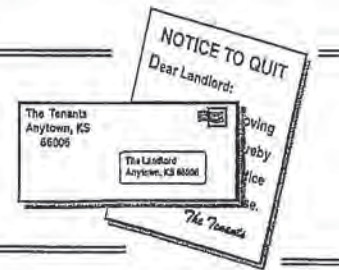

NOTICES TO TERMINATE FROM THE TENANT



30-DAY NOTICE

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

WHEN THERE IS A LEASE

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

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

14/30-DAY NOTICE OF LANDLORD NONCOMPLIANCE

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

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

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

5-DAY NOTICE - FAILURE TO DELIVER

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

5-DAY NOTICE - DAMAGE OR DESTRUCTION

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

IRREGULAR TERMINATION

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

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

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

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

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

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

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

MOVE OUT

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

ABANDONMENT

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

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

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

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

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

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

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

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

HOW TO SHOP FOR AN ATTORNEY

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

Things to look for:

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

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

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

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