Notice to Quit." This notice must be given before filing an eviction case. Any defects in the notice may cause dismissal of the case, requiring the landlord to begin the process again. The type of "Notice to Quit" and how much notice (time) is required is determined by the tenant's status (i.e., a tenant at will or a tenant under lease). Regardless of the type of tenancy, though, the law requires the use of a summary process action to evict. However, the requirements for a "Notice to Quit" can vary widely depending upon how the person came to reside or remain at the property.

2. After the "Notice to Quit" time has expired, the landlord then completes the Summons and Complaint for "Unlawful Detainer" (eviction). The Complaint is filed in the district court (court of general jurisdiction for Utah). The Summons and Complaint must be served on the tenant by a constable, deputy sheriff, or a person over the age of 18 years who is not a party to the action.

3. After being served with the Summons and Complaint, the tenant must file with the court an "Answer" within the time listed in the Summons. The Answer allows the tenant to explain to the court and the landlord why he or she should not be evicted, defenses against the court action, and any claims against the landlord. If the Answer is not filed on time, the landlord may ask for a default judgment and "Order of Restitution" against the tenant. The "Order of Restitution" directs the sheriff or constable to forcefully evict the tenant. If the tenant files a timely Answer, the case will proceed as a civil case under the Utah Rules of Civil Procedure (discovery, trial, etc.)

4. After the complaint has been filed, the landlord may move the case along more quickly by filing with the court an "Owner's Possession Bond," and serving notice upon the tenant. This is usually done when the tenant has answered the Complaint, eliminating the possibility of a default judgment. The Owner's Possession Bond must be approved by the court in an amount equal to the probable amount of costs of suit and actual damages to the tenant if the eviction action was brought improperly.

### **How Do I Evict a Tenant?**

The eviction process in Utah is a four-step process.

The landlord must serve an eviction notice.

If the notice is not obeyed, the landlord must file a court action, which allows the tenant to present defenses in court.

If the judge rules for the landlord, the judge will enter an order for the tenant's eviction by a sheriff.

A landlord must follow the law closely in order to evict a tenant. A notice must say exactly the right thing, and must be served on the tenant in the right way. If the landlord makes a mistake, a tenant may be able to get the case dismissed.

**How Do I Respond to an Eviction?** If your landlord tries to evict you for a good reason, the fact that you have a baby, are pregnant, just lost your job, or have nowhere to go will not prevent a judge from evicting you. Also, if you stay after receiving an eviction notice, you could be liable for three times the daily rent for the days you stay there after the notice expires. Here are some general tips:

An eviction begins with the service of a summons and complaint. The summons notifies tenants that they are being sued and that, to protect their rights, they should "answer" (reply) within a specified period. The complaint explains the lawsuit and tells the landlord's side of the story.

You may wish to contact a lawyer in order to answer the summons. If you do not answer the summons, you will lose the right to explain your version of events, and a judge may issue a default judgment in favor of the landlord.

If you must prepare the answer yourself, respond paragraph by paragraph to each statement in the complaint, saying whether or not you agree with it. Next, make two copies of your answer. Give the original to the court at the address listed at the top of the complaint, send a copy to the landlord or the landlord's attorney, and keep a copy for yourself.

***Nonpayment of rent (3 days) and Breach of lease other than rent (3 days)***

***Non-default termination by landlord or tenant (15 days)***

**Unlawful detainer by tenant for a term less than life.**

(1) A tenant holding real property for a term less than life, is guilty of an unlawful detainer if the tenant:

(a) except as provided in Subsection (1)(i), continues in possession, in person or by subtenant, of the property or any part of it, after the expiration of the specified term or period for which it is let to him, which specified term or period, whether established by express or implied contract, or whether written or parol, shall be terminated without notice at the expiration of the specified term or period;

(b) having leased real property for an indefinite time with monthly or other periodic rent reserved and except as provided in Subsection (1)(i):

(i) continues in possession of it in person or by subtenant after the end of any month or period, in cases where the owner, the owner's designated agent, or any successor in estate of the owner, 15 calendar days or more prior to the end of that month or period, has served notice requiring the tenant to quit the premises at the expiration of that month or period; or

(ii) in cases of tenancies at will, remains in possession of the premises after the expiration of a notice of not less than five calendar days;

(c) continues in possession, in person or by subtenant, after default in the payment of any rent or other amounts due and after a notice in writing requiring in the alternative the payment of the rent and other amounts due or the surrender of the detained premises, has remained uncomplished with for a period of three calendar days after service, which notice may be served at any time after the rent becomes due;

(d) assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste on the premises after service of a three calendar days' notice to quit;

(e) sets up or carries on any unlawful business on or in the premises after service of a three calendar days' notice to quit;

(f) suffers, permits, or maintains on or about the premises any nuisance, including nuisance as defined in Section **78B-6-1107** after service of a three calendar days' notice to quit;

(g) commits a criminal act on the premises and remains in possession after service of a three calendar days' notice to quit;

(h) continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, other than those previously mentioned, and after notice in writing requiring in the alternative the performance of the conditions or covenant or the surrender of the property, served upon the tenant and upon any subtenant in actual occupation of the premises remains uncomplished with for three calendar days after service; or

(i) (i) is a tenant under a bona fide tenancy as provided in Section 702 of the Protecting Tenants at Foreclosure Act of 2009, Pub. L. 111-22; and

(ii) continues in possession after the effective date of a notice to vacate given in accordance with Section 702 of the Protecting Tenants at Foreclosure Act of 2009, Pub. L. 111-22.

(2) Within three calendar days after the service of the notice, the tenant, any subtenant in actual occupation of the premises, any mortgagee of the term, or other person interested in its continuance may perform the condition or covenant and thereby save the lease from forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot afterwards be performed, or the violation cannot be brought into compliance, the notice provided for in

## VERMONT

An eviction is a court action to LEGALLY remove the tenant from a rented unit. As in most states, a Vermont landlord cannot "**lock you out**" of your rented unit, turn off the heat, water or other utilities, or remove the tenants belongings without FIRST going through the Vermont Eviction process.

In the Vermont Eviction process, a landlord must give a written eviction notice to the tenant. The notice in most states is usually called a "Notice of Termination of Tenancy" or a "Notice to Quit." The type of notice the landlord is required to give a tenant depends upon the grounds for the eviction. Possible causes for eviction:

- **Eviction for Nonpayment of Rent**

If the landlord's reason for evicting the tenant is that the tenant has not paid some or all of the rent owed the eviction notice must be in writing. The date given in the notice to pay back rent or leave (the "termination date") must be at least 14 days from the date you receive the notice. The notice does not have to be served by a sheriff or other law enforcement officer in Vermont

It is extremely important to respond in writing before the deadline on any notice you receive. DO NOT IGNORE ANY NOTICE. If a tenant responds in time, they will have the opportunity to have their day in court.

The Landlord and Tenant both have an opportunity to come to an agreement before the court.

### OTHER REASONS FOR EVICTIONS

#### Eviction For Criminal Activity

##### Eviction "For Cause"

Eviction for violating some other aspect of the lease agreement other than nonpayment of rent.

Tenant has 30 days from date notice received to vacate.

##### Eviction for "No Cause"

If you do not have a written rental agreement with your landlord or you had one but it is now expired, your landlord can legally evict you for no reason at all.

You must leave in 60 days if you are on a month to month lease, 90 days if you were there for more then 2 years and if weekly - 21 days.

***Nonpayment of rent (14 days)***

***Breach of lease other than rent (30 days, 14 days for criminal activity on the premises)***

***Non-default termination by landlord (In absence of written agreement, resident for two years or less, 60 days; resident for more than two years, 90 days; and week to week tenancies, 21 days. In case of written agreement, resident for two years or less, 30 days; more than two years, 60 days, week to week, 7 days; but notice must state date of termination conclusion of a term of the agreement)***

***Non-default termination by tenant (not specified)***

### Tenant obligations; use and maintenance of dwelling unit.

(a) The tenant shall not create or contribute to the noncompliance of the dwelling unit with applicable provisions of building, housing and health regulations.

(b) The tenant shall conduct himself or herself and require other persons on the premises with the tenant's consent to conduct themselves in a manner that will not disturb other tenants' peaceful enjoyment of the premises.

(c) The tenant shall not deliberately or negligently destroy, deface, damage or remove any part of the premises or its fixtures, mechanical systems or furnishings or deliberately or negligently permit any person to do so.

(d) Unless inconsistent with a written rental agreement or otherwise provided by law, a tenant may terminate a tenancy by actual notice given to the landlord at least one rental payment period prior to the termination date specified in the notice.

(e) If a tenant acts in violation of this section, the landlord is entitled to recover damages, costs and reasonable attorney's fees, and the violation shall be grounds for termination under subsection 4467(b) of this title.

## VIRGINIA

### Writ of Possession in Unlawful Detainer (EVICTION)

**Note:** Unlawful Detainer and Eviction may be considered the same for the following discussion.

(8.01 - 470 & 472 code of Virginia) The Writ of Possession in Unlawful Detainer (Eviction) is a court order authorizing the Sheriff to physically remove a person and his belongings from a premises and to return possession to the landlord. Usually the court will not issue the Writ of Possession until the appeal period has lapsed. The appeal period is ten (10) days.

Every tenant has the legal right to live in rental housing unless and until the landlord follows the legal process for eviction.

#### **Time Period for Executing Writ:**

This Writ gives the Sheriff thirty (30) days in which to execute. Effective July 1, 2000, this code, 8.01-470, has been modified to read, "The execution of the Writ of Possession by the Sheriff should occur within fifteen (15) calendar days from the date the writ is received by the Sheriff, or as soon as practicable thereafter, but in no event later than thirty (30) days from the date the Writ of Possession was issued."

It is important to remember the date the Writ was issued should a postponement be requested after scheduling the eviction.

#### **The Virginia Residential Landlord Tenant Act covers:**

If you live in an apartment building or in any type of multi-family housing. Multi-family housing means you share heating, hot water, entry and exit, or some other service with another dwelling unit in the same building. You also are covered if your landlord rents out more than ten single-family homes. In cities and in urban counties, you are covered if your landlord rents out more than four single-family homes.

#### **What type of notice does a landlord have to give to evict?**

No matter what the reason, a landlord must give you a written notice in order to evict. However, you do not have to move just because a landlord has given written notice.

**Is a landlord's oral notice to move any good?** No. A landlord's oral notice to move is not good. An oral notice to move should not allow the landlord to start an eviction. You do not have to move just because a landlord has given an oral notice.

**What type of notice does a landlord have to give in a non-payment of rent case?** If a landlord wants to evict you for not paying rent, the landlord must give you a written notice to either move or pay rent in 5 days. If you pay the rent in 5 days, you get to stay. If you do not pay, the landlord can start an eviction in General District Court. You do not have to move just because the landlord has given a written notice.

#### ***Nonpayment of rent (5 days)***

Failure to pay certain rents after five days' notice forfeits right of possession. If any tenant or lessee of premises in a city or town, or in any subdivision of suburban and other lands divided into building lots for residential purposes, or of premises anywhere used for residential purposes, and not for farming or agriculture, being in default in the payment of rent, shall so continue for five days after notice, in writing, requiring possession of the premises or the payment of rent, such tenant or lessee shall thereby forfeit his right to the possession. In such case the possession of the defendant may, at the option of the landlord or lessor, be deemed unlawful, and he may proceed to recover in the same manner provided by Article 13 of Chapter 3 of Title 8.01.

Nothing, however, shall be construed to prohibit a landlord from seeking an award of costs or attorney's fees under § 8.01-27.1 or civil recovery under § 8.01-27.2 as part of the damages requested on an unlawful detainer action filed pursuant to § 8.01-126 provided the landlord has given notice, which notice may be included in a five-day termination notice provided in accordance with this section.

***Breach of lease other than rent*** (none, but landlord may proceed in court for determination of right of reentry)

Proceedings to establish right of reentry, and judgment therefor.

Any person who shall have a right of reentry into lands by reason of any rent issuing thereout being in arrear, or by reason of the breach of any covenant or condition, may serve a declaration in ejectment on the tenant in possession, when there shall be such tenant, or, if the possession be vacant, by affixing the declaration upon the chief door of any message, or at any other notorious place on the premises, and such service shall be in lieu of a demand and reentry; and upon proof to the court, by affidavit in case of judgment by default or upon proof on the trial, that the rent claimed was due and no sufficient distress was upon the premises, or that the covenant or condition was broken before the service of the declaration and that the plaintiff had power thereupon to reenter, he shall recover judgment and have execution for such lands.

***Non-default termination by landlord*** (year to year, 3 months; month to month, 30 days)

Notice to terminate a tenancy; on whom served; when necessary.

A tenancy from year to year may be terminated by either party giving three months' notice, in writing, prior to the end of any year of the tenancy, of his intention to terminate the same. A tenancy from month to month may be terminated by either party giving 30 days' notice in writing, prior to the next rent due date, of his intention to terminate the same. In addition to the termination rights set forth above, and notwithstanding the terms of the lease, the landlord may terminate the lease due to rehabilitation or a change in the use of all or any part of a building containing at least four residential units, upon 120 days' prior written notice to the tenant. Changes shall include but not be limited to conversion to hotel, motel, apartment hotel or other commercial use, planned unit development, substantial rehabilitation, demolition or sale to a contract purchaser requiring an empty building. This 120-day notice requirement shall not be waived; however, a period of less than 120 days may be agreed upon by both the landlord and tenant in a written agreement separate from the rental agreement or lease executed after such notice is given and applicable only to the 120-day notice period. When such notice is to the tenant it may be served upon him or upon anyone holding under him the leased premises, or any part thereof. When it is by the tenant it may be served upon anyone who, at the time, owns the premises in whole or in part, or the agent of such owner, or according to the common law. This section shall not apply when, by special agreement, no notice is to be given; nor shall notice be necessary from or to a tenant whose term is to end at a certain time.

The written notice required by this section to terminate a tenancy shall not be contained in the rental agreement or lease, but shall be a separate writing.

***Remarks*** – Landlord may also terminate fixed term lease in certain circumstances on 120 days notice.

## WASHINGTON

A Washington landlord must follow certain procedures to terminate a tenancy. To terminate a periodic tenancy, a landlord must give at least 20 days' written notice prior to the end of the month. However, if the tenant violates his or her obligations, for example, by failing to pay the rent, the landlord may terminate the lease through eviction proceedings. When a tenant is being evicted because of a rule excluding children or because of conversion to condominiums, 90 days' notice is required.

The action by a landlord to remove a tenant from a rental unit is known as an eviction or an "unlawful detainer." (As in most states) Some local housing codes define "just cause" for an eviction and outline procedures that must be followed.

In an eviction based on nonpayment of rent, a tenant may assert any claim for money owed the tenant by the landlord. The tenant's claim (sometimes known as an equitable defense or setoff) must be related to the tenancy, such as the tenant's payment of a gas bill that was the landlord's responsibility under the rental agreement. In eviction actions strict rules and procedures must be observed. Generally, a legal eviction process involves: Proper notice. Before evicting a tenant, the landlord must serve the required eviction notices using proper procedures. Proper notice usually involves mailing, handing to the tenant, or posting on the unit, the notice. Filing of a lawsuit. If the tenant fails to move out, a lawsuit must be filed to evict the tenant.

Entitlement to a court hearing. If the tenant disputes the reasons for the eviction, the tenant is entitled to a court hearing.

Sheriff's involvement. If the tenant loses the court hearing, the sheriff would then be ordered to physically evict a tenant and remove the property in the unit. Only the sheriff, not the landlord, can physically remove a tenant who does not comply with an eviction notice and only after an unlawful detainer lawsuit has been filed.

Liability for attorneys' fees. In an eviction dispute, the successful party is entitled to recoup costs and attorney fees.

**Settlement of Disputes** The landlord and tenant may agree to arbitration, asking a neutral party to settle the dispute. The process is usually quick and inexpensive, with the administrative fee shared equally unless otherwise allocated by the arbitrator. Landlord-tenant problems can also be resolved through informal mediation. In mediation, a third person intervenes between two disputing parties in an effort to reach an agreement, compromise or reconciliation. Intended to settle a dispute quickly and inexpensively, mediation can be requested by either a landlord or tenant and may be available without charge from city or county agencies. If they are dissatisfied with the mediation process, the parties may pursue legal remedies.

**Prohibited Eviction** Landlords are generally prohibited from locking a tenant out of the premises, from taking a tenant's property for nonpayment of rent (except for abandoned property under certain conditions), or from intentionally terminating a tenant's utility service. Various penalties exist for violating these protections.

Retaliatory evictions are also illegal. A landlord may not terminate a tenancy or increase rent or change other terms of the rental agreement to retaliate against a tenant who asserts his or her rights under the Landlord-Tenant Act or reports violations of housing codes or ordinances.

### ***Nonpayment of rent (3 days) and Breach of lease other than rent (10 days)***

A tenant of real property for a term less than life is guilty of unlawful detainer either:

(1) When he or she holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him or her. When real property is leased for a specified term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;

(2) When he or she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided) requiring him or her to quit the premises at the expiration of such month or period;

(3) When he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplished with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;

(4) When he or she continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW 59.12.040 provided) upon him or her, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplished with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture;

(5) When he or she commits or permits waste upon the demised premises, or when he or she sets up or carries on thereon any unlawful business, or when he or she erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW 59.12.040 provided) upon him or her of three days' notice to quit;

(6) A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing and served upon him or her in the manner provided in RCW 59.12.040. Such person may also be subject to the criminal provisions of chapter 9A.52 RCW; or

(7) When he or she commits or permits any gang-related activity at the premises as prohibited by RCW 59.18.130.

***Non-default termination by landlord or tenant (30 days before end of rental period)***

When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of thirty days or more, preceding the end of any of said months or periods, given by either party to the other.

## WEST VIRGINIA

Under West Virginia law your landlord is required to provide you with proper written notice in advance before attempting to evict you. The amount of notice required varies depending on whether or not there is a written lease. If there is a written lease or rental agreement, the landlord is required to provide at least the amount of notice stated in the lease.

Most tenants simply rent housing on a month-to-month basis without any written lease. In these cases, West Virginia law requires that landlords provide tenants with notice of eviction at least one full rental period in advance before the end of the preceding period. This means your landlord must notify you before your new monthly rental period begins in order to request that you leave by the end of the month. For example, if your rent is due on the first day of the month, say on April 1, and if your landlord wants you to move out by the end of April, then the landlord must provide you with a notice of eviction on or before the last day in March. If your landlord provides you with the notice of eviction after you have already paid rent for the new monthly rental period, then the landlord cannot properly require that you move out until the end of the next month.

Even though West Virginia law requires landlords to provide proper notice in advance before attempting to evict tenants, in some cases the landlords can file a suit in court to evict tenants without providing any notice. If you are behind in your rent, then the landlord may go directly to court and file a suit to evict you without giving a written notice in advance. In addition, if you have violated some other provision of the lease, (for example, by having a pet without the landlord's consent) the landlord can also file a suit to evict you without providing a written notice in advance.

It is important for all tenants to realize that the most important right of all is that a landlord cannot evict you without first going through court, even if a written notice in advance is not required. In other words, a landlord cannot legally change the lock on your door, shut off your utilities, or take any other action to force you out of your rental housing without first going to court and proving to a judge or jury that he or she has the right to have you evicted. Once in court, you have the right to contest the eviction suit. You may also have the right to file your own suit against the landlord ( called a counterclaim). Defending the eviction suit and filing a counterclaim against the landlord is discussed elsewhere in the West Virginia handbook.

***Nonpayment of rent*** (none specified, but landlord may proceed with action in ejectment or unlawful detainer. If tenant pays all rent plus cost before trial, tenancy is redeemed)

***Breach of lease other than rent*** (none specified)

***Non-default termination by landlord or landlord*** (year to year, one year's notice, other, notice at least as long as, and to terminate upon, end of rental period)

## WISCONSIN

An eviction is a process landlords may begin when they believe a tenant has seriously violated the lease, and they want the tenant to fix the problem or leave the apartment. In Wisconsin, the process *usually* begins with a notice giving the tenant at least 5 days to remedy a violation. The process *may* eventually end up in small claims court with a judge deciding whether the tenant stays or whether the tenant will be removed from the apartment. It is important to remember that in Wisconsin a tenant can only be evicted by a judge.

**The EVICTION PROCESS:** The Wisconsin eviction process begins when the landlord serves or gives the tenant a written notice under Wisconsin Stat. 704.17 A landlord's notice is not the same as a Summons and Complaint from Small Claims Court.

The Wisconsin landlord should try to give the notice to the tenant or someone in the tenant's family over the age of 14. If the landlord has tried that, he or she may post a copy of in an obvious place on the rented premises and mail a copy to the tenant's last known address, or send it by registered mail. However, if the tenant acknowledges that they actually received the notice, it does not matter what method of service the landlord used.

**Types of Notice:** Note: A notice that your lease will not be renewed or a 28-day notice to end a month-to-month tenancy are non-renewal notices, not eviction notices.

The notice must be in [writing](#) and include the date, the rent due or lease clause the tenant has supposedly violated, or the rent owed, the type of notice, and the right to cure the problem, if the tenant has one. There are several types of termination notices:

1. 5-day Pay or Quit Notice is a warning that the tenant is late with rent. The landlord can only give this notice at a point when the rent is late. This notice can be cured. By law, the landlord has to allow tenants at least 5 days (not counting the day it is served, Saturday or Sunday, according to Wis. Stat. 801.15(1)) to pay all overdue rent. Your county, community action agency, or churches might assist. Some tenants mistakenly think they have to leave after receiving this notice! All tenants need to do to avoid a court summons is to pay all that is owed (and avoid being late again). Tenants may want to send a dated letter that explains how much rent is attached. Tenants should keep a copy of the letter and check for documentation that they paid in time.
2. 5-day Notice for Non-Rent Violation is a warning that the tenant caused a disturbance, damaged property, or violated a lease rule. The landlord has to allow tenants at least 5 days, and the tenant is only required to promptly take "reasonable steps" to stop the violation, or make a "reasonable offer" to pay the landlord in the case of damages to the unit. Tenants should keep a copy of a letter to the landlord that either denies any violation, or explains that the tenant has taken reasonable steps to cure, or remedy, it (like turning down the stereo) within 5 days.
3. 14-day no-right-to-cure notice orders you to move within a period of at least 14 days even if you fix the problem. The tenant has no right to cure! Landlords can give this notice to week-to-week and month-to-month tenants. Tenants with rental agreements of more than a month can only be given this notice if they already received a 5-day for the same violation type (rent or non-rent) within the previous 12 months.
4. A 5-day notice with-no-right-to-cure is rare. It can be given by the landlord only if the police give the landlord a notice that their property is a "drug nuisance" (drug making or selling is done by the tenant or done in the tenant's unit). A tenant can challenge this termination (do it in writing to the landlord and keep a copy), and then the landlord must let the tenant stay or schedule a court hearing and prove the "drug nuisance" to a judge.
5. 30-day notice to cure is served only to tenants with a lease for more than a year, giving them at least 30 days to pay late rent or take steps to stop violating lease rules.

**The 5 or 14-day Notice:** If the tenant is on a rental agreement for a year or less, the landlord must serve the tenant with a 5-day notice for the first lease violation. If the tenant commits a violation in the same category (rent or other) within 12 months after the 5-day notice was given, the landlord may serve either a 5- or 14-day notice.

If the tenant has a month-to-month rental agreement, the landlord may give a 5- or 14-day notice for the first rent payment violation.

**Responding to the notice:** Once you receive a 5, 14, or 30-day notice, you have three options:

**1. You can fix the problem and remain in the apartment.**

If you received a 5-day notice and you pay up or take reasonable steps to fix another type of violation within the time limit (the day served, Saturday and Sunday do not count (Wis. Stat. 801.15(1))), then you have the right to remain in the apartment. The landlord does not have a right to remove you or even go to court or to refuse a rent payment from you. Write a dated letter to the landlord saying the problem is cured and keep a copy. If you received a 14-day notice and fix the problem (remembering to document that you cured with a copied letter) you may still have to negotiate with your landlord. The landlord could refuse your rent and file an eviction summons and complaint to schedule a small claims court hearing. If you reach a settlement, try to get any agreement in writing, signed by all parties, and keep a copy.

**2. You can deny any violation and stay.**

You might wish to stay if you believe the landlord had no legal reason for giving the notice. Remember, you have a right to a trial and the landlord will need to pay a filing fee, wait for a hearing, and prove you violated the lease and that proper notices were given. Sometimes evictions have no grounds. Judges can allow tenants to reduce a percentage of rent to compensate for major health and safety hazards. Some evictions are thrown out or tenants win counter-claims because of laws against discrimination and landlord retaliation against tenants exercising their legal rights. Contact Tenant Resource Center for more information or a housing attorney for legal advice.

However, if you stay and the landlord files a summons, even if the case is dismissed, the summons is public record. Future landlords might turn you down even for the dismissed eviction - so it is better to avoid the summons if possible.

Also, the landlord could win the eviction and get a judgment for double the pro-rated rent for each day after the last 5- or 14-day. This situation is rare, but it happens. If possible, sometimes the safest option is to negotiate with your landlord; any agreement reached should be in writing with copies for both you and your landlord.

**3. Move out**

This may be an option if you have a place to go. However, moving out does not end your responsibility for the rental agreement. Even if you leave, you will probably still owe the rent, as well as costs to re-rent or until the lease ends. (The landlord has a duty to make all reasonable efforts to re-rent the unit, according to Wisconsin Stat. 704.29.) Also, even if you leave, the landlord may still file in court to evict you, just to make sure you do not move back in (avoid this by giving the landlord notice in writing of your move-out date and keep a copies for your records.) This court record or the landlord's bad reference or credit report can make it difficult to find another apartment.

**IF THE TENANT DOES NOT MOVE OUT:** The only way a landlord may remove you is by a court order. Landlords cannot: change your locks, remove your possessions, push you out, turn off your utilities, throw things out in the street, or any self-help eviction. Most states are the same.

The landlord needs a court order to remove you from the premises. Your landlord can be prevented from trying to remove you illegally, and can be fined, or even sued. Document what happens and any costs you have related to the illegal eviction. Call the sheriff's office, Consumer Protection at (800) 422- 7128, Legal Action, or a private attorney.

The landlord must pay a filing fee and file at the county court. You should receive the Summons, from a sheriff or a civil process server, at least 5 days before the joinder conference or initial hearing. You must appear in court on that day or you will be evicted. You do not need to bring witnesses to a joinder conference, but be prepared to discuss your case at this time. The purpose of the conference is to find out if there will be a settlement (like a written payment plan or agreement for the tenant to leave on a certain date), or if there will need to be a trial. If a settlement is not reached, either party can request the trial to be on a different date. It is important that if you make a payment agreement that it is a reasonable payment schedule. If you make an agreement and do not follow through, you may be evicted without returning to court.

If the case is not settled at the joinder conference it will proceed to trial. If you tell the small claims clerk that you do not want to hold the joinder conference and the trial on the same date, state law requires that the trial be rescheduled to a later date. At trial, you should be prepared to present all evidence and witnesses. Check with your clerk of courts to learn the procedure in your county.

**If Evicted:** If you go to trial and lose in Wisconsin, the judge will issue a written order called a writ of restitution. After the landlord gives the sheriff the writ, the sheriff will come within 10 days to remove you from the apartment. Usually the sheriff will post a 24-hour notice before removing you from the premises. Only the sheriff has the authority to post a 24-hour notice and remove a tenant. (The tenant may contact the sheriff and attempt to arrange a move out date). If the sheriff removes you, your possessions will be moved to storage and you will have to pay reasonable moving and storage costs to retrieve them (but not back rent). After an eviction, it may be very difficult to rent again.

After you are evicted, and the landlord has the opportunity to determine how much money you may owe, a rent and damages hearing will be held. The tenant should receive a notice of this hearing. At this hearing, a hearing examiner will determine the amount of judgment against you. It is important to attend so that you can provide information that may minimize the amount of the judgment. For example, landlords cannot charge for time spent rerenting or a rerental processing fee. Landlords have an unwaivable duty to mitigate or minimize all rerental costs (Wis. Stat. 704.29). For more information contact Tenant Resource Center. For legal advice, contact a housing attorney.

***Nonpayment of rent*** (5 days, 30 days in case of lease for one year or more. A month to month tenancy is terminated if a notice of termination is give at least 14 days after rent is in default)

***Breach of lease other than rent*** (5 days, 30 days in case of lease for one year or more)

***Non-default termination by landlord or tenant*** (28 days)

## WYOMING

**Landlord's Right of Re-Entry** Except where there is a provision in the lease stating otherwise, nonpayment of rent does not give the landlord the right to re-enter and retake possession of the apartment and evict you without any kind of prior notice. If you are behind on your rent, the landlord must make a demand for its payment and give you sufficient notice to vacate the apartment before he can re-enter and take possession. After the landlord has given sufficient notice, he can re-enter the apartment as long as he does so peaceably. However, if the landlord uses violent force in re-entry, he can be liable to the tenant for damages.

**Wyoming's Eviction (Forcible Entry and Detainer) Statute** If a tenant is three (3) days late in his payment of rent, then on the fourth day the landlord can give the tenant written notice to vacate the apartment

Three days after a written notice has been given to the tenant, the landlord can go to Circuit Court and have the tenant evicted, provided the landlord proves his case for eviction. This statute does not mean that the lease is automatically terminated when the tenant is three days late with the rent, but only gives the landlord the right to go to court after the tenant is seven days late in the payment of rent. If the tenant pays the late rent before the landlord has started the legal proceedings, this prevents the landlord from evicting the tenant. If the tenant is ordered by a court to vacate and does not, the sheriff may remove the tenant's possessions and prevent the tenant from re-entering the premises without further action by the court.

Besides nonpayment of rent, a landlord may also evict a tenant for whatever reasons may be specified in the lease signed by the tenant. If no specific reasons are listed, then besides nonpayment of rent, a landlord may evict a tenant for failure to maintain the rental unit in a clean and safe condition, for failure to dispose of garbage and waste, for failure to maintain the plumbing fixtures in a sanitary manner, etc

**Retaliatory Eviction** As a tenant you cannot be evicted in the middle of your tenancy for any actions that do not relate to the lease such as joining a renters' association, signing a petition or the like.

**Constructive Eviction** Any willful act done by the landlord or by people who represent her that substantially damages, interferes with or makes the tenant's living condition impossible will be considered constructive eviction by the landlord and will relieve the tenant of his duty to pay rent if he vacates the apartment. If the landlord violates her duty to protect the tenant's right of quiet enjoyment, then this will be grounds for a constructive eviction. If you believe you are justified in vacating your rental unit because of some act or acts by done by the landlord, it is highly recommended that you consult with the Students' Attorney before you move out.

**Personal Property of a Tenant - Liens** - A **lien** is when one person keeps or has an interest in the property of another as security for the payment of a debt. At common law, a landlord does not have a lien on the personal property of his tenant merely by reason of a landlord-tenant relationship. This means that the landlord cannot keep your television if you fail to pay the rent. However, the landlord can obtain a lien on your property in the apartment if there is a provision in the lease to this effect, and you agree to it by signing the lease.

By statute (W.S. 1-21-1210), following termination of a lease, a landlord may dispose of any trash or property you leave behind when you move out and the landlord reasonably believes that these items are hazardous, perishable or valueless and abandoned. He also may dispose of any valuable property you leave behind, but only after he gives you timely notice of his intention to dispose of it and you fail to respond to his notice within the statutory timeframe. If you do get a notice from the landlord and you do respond, the landlord is entitled to storage costs and the costs of removal of your property to the place of storage before you can retake possession of your property.

**Nonpayment of rent** (3 days unconditional demand for possession when rent at least 3 days in arrears) or **Breach of lease other than rent** (3 days unconditional demand for possession for failure to maintain)

Jurisdiction of circuit courts. Any circuit court within the judicial district may inquire against those who make unlawful and forcible entry into lands and tenements and detain the same, or against those who, having a lawful and peaceable entry into lands or tenements, unlawfully or by force hold the same. If it is found that an unlawful

and forcible entry was made and the lands or tenements are held by force, or that after a lawful entry the lands are held unlawfully, the judge shall require restitution to the complaining party.

**1-21-1002. When proceedings allowed.**

(a) Proceedings for forcible entry and detainer may be had in any of the following cases:

- (i) Against tenants holding over their terms or after a failure to pay rent for three (3) days after it is due;
- (ii) In sales of real estate on execution, orders or other judicial process, including proceedings for the foreclosure of a mortgage by court action, when the judgment debtor was in possession at the time of rendition of the judgment or decree by virtue of which the sale was made;
- (iii) When real estate has been sold under a power of sale contained in any mortgage or trust deed and the purchaser or his assignee has demanded possession;
- (iv) Any sale by executors, administrators, guardians or on partition where any of the parties to the petition were in possession at the commencement of the suit, after the sale has been examined by the proper court and adjudged legal;
- (v) In cases where the defendant is a settler or occupier of lands or tenements, without color of title, to which the complainant has the right of possession;
- (vi) Against renters in violation of any terms imposed under W.S. 1-21-1204 or 1-21-1205.

(b) This section shall not be construed as limiting the provisions of W.S. 1-21-1201 through 1-21-1210.

**1-21-1003. Notice to quit premises required.**

The party desiring to commence an action for forcible entry or detainer must notify the adverse party to leave the premises involved. The notice shall be served at least three (3) days before commencing the action, by leaving a written copy with the defendant or at his usual place of abode or business if he cannot be found.

**1-21-1004. Summons; service and return.**

The summons shall state the cause of the complaint against the defendant, the time and place of trial and shall be served and returned as in other cases. Such service shall be not less than three (3) nor more than twelve (12) days before the day of trial set by the judge.

**1-21-1005. Proceedings when defendant fails to appear.**

If the defendant does not appear in accordance with a properly served summons the circuit court shall try the action as though he were present. Before proceeding, the plaintiff shall file a complaint in which he relies in order to recover the premises. The complaint must be sustained by proof or the action dismissed.

**1-21-1006. Proceedings when defendant appears.**

If the defendant appears, a like complaint shall be admitted or denied in the answer of the defendant. Both parties may be allowed to amend. If no answer is made by the defendant, he may not offer evidence upon his part, but shall only be allowed to cross-examine the plaintiff's witnesses.

**1-21-1007. Bond on granting continuance.**

No continuance shall be granted the defendant for longer than two (2) days unless he gives a bond to the adverse party, with good and sufficient surety approved by the circuit court, conditioned for the payment of the rent that may accrue and costs if judgment is rendered against him.

**1-21-1008. Trial by judge or jury; judgment and costs.**

(a) If the action is not continued, the place of trial changed or if neither party demands a jury, upon the return day of the summons the circuit court shall try the action. If the circuit court concludes that the complaint is not true, the court shall enter judgment against the plaintiff for costs. If the court finds the complaint true, it shall render a general judgment in favor of the plaintiff for restitution of the premises and costs. If the court finds the complaint true in part, it shall render judgment for restitution of that part only and the costs shall be taxed as deemed equitable.

(b) If the case is one based on failure to pay rent, the court shall further find the amount of rent due and payable at the time of the hearing, together with the terms and conditions of the agreement between the parties in relation to the amount and time of payment of rent. If the trial is by jury the verdict shall contain a finding of these facts and the court shall recite such findings in the docket entry of proceedings. The court, upon these findings, in addition to entering judgment for the plaintiff to have restitution, shall render judgment in accordance with the findings for the amount of rent found due, together with costs and attorney's fees as provided by the lease, and shall issue execution separate from the writ of restitution for the rent found due and costs as in other actions.

**1-21-1009. Trial by jury; verdict.**

If a jury is demanded by either party, the proceedings shall be the same as in other cases until the empaneling thereof. If the jury finds the complaint true they shall render a general verdict against the defendant, and if untrue, a general verdict in favor of the defendant. If true in part, the verdict shall set forth the facts they find true.

**1-21-1010. Judgment upon verdict.**

The circuit court shall enter the verdict upon the docket and render judgment thereon.

**1-21-1011. Exceptions.**

Exceptions to the opinion of the circuit court on questions of law or evidence may be taken by either party, whether tried by a jury or the court.

**1-21-1012. Writ of restitution; issuance.**

When a judgment of restitution is entered by a circuit court, the court shall, at the request of the plaintiff, his agent or attorney, issue a writ of restitution thereon.

**1-21-1013. Writ of restitution; execution and return.**

Unless the defendant takes an appeal, the officer shall execute the writ of restitution within two (2) days after receiving it, Sundays excepted, by restoring the plaintiff to possession of the premises. He shall levy and collect the execution for rent and costs and make return as upon other executions.

**1-21-1014. Proceedings upon stay on appeal; bond required.**

(a) If the officer receives notice from the circuit court that the proceedings have been stayed on appeal, he shall immediately delay all further proceedings upon execution and writ of restitution. If the premises have been

restored to the plaintiff he shall immediately place the defendant in possession thereof and return the writ and execution with his proceedings and costs taxed thereon.

(b) An appeal by a defendant shall not stay the proceedings on judgment unless within forty-eight (48) hours after judgment, Sundays excepted, the appellant executes and files with the court his bond to plaintiff, with two (2) or more sufficient sureties approved by the court, conditioned that the appellant will pay all costs which have accrued or may thereafter accrue and all damages which plaintiff may have sustained or may thereafter sustain in consequence of the wrongful detention of the premises during the pendency of the appeal. Upon taking the appeal and filing the bond, all further proceedings in the case shall be stayed and the appellate court shall thereafter issue all writs and processes to carry out the judgment of the appellate court. The court in which the appeal is pending may require a new bond in a larger amount, with sureties approved by the appellate court, if deemed necessary to secure the rights of the parties.

**1-21-1015. Rents to be deposited on appeal.**

(a) In appeals from the judgment of a circuit court for rents due and payable, in addition to the bond required by W.S. 1-21-1014, the appellant shall deposit with the court the amount of rent specified in the judgment. Unless the deposit is made, the appeal is not perfected and proceedings upon the judgment shall be had accordingly. If the appeal is perfected, the court shall transmit the deposit to the clerk of the appellate court with the papers in the case.

(b) Thereafter, when the rents become due, the appellant shall deposit them with the clerk of the appellate court. If at any time during the pendency of the appeal and before final judgment the appellant fails to make any deposit of rent at the time specified in the judgment appealed, the court in which such appeal is pending shall, upon such fact being made to appear, and upon motion and proof of such fact by the appellee, the appellate court shall affirm the judgment appealed from with costs. Proceedings shall thereupon be had as in like cases determined upon the merits and the rent money deposited paid to the plaintiff or his assignee upon order of the court.

**1-21-1016. Ejectment not barred.**

The pendency of an action for forcible entry or detainer does not bar an action of ejectment.

***Non-default termination by landlord or tenant (No statute)***

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