

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5784 HOUSE JUDICIARY

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 21, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/06/90

The LABOR & COMMERCE Committee considered:

~~HB 309~~

HOUSE BILL NO. 309 [LANDLORD/TENANT RELATIONSHIP]

"An Act relating to the landlord and tenant relationship; relating to tenancies in property secured by financial obligations; relating to the information pamphlet on landlord and tenant rights and its availability; and amending Rule 85 of the Alaska Rules of Civil Procedure and Rule 8 of the Alaska District Court Rules of Civil Procedure."

RECOMMENDATIONS:

- be replaced with CS HB 309 (L+T) the same title
 a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

- | | |
|--|--|
| ATTACHES NEW FISCAL NOTE(S):
(Dept) | APPROVES PREVIOUS:
(Date/Dept) |
| <input checked="" type="checkbox"/> fiscal impact <u>AK Court System</u> | <input type="checkbox"/> fiscal note(s) _____ |
| <input type="checkbox"/> zero fiscal note _____ | <input type="checkbox"/> zero fiscal note(s) _____ |
| <input type="checkbox"/> zero with analysis _____ | <input type="checkbox"/> zero fn/analysis _____ |

SIGNING DO PASS:

SIGNING:

(check appropriate column)

Do Not
Pass
No Rec
Amend

<u>David Douley Donkey</u>	<u>David Finkelstein</u>		
<u>Bob Boucher</u>	<u>W. H. ...</u>		
<u>Drew ...</u>			
<u>Collins</u>			

David Douley
Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: CSHB 309

Publiah Date: 4/21/89

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	Alaska Court System
Title: <u>An Act relating to the landlord and tenant relationship...</u>	BRU:	<u>Trial Courts</u>
Sponsor: <u>Labor & Commerce</u>	Components:	
Requestor: <u>Labor & Commerce</u>		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services		31.7	31.7	31.7	31.7	31.7
Travel		10.0				
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	41.7	31.7	31.7	31.7	31.7

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

General Funds	0.0	41.7	31.7	31.7	31.7	31.7
Federal Funds						
Other						
TOTAL	0.0	41.7	31.7	31.7	31.7	31.7

POSITIONS:

Full-time		1.0	1.0	1.0	1.0	1.0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Jan Brundberg, General Counsel
 Division: Alaska Court System
 Approved by: Arthur W. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 03/15/90
 Date: 03/15/90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)

Alaska Court System
CSHB 309
Fiscal Analysis

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Court Clerk II, PFT, range 10, Anchorage	\$22,140	\$9,510	<u>\$31,650</u>
 <u>Travel (one-time cost)</u>			
Four meetings of the Forms Committee to revise forms and informational pamphlets (4 @ \$1,500)			6,000
Training for Clerks of Court (additional day of training added to annual clerks conference)			<u>4,000</u>
	Total Travel		<u>10,000</u>
	Total Cost		<u>841,650</u>

Fiscal Analysis - CSHE 309

The primary impacts of this bill on the Alaska Court System are found in sections 1 and 5. Section 1 provides that the court shall give priority on the calendar to Forced Entry and Detainer actions. Section 5 provides that these actions shall be brought in small claims court when both the underlying claim does not exceed \$5,000 and important or unusual points of law are not involved.

The Uniform Residential Landlord and Tenant Act is codified in AS 34.03.010-34.03.380. Topics within the act include purposes and rules of construction, rental agreements, landlord obligations, tenant obligations, tenant remedies, landlord remedies, periodic tenancy, holdover and abuse of access, retaliatory action and general provisions. The Act prescribes many formal notice provisions that either the landlord or the tenant must adhere to. See AS 34.03.160, AS 34.03.170, AS 34.05.180, AS 34.03.200, AS 34.03.220, AS 34.03.290, AS 34.03.300.

The Forcible Entry and Detainer section of the Code of Civil Procedure governs the recovery of possession of real property. These laws include: prohibition of use of force for entry on realty, action for forcible entry or detention, unlawful holding by force, requisites of notice to quit, period between service of notice and action brought, summons and continuance, action against person paying rent in advance, agricultural tenant, inquiry into merits of title and action for possession of realty. See AS 09.45.060 to AS 09.45.160.

The interplay between the Landlord-Tenant Act found in AS 34.03 et seq, and the Forcible Entry and Detainer provisions of AS 09.45.060 et seq is complicated at best. Both acts contain specific notification and strict time requirements. These laws have not been written so that a layperson can easily bring or defend an Forcible Entry and Detainer action without legal assistance. Presently, landlord-tenant and FED actions are brought in district court. Most of these actions are filed with legal representation. Although people are entitled to represent themselves at the district court level, they are not as likely to unknowingly attempt self-representation as in small claims court where the presumption is that the matters can be handled without legal representation.

The proposed bill's purpose in giving small claims court jurisdiction over FED's is to streamline procedures. However, the opposite is what is likely to happen. First, the public will be under the misimpression that they don't need legal advice. Clerks of court are required to assist people in filling out the small claims court forms, yet they are forbidden to give legal advice. However, many people who seek assistance will be expecting legal advice. This process is likely to unduly frustrate people who are filing and defending these actions, and may cause additional delays for the paperwork to be properly completed.

FED cases already receive calendaring priority. They are set for trial not more than 15 days from the date of filing of the complaint under Civil Rule 65(2).

The current small claims rules do not provide for expedited process. These rules will need to be changed as will internal calendaring procedures. Small claims forms, the small claims handbook and writs of assistance and their instructions will need to be redrafted and forms suitable for FED actions will have to be devised.

Small claims clerks will need to be trained to assist with the filing of FED complaints, summonses, answers and writs of assistance. Because FED procedures involve special time limits depending on the allegations of the complaint, more clerical time can be expected to be taken up with these cases. The Anchorage trial court presently averages approximately 125 FED filings per month. These filings would increase small claims filings by approximately one-fourth.

This proposed bill also states that magistrates would hear these cases. Under AS 22.15.120 magistrates are excluded from hearing matters dealing with the recovery of premises.

To implement the noted provisions of this bill, the court system would need:

- 1 FT Court Clerk Anchorage - R.10
- 4 forms committee meetings
- Statewide clerk training
- small claims rules revisions

FISCAL NOTE

RECEIVED

DEC 1989

REQUEST:

Revision Date: _____
Title: An Act relating to retirement benefits for Admin. Director of Courts
Sponsor: Pettyjohn and Zawacki
Requestor: Judiciary Committee/ Representative Goll

Agency Affected: Administration
BRU: Division of Retirement and Benefits
Components: Division of Retirement and Benefits

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

There are no costs associated with this Bill. The intent is to offer voluntary compliance with AS 36.3030(c); there will be no fiscal impact.

Prepared by: Sally Smith
Division: Retirement and Benefits

Phone: (907) 465-4470
Date: 12/15/89

Approved by Commissioner: Frank S. Baxter
Agency: Department of Administration

Date: 12/15/89

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
TUNEAU ALASKA 99511
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

June 20, 1989

SUBJECT: Landlord and tenant relationships (etc.)
Sectional analysis: HB 309

TO: Representative Dave Donley

FROM: Richard A. Bradley
Legislative Counsel

Michael Ward has requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill adds a new subsection to AS 09.45.070. It requires the court to "give priority on the calendar" of the court to the forcible entry or detainer (FED) action.

Section 2 of the bill amends AS 09.45.100 (requisites of notice to quit). The section is a conforming amendment to the amendment made to AS 09.45.110 in section 3 of the bill.

Section 3 of the bill amends AS 09.45.110 (period between service of notice and action brought). The amendment reduces to seven days (from the existing 10 days) the period for the "notice to quit" from the landlord. It also provides that if an action had been brought against the tenant within the previous 12 months, the period for the "notice to quit" may be reduced to three days.

Section 4 of the bill amends AS 09.45.120 (summons and continuance). The amendment deletes the requirement that a notice not be served more than four days before the date of trial; it continues the existing requirement that the notice

be served not less than two days before the date of trial. The amendment repeals the requirement for a "financial undertaking" before any continuance may be granted and authorizes the continuance if "the defendant . . . deposits with the court the rent that will accrue during the next month"

Section 5 of the bill amends AS 09.45.130 (action against persons paying rent in advance). The amendment is a conforming amendment for the changes made in AS 09.45.110, in bill section 3.

Section 6 of the bill amends AS 22.15.040(a) (small claims). The amendment provides that when the district judge or a magistrate is hearing a case involving a FED claim of \$5,000 or less, the court shall hear the matter as a small claim unless important or unusual points of law are involved.

Section 7 of the bill amends AS 34.03.010 (purpose and construction of the landlord and tenant act) by adding a new subsection. The amendment provides that a person who has not paid the first month's rent in full does not acquire rights under AS 34.03. It also provides that a person whose right to the use of premises depends upon rights acquired by another person does not acquire rights unless the other person has acquired rights.

Section 8 of the bill amends AS 34.03.070(a) (security deposits and prepaid rent) by authorizing a landlord to request and receive prepaid rent or a security deposit in the amount of three months' rent, up from the existing two months' rent.

Section 9 of the bill amends AS 34.03.070(g) (security deposits and prepaid rent). It provides that the landlord shall mail the security deposit or prepaid rent that has not been applied to unpaid rent or damages to the tenant at the address provided by the tenant. It further amends the law to provide that if the tenant has not provided the landlord with a forwarding address within 90 days after the tenancy is terminated, the right of the tenant to the amounts otherwise due to the tenant lapses and the landlord may retain the money not applied to unpaid rent or damages.

Section 10 of the bill amends AS 34.03.100(c) (landlord to maintain fit premises). The amendment authorizes the

landlord and tenant to agree that the tenant in a one- or two-family residence may undertake the landlord's responsibility to maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, (etc.) facilities and appliances supplied or required to be supplied by the landlord. The maintenance of elevators is excluded from the section.

Section 11 of the bill amends AS 34.03.140(a) (access). The amendment adds to the lists of conduct prohibited to a tenant the removal of property belonging to the landlord.

Section 12 of the bill amends AS 34.03.140(c) (access). The amendment provides that "when possible", the landlord shall give at least 24 hours notice to the tenant of an intention to enter property rented to the tenant.

Section 13 of the bill amends AS 34.03 by adding a new sec. 34.03.155 (additional tenant obligations). It provides that when a landlord defaults on a financial obligation that secures property occupied by a tenant, the holder of the financial obligation may require the tenant to make payments directly to the holder of the financial obligation.

Section 14 of the bill amends AS 34.03.220(a) (noncompliance with rental agreement; failure to pay rent). The amendment authorizes the landlord to terminate a tenancy on three days' notice when a public utility providing electricity or natural gas to the premises discontinues the service to the premises for the tenant's failure to pay for the utility services.

Section 15 amends AS 34.03.220(b) (noncompliance with rental agreement; failure to pay rent). The amendment provides that if the rent due is not paid in full after notice by the landlord, the tenancy terminates. It also permits a landlord who does receive a partial payment of rent to extend the tenancy on the basis of the amount of the rent received.

Section 16 of the bill amends AS 34.03.230(b) (remedies for absence, nonuse, and abandonment). The amendment provides that the landlord may reenter the dwelling unit and terminate the agreement when the rent has not been paid and, in a week-to-week tenancy, the tenant has been absent for three days or, in a month-to-month tenancy, the tenant has been absent for ten days.

Section 17 of the bill amends AS 34.03.260(a) (disposition of abandoned property). The amendment provides that unless a landlord has agreed to store personal property left by a tenant at the end of the tenancy, the property left by the tenant, including an automobile, is considered to have been abandoned. The landlord may give notice to the tenant that if the property is not removed within 15 days after receipt of the notice, the landlord may sell the property at a public sale. Perishable commodities and property determined by the landlord to be valueless or to have little value may be disposed of in the landlord's discretion.

Section 18 of the bill amends AS 34.03.260(b) (disposition of abandoned property). Section 19 of the bill amends AS 34.03.260(c). Section 20 of the bill amends AS 34.03.-260(d). The amendments made by bill sections 18 - 20 are nonsubstantive and conform the law to the changes made in (a) of the section by section 17 of the bill.

Section 21 of the bill amends AS 34.20.090 (title, interest, possessory rights and redemption under deeds of trust). The section deals with an apparent ambiguity under the section that the Supreme Court interpreted in Interior Energy Corporation v. Alaska Statebank, ___ P.2d ___ (No. 3424, April 14, 1989). The amendment would reverse the opinion of the Supreme Court; the amendment provides that a "lease or a periodic tenancy created by the party or the assigns of the party executing the deed of trust continues according to [its] terms"

Section 22 of the bill adds a new Sec. 42.30.400 (rights of landlords to receive notice of the discontinuance of service). The section permits landlords whose tenants receive electricity or natural gas from public utilities to register as the owner of property with the public utility and the public utility may not thereafter discontinue utility service until ten days after providing the landlord with notice of an intention to discontinue the service.

Section 23 of the bill amends AS 44.23.020(b)(8) (duties of attorney general). The amendment deletes extraneous material within the section.

Section 24 of the bill amends Rule 85(a) of the Alaska Rules of Civil Procedure. The amendment conforms the Civil Rules to the changes made in section 4 of the bill regarding continuances in FED actions.

Representative Dave Donley

Page 5

June 20, 1989

Section 25 of the bill amends Rule 85 of the Alaska Rules of Civil Procedure. The amendment conforms the Civil Rules to the substantive changes made in section 1 of the bill regarding priority for FED actions on the calendar.

Section 26 of the bill amends Rule 8 of the Alaska District Court Rules of Civil Procedure by providing that when a FED action does not involve a claim in excess of \$5,000, the district judge or magistrate shall hear the action as a small claim unless unusual or important points of law are involved. The amendment conforms the Civil Rules to the substantive changes made in section 6 of the bill.

Since the bill amends rules of practice and procedure, the bill title specifically acknowledges the changes and a special vote must be taken by each house of the legislature on the rules changes. See art. IV, sec. 15 of the Alaska Constitution.

If I may be of further assistance, please advise.

RAB:mi

wkmi4/033



Official Business

Alaska State Legislature


House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

January 23, 1990

TO: Representative Dave Donley
Chairman, House Labor and
Commerce Committee

FROM: Rep. David Finkelstein 

RE: HB 309, Landlord/Tenant Law Amendments

I will be absent from the hearing from 3:25-3:50 to go to the Labor Conference, so I thought I would put down my ideas on HB 309 on paper. Many of the same objections will arise in the Judiciary Committee so it may be worth addressing some of them now.

Sec. 2. Amendment of AS 09.45.100

Though I realize that this is one of the critical sections of HB 309, I recommend the time of 10 days be maintained from the period of the notice to quit to the commencement of action for possession. In cases where a second notice to quit must be given within a twelve month period, five days might be more appropriate than the bill's recommendation of three days.

Sec. 8. Amendment of AS 34.03.070 (a)

This may be an instance where the amount of monthly rent (perhaps for those rentals in excess of \$800/month) could be the basis for allowing three months rather than two months deposit.

Sec. 10. Amendment of AS 34.03.100

As in Section 8, I think this should only apply to high-rent rentals.

Sec. 12. Amendment to AS 34.03.140

I believe we need to clarify what is meant by the term "when possible," as added in line 2, page 5 of the workdraft.

Sec. 15. Amendment to AS 34.03.220

Section 15 should give the tenant an opportunity to pay utilities bills in arrears and be reinstated, and the termination period should be increased from 3 to 5 days.

Sec. 24. Amendment to AS 44.23.020 (b), (8)

I haven't heard of any reason why we should get rid of the Department of Law's review.

Thanks for your consideration.

PROPOSED ONLY
 Not adopted by
 House Labor &
 Commerce Comm.
 as of 1/18/90

Original sponsor(s): LABOR & COMMERCE COMMITTEE

1 IN THE HOUSE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 309 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the landlord and tenant relation-
 7 ship; relating to tenancies in property secured by
 8 financial obligations; relating to the information
 9 pamphlet on landlord and tenant rights and its avail-
 10 ability; and amending Rule 85 of the Alaska Rules of
 11 Civil Procedure and Rule 8 of the Alaska District
 12 Court Rules of Civil Procedure."

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

14 * Section 1. AS 09.45.070 is amended by adding a new subsection to
 15 read:

16 (c) The court shall give priority on the calendar to an action
 17 filed under AS 09.45.070 - 09.45.160.

18 * Sec. 2. AS 09.45.100 is amended to read:

19 Sec. 09.45.100. REQUISITES OF NOTICE TO QUIT. A notice to quit
 20 shall be in writing and shall be served upon the tenant or person in
 21 possession by being delivered to the tenant or person or left at the
 22 premises in case of absence from the premises, or the notice may be
 23 sent by registered or certified mail, in which case an additional
 24 three days shall be added to the notice period required under AS 09.-
 25 45.110 (10 DAYS).

26 * Sec. 3. AS 09.45.110 is amended to read:

27 Sec. 09.45.110. PERIOD BETWEEN SERVICE OF NOTICE AND ACTION
 28 BROUGHT. An action for the recovery of the possession of the premises
 29 may be maintained in the cases specified in AS 09.45.090(2) when the

1 notice to quit has been served upon the tenant or person in possession
2 for the period of seven [10] days before the commencement of the
3 action. If an action for the recovery of the premises was filed
4 against the tenant within the previous 12 months, the notice to quit
5 need be served upon the tenant or the person in possession only three
6 days before the commencement of the action. If [UNLESS] the leasing
7 or occupation is for the purpose of farming or agriculture, [IN WHICH
8 CASE] the notice shall be served 90 days before the commencement of
9 the action.

10 * Sec. 4. AS 09.45.120 is amended to read:

11 Sec. 09.45.120. SUMMONS AND CONTINUANCE. Summons in actions for
12 forcible entry and detainer shall be served not less than two [NOR
13 MORE THAN FOUR] days before the date of trial. A [NO] continuance may
14 not [SHALL] be granted for a longer period than two court days unless
15 the defendant applying for the continuance deposits with [GIVES AN
16 UNDERTAKING TO THE ADVERSE PARTY, WITH SURETIES APPROVED BY] the court
17 [CONDITIONED TO THE PAYMENT OF] the rent that will [MAY] accrue during
18 the next month if judgment is rendered against the defendant.

19 * Sec. 5. AS 09.45.130 is amended to read:

20 Sec. 09.45.130. ACTION AGAINST PERSONS PAYING RENT IN ADVANCE.
21 The service of a notice to quit upon a tenant or person in possession
22 does not authorize an action to be maintained against the tenant or
23 person for the possession of the premises until the expiration of the
24 period for which that tenant or person may have paid rent for the
25 premises in advance. To authorize the [AN] action against a tenant or
26 person in possession who has paid rent in advance, the [A] notice must
27 be given under AS 09.45.110 [AT LEAST 10 DAYS] before the date the
28 rent is due again [IN CASE OF A MONTH-TO-MONTH TENANCY OR AT LEAST
29 THREE DAYS BEFORE IN THE CASE OF A WEEK-TO-WEEK TENANCY].

1 * Sec. 6. AS 22.15.040(a) is amended to read:

2 (a) When a claim for relief does not exceed \$5,000 exclusive of
3 costs, interest, and attorney fees, and request is so made, the dis-
4 trict judge or magistrate shall hear the action as a small claim
5 unless important or unusual points of law are involved. When a claim
6 for possession under AS 22.15.030(a)(6) does not exceed \$5,000 exclu-
7 sive of costs, interest, and attorney fees, the district judge or
8 magistrate shall hear the action as a small claim unless important or
9 unusual points of law are involved. The supreme court shall prescribe
10 the procedural rules and standard forms to assure simplicity and the
11 expeditious handling of small claims.

12 * Sec. 7. AS 34.03.010 is amended by adding a new subsection to read:

13 (c) A person who has not paid rent in full for the first rental
14 period under a rental agreement does not acquire rights under this
15 chapter. A person whose right to the use of premises depends upon
16 rights acquired by another person does not acquire rights unless the
17 other person has acquired rights under this chapter.

18 * Sec. 8. AS 34.03.070(a) is amended to read:

19 (a) A landlord may not demand or receive prepaid rent or a
20 security deposit, however denominated, in an amount or value in excess
21 of three [TWO] months' periodic rent.

22 * Sec. 9. AS 34.03.070(g) is amended to read:

23 (g) If the landlord or tenant gives notice that complies with
24 AS 34.03.290, the landlord shall mail the written notice and refund
25 required by (b) of this section within 14 days after the tenancy is
26 terminated and possession is delivered by the tenant to the address
27 supplied by the tenant. If the tenant does not give notice that
28 complies with AS 34.03.290, the landlord shall mail the written notice
29 and refund required by (b) of this section within 30 days after the

1 tenancy is terminated, possession is delivered by the tenant, or the
2 landlord becomes aware that the dwelling unit is abandoned. If the
3 landlord does not know the mailing address of the tenant, but knows or
4 has reason to know how to contact the tenant to give the notice re-
5 quired by (b) of this section, the landlord shall make a reasonable
6 effort to deliver the notice and refund to the tenant. If the tenant
7 does not provide the landlord with an address within 90 days after the
8 tenancy is terminated and if the landlord is unable to contact the
9 tenant, the landlord may retain the amount not applied under (b) of
10 this section.

11 * Sec. 10. AS 34.03.100(c) is amended to read:

12 (c) The landlord and tenant of a one- or two-family residence
13 may agree in writing that the tenant perform the landlord's duties
14 specified in (a)(3), (4) [(a)(4)], (5), (6), and (7) of this section.
15 The tenant may not agree to maintain elevators in good and safe work-
16 ing order. They may also agree in writing that the tenant perform
17 specified repairs, maintenance tasks, alterations, and remodeling.
18 Agreements are allowed under this subsection only if the transaction
19 is entered into in good faith and not for the purpose of evading the
20 obligations of the landlord.

21 * Sec. 11. AS 34.03.140(a) is amended to read:

22 (a) The tenant may not unreasonably withhold consent to the
23 landlord to enter into the dwelling unit in order to inspect the
24 premises, make necessary or agreed repairs, decorations, alterations,
25 or improvements, supply necessary or agreed services, remove property
26 belonging to the landlord, or exhibit the dwelling unit to prospective
27 or actual purchasers, mortgagees, tenants, workers or contractors.

28 * Sec. 12. AS 34.03.140(c) is amended to read:

29 (c) A landlord may not abuse the right of access or use it to

1 harass the tenant. Except in case of emergency or if it is imprac-
2 ticable to do so, the landlord shall, when possible, give the tenant
3 at least 24 hours notice of intention to enter and may enter only at
4 reasonable times and with the tenant's consent.

5 * Sec. 13. AS 34.03 is amended by adding a new section to article 4 to
6 read:

7 Sec. 34.03.155. ADDITIONAL TENANT OBLIGATIONS. If a landlord
8 defaults on a financial obligation that secures property occupied by a
9 tenant of the landlord, the holder of the financial obligation may
10 advise the landlord and the tenant of the landlord to make payments
11 otherwise due to the landlord directly to the holder of the financial
12 obligation for the benefit of the landlord and holder. A payment made
13 under this section to the holder of the financial obligation dis-
14 charges to that extent the debt of tenant to the landlord.

15 * Sec. 14. AS 34.03.190 is amended to read:

16 Sec. 34.03.190. LANDLORD'S NONCOMPLIANCE AS DEFENSE TO ACTION
17 FOR POSSESSION OR RENT. (a) In an action for possession based upon
18 nonpayment of the rent or in an action for rent when the tenant is in
19 possession, the tenant may counterclaim for any amount recoverable
20 under the rental agreement or this chapter. A tenant may not counter-
21 claim under this section unless, before the landlord filed an action
22 for possession or rent, the tenant had provided the landlord with
23 written notice under AS 34.03.160 specifying the acts and omissions
24 constituting the breach. If a counterclaim is made, the court shall
25 determine whether the defense is supported by the evidence and, if so,
26 may order that

27 (1) the periodic rent [IS TO] be reduced to reflect the
28 diminution in value of the dwelling unit during the period of noncom-
29 pliance;

1 (2) the action be continued for a reasonable time to enable
2 the landlord to cure the violation;

3 (3) the tenant pay into court all or part of the rent that
4 has accrued and that is continuing to accrue [THEREAFTER ACCRUING]; if
5 the violations have not been cured within six months, the court shall
6 enter judgment for the defendant and either refund to the defendant
7 all money deposited or use the money for the purpose of making the
8 dwelling fit for human habitation; if the violations have been cured,
9 the court shall determine the amount due to each party; the party to
10 whom a net amount is owed shall be paid first from the money paid into
11 the court, and the balance by the other party; if no rent remains due
12 after application of this section, judgment shall be entered for the
13 tenant in the action for possession;

14 (4) the tenant vacate the dwelling during the making of
15 necessary repairs, when the repairs cannot be made without vacation of
16 the premises, the tenant to be reinstated upon completion of the
17 repairs.

18 (b) In an action for rent where the tenant is not in possession,
19 the tenant may counterclaim if authorized under [AS PROVIDED IN] (a)
20 of this section but the tenant is not required to pay rent into court.

21 * Sec. 15. AS 34.03.220(a) is amended to read:

22 (a) Except as provided in this chapter, if there is a material
23 noncompliance by the tenant with the rental agreement or noncompliance
24 with AS 34.03.120 materially affecting health and safety, the landlord
25 may deliver a written notice to the tenant specifying the acts and
26 omissions constituting the breach and specifying that the rental
27 agreement will terminate upon a date not less than 20 days after
28 receipt of the notice. If the breach is not remedied in 10 days, the
29 rental agreement terminates as provided in the notice subject to the

1 provisions of this section. If a public utility providing electric-
2 ity, natural gas, or water to the premises occupied by the tenant
3 discontinues the service to the premises for failure to pay for the
4 utility service, the landlord may deliver a written notice to the
5 tenant advising that the tenancy will terminate three days after the
6 delivery of the notice. If the breach is remediable by repairs or the
7 payment of damages or otherwise and the tenant adequately remedies the
8 breach before the date specified in the notice, the rental agreement
9 will not terminate. In the absence of due care by the tenant, if
10 substantially the same act or omission that constituted a prior non-
11 compliance of which notice was given recurs within six months, the
12 landlord may terminate the rental agreement upon at least 10 days
13 written notice specifying the breach and the date of termination of
14 the rental agreement.

15 * Sec. 16. AS 34.03.220(b) is amended to read:

16 (b) If rent is unpaid when due and the tenant fails to pay rent
17 in full within 10 days after written notice by the landlord of nonpay-
18 ment and the intention to terminate the rental agreement if the rent
19 is not paid within that period of time, the tenancy terminates unless
20 the landlord agrees to allow the tenant to remain in occupancy, and
21 the landlord may terminate the rental agreement and immediately re-
22 cover possession of the rental unit. Only (; ONLY) one written notice
23 of default need be given the tenant by the landlord as to any one
24 default. A landlord who has given written notice to the tenant under
25 this subsection may accept a partial payment of the rent due under the
26 rental agreement and extend the date for the eviction accordingly.

27 * Sec. 17. AS 34.03.230(b) is amended to read:

28 (b) During an absence of the tenant in excess of seven days, the
29 landlord may enter the dwelling unit at times reasonably necessary as

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provided in AS 34.03.140. The landlord may reenter the dwelling unit and terminate the rental agreement when the rent has not been paid, the tenant failed to give the landlord notice of the absence, and the tenant

(1) in a week-to-week tenancy has been absent for three days:

(2) in a month-to-month tenancy has been absent for 10 days.

* Sec. 18. AS 34.03.260(a) is repealed and reenacted to read:

(a) Unless the tenant requests the landlord in writing to store property owned by the tenant before termination of a tenancy including but not limited to a termination after expiration of a lease or by surrender or abandonment of the premises and the landlord agrees, the landlord may consider personal property, including an automobile, left on the premises to be abandoned and give notice to the tenant demanding that the property be removed within the dates set out in the notice but not less than 15 days after delivery or mailing of the notice, and advising that if the property is not removed within the time specified, it may be sold at a public sale. The landlord may dispose of perishable commodities and personal property that is reasonably determined by the landlord to be valueless or of such little value that the cost of storing and conducting a public sale would probably exceed the amount that would be realized from the sale in any manner the landlord considers fit.

* Sec. 19. AS 34.03.260(b) is repealed and reenacted to read:

(b) A landlord who has agreed to store property of a tenant under this section shall store the property in a place of safekeeping and shall exercise reasonable care of the property, but is not responsible to the tenant for loss not caused by the landlord's deliberate

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or negligent act. If the landlord has agreed to store the property on the premises previously demised, the storage cost may not exceed the fair rental value of the premises. If the tenant's property is removed to a commercial storage company, the storage cost includes the actual charge for the storage and removal from the premises to the place of storage.

* Sec. 20. AS 34.03.260(c) is repealed and reenacted to read:

(c) If the landlord has not agreed to store the personal property of the tenant but the tenant makes response in writing that is timely under (a) of this section of an intention to remove the personal property from the premises but does not remove the property within the time specified in (a) of this section, it is conclusively presumed that the tenant has abandoned the property. If the tenant removes the property after the termination of the tenancy, the landlord is entitled to the cost of storage for the period the property has remained in the landlord's safekeeping.

* Sec. 21. AS 34.03.260(d) is amended to read:

(d) The landlord is not liable [MAY NOT BE HELD TO RESPOND! in damages in an action by a tenant claiming loss by reason of the landlord's storage [ELECTION, DESTRUCTION,] or disposition of property under this section. A [, OR SALE. IF, HOWEVER, THE] landlord who ~~deliberately~~ or negligently violates the provisions of this section [, THE LANDLORD] is liable for actual damages and penal damages of an amount not to exceed actual damages.

* Sec. 22. AS 34.20.090 is amended by adding a new subsection to read:

(d) A lease or a periodic tenancy created by the party or the assigns of the party executing the deed of trust continue according to the terms of the lease or periodic tenancy.

* Sec. 23. AS 42.30 is amended by adding a new section to read:

ARTICLE 6. RIGHTS OF LANDLORDS IN UTILITY SERVICE.

Sec. 42.30.400. RIGHTS OF LANDLORDS TO RECEIVE NOTICE OF THE DISCONTINUANCE OF SERVICE. A public utility that provides electricity, natural gas, or water to individual customers shall permit a landlord to register as the owner of an improvement served by the public utility. The public utility may not discontinue service to a tenant of the improvement until 10 days after the public utility has provided to the landlord written notice of an intention to discontinue service.

* Sec. 24. AS 44.23.020(b)(8) is amended to read:

(8) prepare, publish and revise as it becomes useful or necessary to do so an information pamphlet on landlord and tenant rights and the means of making complaints to appropriate public agencies concerning landlord and tenant rights [; THE CONTENTS OF THE PAMPHLET AND ANY REVISION SHALL BE APPROVED BY THE DEPARTMENT OF LAW, DIVISION OF CONSUMER PROTECTION, BEFORE PUBLICATION].

* Sec. 25. Rule 85(a)(3) of the Alaska Rules of Civil Procedure is amended to read:

(3) Continuances. No continuance shall be granted for a longer period than 2 days [.] unless the defendant applying for a continuance deposits with [THEREFOR SHALL GIVE AN UNDERTAKING TO THE ADVERSE PARTY, WITH SURETIES APPROVED BY! the court [, CONDITIONED TO THE PAYMENT OF] the rent that will [MAY] accrue during the next month if judgment is rendered against defendant.

* Sec. 26. Rule 85 of the Alaska Rules of Civil Procedure is amended by adding a new paragraph to read:

(c) Priority on the Calendar. The trial court shall give priority on the calendar to an action brought under the forcible entry or detainer provisions of law.

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* Sec. 27. Rule 8 of the Alaska District Court Rules of Civil Procedure is amended by adding a new paragraph to read:

(d) Notwithstanding (a) - (c) of this rule, when a claim for possession under AS 22.15.030(a)(6) does not exceed \$5,000 exclusive of costs, interest, and attorney fees, the district judge or magistrate shall hear the action as a small claim unless important or unusual points of law are involved.

* Sec. 28. The Legislative Affairs Agency shall make copies of the pamphlet prepared by the Department of Law under AS 44.23.020(b)(8), as amended in sec. 24 of this Act, available to members of the public at Legislative Information Offices throughout the state.

STATE OF ALASKA
THE LEGISLATURE

HOUSE OF REPRESENTATIVES
LEGISLATIVE COUNSEL
1000 W. WARD
JUNEAU, ALASKA 99801


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 28, 1989

SUBJECT: Landlord and tenant relationships, etc.
(CSHB 309(L&C))

TO: Representative Dave Donley
Chair, House Labor and Commerce Committee

FROM: Richard A. Bradley
Legislative Counsel 

You have requested a committee substitute for HB 309.

Your request asked for the addition of two ideas.

(1) You asked that a section be added to require new owners of rental properties to honor existing leases with the current tenants for at least three months after purchase and possession of the property. After we talked about it, you asked that existing month-to-month tenancies be protected for three months and that leases entered into within the three months preceding the purchase be protected.

When we talked, I regret that I had overlooked the existence of AS 40.17.080(b) (former AS 34.15.290); that section now provides:

(b) A conveyance of real property in the state, other than a lease for a term of less than one year, is void as against a subsequent innocent purchaser in good faith for valuable consideration of the property or a part of the property whose conveyance is first recorded. An unrecorded conveyance is valid as between the parties to it and as against one who has actual notice of it. In this subsection, "purchaser" includes a holder of a consensual interest in real property that secures payment or performance of an obligation.

We take this section to mean that existing law provides protection to tenants whose term is less than one year; if the

Representative Dave Donley
Page 2
December 28, 1989

lease is for one year or longer, the lease is valid according to its terms if it has been recorded or if the purchaser has "actual notice" of it. We understand, moreover, that on the sale of an apartment house, for example, the use of a warranty deed would oblige the grantor-warrantor to include encumbrances existing on the premises [see AS 34.15.030(b)(2)] and thus the purchaser will be on notice as to the encumbrances [leases or other tenancies] that exist on the property.

At that point, purchasers are protected; if long term leases at low rates exist, they are valid but the property is simply worth less.

Because this area was not unregulated, your proposal would require an amendment to this section. And because amendment of this section according to your request results in a decrease of protection as to existing leases and increased protection for month-to-month tenancies, there seems to be a different starting point than we had assumed and I have not provided a draft responsive to this point. You may wish to reconsider your request. Or I may have misunderstood your request.

(2) You also asked that we prepare an amendment that would require that tenants present their complaints about their rental property to the landlord in writing. To some extent, existing law now permits this. See AS 34.03.160.

I have proposed an amendment to AS 34.03.190. It provides that a tenant may not plead the acts and omissions of the landlord as a defense unless the written notice had been presented before the civil action for eviction had been filed.

If I may be of further assistance, please advise.

RAB:mi
wkmi6/007

Alaska State Legislature

Legislative Research Agency



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Phone: (907) 185-3881
Fax: (907) 183-3351

January 11, 1990

Referenced back up
material available
through Committee
Office (465-4954)

MEMORANDUM

TO: Representative Dave Donley

FROM: Linda J. Snow *LJ Snow*
Legislative Analyst

RE Interest Earned on Security Deposits
Research Request 90.152

You asked how other states address the question of interest earned on security deposits for rental housing. You also asked how interest earned on security deposits was handled in rental units owned or managed by a federal agency.

Statutes of Other States

As of 1987, sixteen states had statutes requiring that security deposits (and in some states, prepaid rent) be placed in interest-bearing accounts with the interest accruing to the tenant. A summary of state security deposit legislation compiled by the National Housing Law Project in 1987 is included as Attachment A. Eleven states specify an actual, or minimum rate of interest to accrue to tenants, ranging from 4 to 5.25 percent. Five states do not specify an interest rate, but three of the five require that landlords pay one percent less than the interest earned on the account (the one percent is generally considered an administrative fee). Florida and Pennsylvania allow deposit into a non-interest bearing account at the option of the landlord. Florida law allows the landlord an additional option of posting a surety bond in the amount of the security deposits and pre-paid rents held on behalf of the tenants, or \$50,000, whichever is less, and paying the tenant a five-percent simple interest.

Eight states require that security deposits be held a minimum length of time ranging from six months to two years before interest is paid. Four states require a minimum deposit before interest is paid, ranging from 50 to 100 dollars, or one month's rent. Illinois requires that interest accrue only to tenants of multi-family dwellings of 25 units or more, and the Kansas statute addresses only municipal housing authorities which are wholly or partially

Representative Dave Donley
January 11, 1990
Page 2

subsidized by the federal government. Some states require that accrued interest be paid to the tenant annually, while others require that it be paid within 30 days after the tenant quits the premises.

Included as Attachment B is the most current version of the *Uniform Residential Landlord and Tenant Act*, drafted by the National Conference of Commissioners on Uniform State Laws. This model law does not address the question of interest earned on security deposits or pre-paid rent.

Federally Owned or Managed Rental Units

The U.S. Department of Housing and Urban Development (HUD) has several housing programs that operate in Alaska, under various forms of management. In general, HUD policy conforms to state and local law. If state and local law do not address the question of interest accrued on security deposits and pre-paid rent, it is up to the discretion of the individual manager to decide how the matter is handled.¹ This is also the policy of both the Indian Housing Authority, which coordinates 14 regional housing authorities statewide, and the HUD public housing loan management program.

The Alaska State Housing Authority (ASHA) administers two programs for HUD (Conventional Public Housing and Section 8 New Construction). HUD policy guidelines for ASHA state that if ASHA elects to invest the deposits in interest-bearing accounts, it may either refund the interest to the tenant when the premises are vacated, or use the interest for tenant services or activities.² ASHA has made the policy decision to pay interest accrued on security deposits to the tenant under both programs that they administer for HUD.³

The federal government also has jurisdiction over military housing in Alaska. No rents or security deposits are collected for this type of housing, however.

¹Personal communication with Jim Snyder, Loan Management Program, U.S. Department of Housing and Urban Development, Anchorage Office, January 10, 1990.

²Memorandum from B. Elaine Smith, Controller, ASHA to Jo Ann Goyne, Director of Housing Management, ASHA and Barbara Morse-Quinn, Executive Director, ASHA, December 16, 1987, included in Attachment 3. Also see excerpt from HUD Handbook 7465.1 Rev., chapter 4, section 3, 4-14(c), and excerpt from HUD Handbook 4350.3, Change 1, section 2, 4-10(b), included in Attachment C.

³Memorandum from Barbara Morse-Quinn, Executive Director, ASHA to B. Elaine Smith, Controller, ASHA, December 29, 1987.

Representative Dave Donley
January 11, 1990
Page 3

I hope this information is useful to you. Listed in the attachments are many specific cites of state statutes, which are available in the legislative reference library. If you need further assistance in obtaining specific statutes, please feel free to contact this office.

Attachments

ATTACHMENT A

Summary of State Security Deposit Legislation

INDEX

Security Deposit Table	pp. 1-3
Maximum Security Deposit Amount	pp. 4-7
States Requiring Payments of Interest on Security Deposits	pp. 8-9
Maximum Return Times for Return of Security Deposits	pp. 10-11
Penalty for Landlord's Failure to Comply with Security Deposit Return Provision	pp. 12-15
Security Deposit Statute Citations	pp. 16-19

Information compiled by
Terence Houzell, Law Clerk
National Housing Law Project

3/19/87

STATE	INTEREST REQUIRED?	MAXIMUM SECURITY DEPOSIT AMOUNT?	MAXIMUM TIME FOR THE RETURN OF SECURITY DEPOSIT?	PENALTY FOR FAILURE TO TIMELY RETURN SECURITY DEPOSIT?
ALABAMA	NO SECURITY DEPOSIT STATUTE			
ALASKA	NO	YES	YES	YES
ARIZONA	NO	YES	YES	YES
ARKANSAS	NO	YES	YES	YES
CALIFORNIA	NO	YES	YES	YES
COLORADO	NO	NO	YES	YES
CONNECTICUT	YES	YES	YES	YES
DELAWARE	NO	YES	YES	YES
D. C.	YES	NO	YES	YES
FLORIDA	YES	NO	YES	NO
GEORGIA	NO	NO	YES	YES
HAWAII	NO	YES	YES	YES
IDAHO	YES	NO	YES	YES
ILLINOIS	YES	NO	YES	YES
INDIANA	NO SECURITY DEPOSIT STATUTE			
IOWA	NO	YES	YES	YES
KANSAS	YES	YES	YES	YES
KENTUCKY	NO	NO	NO	NO
LOUISIANA	NO	NO	YES	YES
MAINE	NO	YES	YES	YES
MARYLAND	YES	YES	YES	YES
MASS.	YES	YES	YES	YES
MICHIGAN	NO	YES	YES	YES

STATE	INTEREST REQUIRED?	MAXIMUM SECURITY DEPOSIT AMOUNT?	MAXIMUM TIME FOR THE RETURN OF SECURITY DEPOSIT?	PENALTY FOR FAILURE TO TIMELY RETURN SECURITY DEPOSIT?
MINNESOTA	YES	NO	YES	YES
MISSISSIPPI	NO SECURITY DEPOSIT STATUTE			
MISSOURI	NO	YES	YES	YES
MONTANA	NO	NO	YES	YES
NEBRASKA	NO	YES	YES	YES
NEVADA	NO	YES	YES	YES
N.H.	YES	YES	YES	YES
NEW JERSEY	YES	YES	YES	YES
NEW MEXICO	YES	YES	YES	YES
NEW YORK	YES	NO	NO	NO
N. CAROLINA	NO	NO	YES	YES
N. DAKOTA	YES	YES	YES	YES
OHIO	NO	NO	YES	YES
OKLAHOMA	NO	NO	YES	YES
OREGON	NO	NO	YES	YES
PENN.	YES	YES	YES	YES
RHODE ISL.	NO	YES	YES	YES
S. CAROLINA	NO	NO	YES	YES
S. DAKOTA	NO	YES	YES	YES
TENNESSEE	NO	NO	NO	YES
TEXAS	NO	NO	YES	YES
UTAH	NO	NO	YES	YES
VERMONT	NO	NO	YES	YES

STATE	INTEREST REQUIRED?	MAXIMUM SECURITY DEPOSIT AMOUNT?	MAXIMUM TIME FOR THE RETURN OF SECURITY DEPOSIT?	PENALTY FOR FAILURE TO TIMELY RETURN SECURITY DEPOSIT?
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VIRGINIA	YES	YES	YES	YES
WASHINGTON	NO	NO	YES	YES
VIRGINIA	NO SECURITY DEPOSIT STATUTE			
WISCONSIN	NO SECURITY DEPOSIT STATUTE			
WYOMING	NO SECURITY DEPOSIT STATUTE			

TATES WITH LAWS ON SECURITY DEPOSITS

- Alaska Alas. Stat., tit. 34, sec. .03.070 (1986)
(Code includes statutes and amendments enacted during the Regular Session of 1986)
- Arizona Ariz. Rev. Stat. Ann., sec. 33-1321 (1974)
(Code includes statutes and amendments enacted during the Second Regular Session of 1986)
- Arkansas Ark. Stat. Ann., secs. 50-525 to 50-530 (Michie Supp. 1986) (Code includes statutes and amendments enacted during the First Extraordinary Session of 1986)
- California Cal. Civ. Code, Sec. 1950.5 (West Supp. 1987) (Code includes statutes and amendments through 1986 of the 1985-1986 Regular Session)
- Colorado Colo. Rev. Stat. Ann., tit. 38, secs. 12-101 to 12-103 (1982) (Code includes statutes and amendments enacted during the 1986 Session)
- Connecticut Conn. Gen. Stat. Ann., sec. 47a-21 (West Supp. 1986) (Code includes statutes and amendments enacted during the January Regular, July Special and Veto Sessions of 1986)
- Delaware Del. Code Ann., tit. 25, sec. 5511 (1975 & Michie Supp. 1986) (Code includes statutes and amendments enacted during 1986 Session)
- D.C. 14 D.C. Municipal Regulations, sections 308-311
(Code includes statutes and amendments enacted during 1985 Session)
- Florida Fla. Stat. Ann., sec. 83.49 (West Supp. 1986)
(Code includes statutes and amendments enacted during the First Regular Session of 1986)
- Georgia Code of Ga. Ann., tit. 81, secs. 601 to 608
(Harrison Supp. 1986) (Code includes statutes and amendments enacted during the 1986 Regular Session)
- Hawaii Hawaii Rev. Stat., tit. 28, sec. 521-44 (1976)
(Code includes statutes and amendments enacted during the 1984 Regular and Special Sessions)
- Idaho Idaho Code, sec. 8-321 (1978) (Code includes statutes and amendments enacted during the 1986

INDIANA	NO SECURITY DEPOSIT STATUTE
IOWA	Sec. 582A.12 2 months' rent (no classification provided)
KANSAS	Ch. 58, sec. 2550 1 month's rent (unfurnished) 1.5 month's rent (furnished); .5 month's rent addi- tional if tenant allowed to keep or maintain pets (No classification provided)
KENTUCKY	Security deposit statute does not specify a maximum amount
LOUISIANA	Security deposit statute does not specify a maximum amount
MAINE	Tit. 14, sec. 8032 2 months' rent (means any advance or deposit, regardless of de- nomination, of money, the primary function of which is to secure the performance of the agree- ment)
MARYLAND	sec. 8-203 2 months' rent or \$50 whichever is greater (includes prepaid rent and any prepaid amount given to protect the landlord against non- payment of rent or damage to the leased premises)
MASSACHUSETTS	ch. 186, sec. 15B 1 month's rent (does not include prepaid last month's rent)
MICHIGAN	sec. 554.602 1.5 months' rent (any prepayment in excess of the first month rent)
MINNESOTA	Security deposit statute does not specify a maximum amount
MISSISSIPPI	NO SECURITY DEPOSIT STATUTE
MISSOURI	sec. 535.300 2 months' rent (No classification provided)
MONTANA	Security deposit statute does not specify a maximum amount
NEBRASKA	ch. 76, sec. 1416 1 month's rent (No classification provided)
NEVADA	sec. 118A.242 3 months' rent (includes last month's rent)
NEW HAMPSHIRE	sec. 540-A:5 1 month's rent or \$100, which- ever is greater (funds in excess of the monthly rent which are transferred from the tenant to the

landlord for any purpose)

NEW JERSEY	tit. 46, sec. 8-21.2 1.5 months' rent (No classification provided)
NEW MEXICO	ch. 47, sec. 8-18 1 month's rent if rental agreement duration less than one year
NEW YORK	Security deposit statute does not specify a maximum amount
NORTH CAROLINA	Security deposit statute does not specify a maximum amount
NORTH DAKOTA	ch. 47, sec. 16-07.1 1 month's rent (No classification provided)
OHIO	Security deposit statute does not specify a maximum amount
OKLAHOMA	Security deposit statute does not specify a maximum amount
OREGON	Security deposit statute does not specify a maximum amount
PENNSYLVANIA	tit. 68, sec. 250.511a 2 months' rent (No classification provided)
RHODE ISLAND	sec. 34-18-19 1 month's rent (No classification provided)
SOUTH CAROLINA	Security deposit statute does not specify a maximum amount
SOUTH DAKOTA	tit. 43, sec. 32-6.1 1 month's rent (any deposit of money whose function is to secure the performance of the agreement; a larger deposit may be agreed upon where special conditions pose a danger to maintenance of the premises)
TENNESSEE	Security deposit statute does not specify a maximum amount
TEXAS	Security deposit statute does not specify a maximum amount
UTAH	Security deposit statute does not specify a maximum amount
VERMONT	Security deposit statute does not specify a maximum amount

VIRGINIA

tit. 55, sec. 245.11 2 months' rent
(No classification provided)

WASHINGTON

Security deposit statute does not specify a
maximum amount

WEST VIRGINIA

No security deposit statute

WISCONSIN

No security deposit statute

WYOMING

No security deposit statute

STATES REQUIRING PAYMENT OF INTEREST ON SECURITY DEPOSITS

<u>State</u>	<u>Citation</u>	<u>Amount</u>
CONNECTICUT	47a-21(1)	6.25% per year
D.C.	311.1	not less than 5% per annum simple interest (n. 1)
FLORIDA	83.49(1)(b)	5% per year simple interest or 75% of the annualized average interest rate on the account or a non interest account at the option of the landlord
ILLINOIS	80-121	5% on deposits held more than 6 months (see n. 2)
KANSAS	58-2548	5% per year for tenants living in a municipal housing authority which is wholly or partially subsidized by the federal government
MARYLAND	Real Prop. 8-203(f)	4% simple interest on \$50 or more
MASSACHUSETTS	Ch. 186, Sec. 15B(2)(a) Sec. 15B(3)(b)	5% on last month's rent; 5% on security deposit if held at least one year
MINNESOTA	504.20, subd. 2	5.5% simple interest
NEW HAMPSHIRE	540-A:6	5% or the interest rate on regular savings accounts, whichever is larger (n. 3)
NEW JERSEY	46:8-19	1% less than amount earned on account (n. 4)
NEW MEXICO	47-8-18	interest equal to the passbook interest permitted in the state (n. 5)
NEW YORK	Gen. Oblig. Law 7-103(2)	1% less than amount earned on the account
NORTH DAKOTA	47-16-07.1	interest-bearing account with no percentage specified (n. 6)
OHIO	5321.16(A)	5% on deposits of more than one month's rent or \$50, if tenant in possession at least six months
PENNSYLVANIA	68-260.511b	1% less than amount earned on

account, if funds held more than two years; landlord can also deposit in a non-interest-bearing account

VIRGINIA

65-248.11(b)

5% on deposits held at least 13 months

1. 1 -- Interest not payable when duration of the tenancy is less than twelve months (sec. 311.2)
1. 2 -- The act applies only to lessors of real property containing 25 or more units.
1. 3 -- Applies to landlords who hold a security deposit for one year or longer
1. 4 -- If the landlord owns ten or more units, he must deposit the security deposit in an insured money market account, in which case he can either use 1% less than the interest rate or 12.5% of the account's earnings, whichever is larger.
1. 5 -- Applies only to deposits in excess of 1 month's rent
1. 6 -- Interest not required on occupancy less than nine months in duration

RATES SETTING MAXIMUM TIMES FOR RETURN OF DEPOSITS

ALABAMA	NO SECURITY DEPOSIT STATUTE	
ALASKA	34.03.070	30 days (n. 1)
ARIZONA	33-1321(C)	14 days
ARKANSAS	50-527(a)	30 days
CALIFORNIA	1850.5	2 weeks
COLORADO	38-12-103	1 month (n. 2)
CONNECTICUT	47a-21(d)(2)	30 days
DELAWARE	25-5511(3)(a)	15 days
D.C.	309.1, 308.2	45 days (n. 3)
FLORIDA	83.49	45 days
GEORGIA	61-805	1 month
HAWAII	521-44(c)	14 days
IDAHO	6-321	21 days (n. 4)
ILLINOIS	80, P. 101	30 days (n. 5)
INDIANA	NO SECURITY DEPOSIT STATUTE	
IOWA	582A.12(3)	30 days
KANSAS	58-2550(b)	14 days
KENTUCKY	NO TIME SET FORTH IN SECURITY DEPOSIT STATUTE	
LOUISIANA	9;3251(A)	1 month
MAINE	14-6033	30 days (n. 6)
MARYLAND	Real Prop. 8-203(f)	45 days
MASSACHUSETTS	Ch. 186 Sec 15B(4)	30 days
MICHIGAN	554.809	30 days
MINNESOTA	504.20	3 weeks
MISSISSIPPI	NO SECURITY DEPOSIT STATUTE	
MISSOURI	535.300	30 days
MONTANA	70-25-202	30 days
NEBRASKA	76-1416	14 days
NEVADA	118A.242	30 days
NEW HAMPSHIRE	540-A; 7	30 days
NEW JERSEY	46:8-21.1	30 days
NEW MEXICO	47-8-37	30 days
NEW YORK	NO TIME SET FORTH IN SECURITY DEPOSIT STATUTE	
NORTH CAROLINA	Ch. 42-52	30 days
NORTH DAKOTA	47-16-07.1	30 days
OHIO	5321.16	30 days
OKLAHOMA	41-115	30 days
OREGON	10:91.760 (7)	30 days
PENNSYLVANIA	68-250.512	30 days
RHODE ISLAND	34-18-18	20 days
SOUTH CAROLINA	27-40-410	30 days
SOUTH DAKOTA	43-32-24	2 weeks
TENNESSEE	NO TIME SET FORTH IN SECURITY DEPOSIT STATUTE	
TEXAS	Property 92.103	30 days
UTAH	57-17-3	30 days
VERMONT	9-4461	14 days
VIRGINIA	55-245.11	30 days
WASHINGTON	59.15.280	14 days
WEST VIRGINIA	NO SECURITY DEPOSIT STATUTE	

WISCONSIN
WYOMING

NO SECURITY DEPOSIT STATUTE
NO SECURITY DEPOSIT STATUTE

1. 1 -- 14 days if tenant gives 30 days notice of vacating
1. 2 -- a lease clause may permit a longer period, not to exceed two months
1. 3 -- 45 days if not withholding any part; if withholding any part, 30 days after notice given (notice must be given 45 days after the termination of the tenancy)
1. 4 -- a lease clause may permit a longer period, not to exceed 30 days
1. 5 -- Applies only to buildings with 10 or more units
1. 6 -- 21 days for month-to-month tenancies

'PENALTY FOR LANDLORD'S FAILURE TO COMPLY WITH SECURITY DEPOSIT RETURN PROVISION'

ALABAMA NO SECURITY DEPOSIT STATUTE

ALASKA sec. 34.03.080 (tenant may recover an amount not to exceed twice the actual amount withheld)

ARIZONA sec. 33-1321(D) (tenant may recover the money and property due and twice the amount wrongfully withheld)

ARKANSAS sec. 50-528 (tenant may recover the money and property due and twice the amount wrongfully withheld, costs, and reasonable attorney's fees)

CALIFORNIA sec. 1950.5 (bad faith claim or retention by landlord entitles tenant to damages not to exceed \$200, in addition to actual damages plus interest at the rate of 2% per month from the due date until paid)

COLORADO sec. 38-12-103(2), (3) (failure to comply works as a forfeiture of rights to withhold any portion; willful retention renders landlord liable twice the amount wrongfully withheld, reasonable attorney's fees, court costs)

CONNECTICUT sec. 47a-21(d)(2) (tenant may recover twice the amount wrongfully withheld)

DELAWARE sec. 5511(a) (failure to remit in 15 day entitles tenant to full security deposit; failure to remit in 30 days entitles tenant to twice the security deposit)

D.C. sec. 309.3 (tenant may recover the full security deposit including any interest)

FLORIDA no penalty provision provided in the statute

GEORGIA sec. 61-606 (tenant may recover the security deposit in full for non-compliance with notice requirements; three times the amount improperly withheld plus reasonable attorney's fees for failure to return the security deposit due)

HAWAII sec. 521-44(c) (tenant may recover the security deposit in full)

IDAHO sec. 8-320 (tenant may file an action for damages and specific performance)

ILLINOIS sec. 80. para. 101 (tenant may recover twice the amount of

the security deposit due; court costs; and reasonable attorney's fees)

INDIANA

NO SECURITY DEPOSIT STATUTE

IOWA

sec. 562A.12(4), (7) (tenant may recover the security deposit in full; bad faith retention entitles tenant to punitive damages not to exceed two hundred dollars in addition to actual damages)

KANSAS

ch. 58, sec. 2553 (tenant may recover the portion of the security due together damages in an amount equal to 1.5 the amount wrongfully withheld)

KENTUCKY

No penalty provision provided in the statute

LOUISIANA

sec. 3252 (wilful failure to comply entitles tenant to actual damages or two hundred dollars, whichever is greater; failure to remit within 30 days after a written demand for a refund shall constitute wilful failure)

MAINE

tit. 14, sec. 6033 (tenant may recover the security deposit in full; willful retention entitles tenant to twice the amount wrongfully withheld, court costs, attorney's fees)

MARYLAND

Real Property, sec. 8-203 (failure to send list of damages entitles tenant to full security deposit; failure to return security deposit entitles to an action for up to threefold of the withheld amount and reasonable attorney's fees)

MASSACHUSETTS

ch. 186, sec. 15B(6), (7) (tenant may recover the security deposit in full, willful retention entitles tenant to three times the security plus 5% interest from when payment due, court costs and attorney's fees)

MICHIGAN

ch. 554.611 (tenant may recover security deposit in full)

MINNESOTA

sec. 504.20 (tenant may recover the security deposit in full plus 5.5% interest and the amount wrongfully withheld plus 5.5% interest)

MISSISSIPPI

NO SECURITY DEPOSIT STATUTE

MISSOURI

sec. 535.300 (tenant may recover as damages not more than twice the amount wrongfully withheld by landlord)

MONTANA

tit. 70, secs. 25-204 and 25-205 (failure to send list of damages and cleaning charges

entitles tenant to full security deposit; failure to return security deposit entitles to an action for twice the withheld amount and reasonable attorney's fees)

NEBRASKA

ch. 78, sec. 1417 (tenant may recover the property and money due him and reasonable attorney's fees)

NEVADA

sec. 118A.242 (tenant entitled to an amount equal the entire deposit)

NEW HAMPSHIRE

ch. 540-A, sec. 8 (tenant may recover damages in an amount equal to twice the sum of the amount of the security deposit plus any interest)

NEW JERSEY

tit. 46, sec. 8-21.1 (tenant may recover double the amount due, court costs, reasonable attorney's fees at the discretion of the court)

NEW MEXICO

ch. 47, sec. 8-37 (security deposit in full, court costs, reasonable attorney's fees)

NEW YORK

art. 7, sec. 105 (failure to comply is a misdemeanor)

NORTH CAROLINA

sec. 42-56 (tenant may institute civil action to require the accounting of and the recovery of the balance of the deposit; may recover damages)

NORTH DAKOTA

ch. 47, sec. 16-07.2 (treble damages for any security deposit money withheld without reasonable justification)

OHIO

sec. 5321.16 (tenant may recover the property and and money due him, together with damages in an equal to the amount wrongfully withheld, and reasonable attorney's fees)

OKLAHOMA

tit. 41, sec. 115(E) (tenant may recover the security and damage deposit and prepaid rent, if any)

OREGON

tit. 10, sec. 91.760 (tenant may recover the property and money due in an amount equal to twice the amount: (a) withheld without written accounting; or withheld in bad faith)

PENNSYLVANIA

tit. 68, sec. 250.512 (failure to send list of damages entitles tenant to full security deposit plus interest; failure to return security deposit entitles to an action for twice the wrongfully withheld amount)

RHODE ISLAND	sec. 34-18-13 (tenant may recover the amount due him together with damages in an amount equal to twice the amount wrongfully withheld, and reasonable attorney's fees)
NORTH CAROLINA	tit. 27, sec. 40-410 (tenant may recover the property and money in an amount equal to three times the amount wrongfully withheld)
NORTH DAKOTA	tit. 43, sec. 32-24 (security deposit in full; willful retention entitles tenant to punitive damages not to exceed two hundred dollars)
TENNESSEE	sec. 86-28-501 (damages, injunctive relief, and reasonable attorney's fees upon giving 14 days' written notice)
TEXAS	sec. 92-109 (bad faith retention of security deposit entitles tenant to \$100, three times the portion of the deposit wrongfully withheld; failure to provide a written description and itemized list entitles tenant to a full security deposit and reasonable attorney's fees)
UTAH	tit. 57, sec. 17-3 (failure to provide notice entitles tenant to a full deposit, a civil penalty of a hundred dollars, and court costs)
VERMONT	tit. 9, sec. 4461 (security deposit in full; willful retention entitles tenant to twice the amount wrongfully withheld, court costs, attorney's fees)
VIRGINIA	tit. 55, sec. 248.11 (the security deposit due, actual damages, and reasonable attorney's fees)
WASHINGTON	tit. 59, ch. 18, secs. 280 to 285 (security deposit in full; willful retention may, in the court's discretion, entitle the tenant to up to twice the amount of the deposit)
WEST VIRGINIA	NO SECURITY DEPOSIT STATUTE
WISCONSIN	NO SECURITY DEPOSIT STATUTE
WYOMING	NO SECURITY DEPOSIT STATUTE

3-9-87

STATES WITH LAWS ON SECURITY DEPOSITS

- Alaska Alas. Stat., tit. 34, sec. .03.070 (1986)
(Code includes statutes and amendments enacted during the Regular Session of 1986)
- Arizona Ariz. Rev. Stat. Ann., sec. 33-1321 (1974)
(Code includes statutes and amendments enacted during the Second Regular Session of 1986)
- Arkansas Ark. Stat. Ann., secs. 60-626 to 60-630 (Michie Supp. 1986) (Code includes statutes and amendments enacted during the First Extraordinary Session of 1986)
- California Cal. Civ. Code, Sec. 1960.5 (West Supp. 1987) (Code includes statutes and amendments through 1986 of the 1985-1986 Regular Session)
- Colorado Colo. Rev. Stat. Ann., tit. 38, secs. 12-101 to 12-103 (1982) (Code includes statutes and amendments enacted during the 1986 Session)
- Connecticut Conn. Gen. Stat. Ann., sec. 47a-21 (West Supp. 1986) (Code includes statutes and amendments enacted during the January Regular, July Special and Veto Sessions of 1986)
- Delaware Del. Code Ann., tit. 25, sec. 5511 (1975 & Michie Supp. 1986) (Code includes statutes and amendments enacted during 1986 Session)
- D.C. 14 D.C. Municipal Regulations, sections 308-311
(Code includes statutes and amendments enacted during 1986 Session)
- Florida Fla. Stat. Ann., sec. 83.49 (West Supp. 1986)
(Code includes statutes and amendments enacted during the First Regular Session of 1986)
- Georgia Code of Ga. Ann., tit. 61, secs. 601 to 608
(Harrison Supp. 1986) (Code includes statutes and amendments enacted during the 1986 Regular Session)
- Hawaii Hawaii Rev. Stat., tit. 28, sec. 521-44 (1976)
(Code includes statutes and amendments enacted during the 1984 Regular and Special Sessions)
- Idaho Idaho Code, sec. 8-321 (1979) (Code includes statutes and amendments enacted during the 1986

Regular Session)

- Illinois Ill. Rev. Stat. Ann., ch. 80, paras. 101, 121, 122 (1987) (Code includes statutes and amendments enacted during the 1986 Regular Session)
- Iowa Iowa Code Ann., sec. 582A.12 (West Supp. 1986) (Code includes statutes and amendments enacted during the 1986 Regular Session)
- Kansas Kan. Stat. Ann., ch 55, sec. 2550 (1983) (Code includes statutes and amendments enacted during the 1986 Session)
- Kentucky Ky. Rev. Stat., ch. 383.680 (Michie Supp. 1986) (Code includes statutes and amendments enacted during the 1986 Regular Session)
- Louisiana La. Rev. Stat. Ann., secs. 9-3251 to 9-3254 (1983) (Code includes statutes and amendments enacted during the 1986 Regular Session)
- Maine Me. Rev. Stat. Ann., tit. 14, secs. 6031 to 6038 (1980 & West Supp. 1986) (Code includes statutes and amendments enacted during the Second Special Session of 1986)
- Maryland Md. Real Property Ann. Code, sec. 8-203 (1981) (Code includes statutes and amendments enacted during the 1986 Session)
- Massachusetts Mass. Gen. Laws Ann., ch. 186, sec. 15B (West Supp. 1986) (Code includes statutes and amendments enacted during the 1986 Regular Session)
- Michigan Mich. Comp. Laws Ann., sec. 554.601 to 554.613 (West Supp. 1986) (Code includes statutes and amendments enacted during the 1986 Regular Session)
- Minnesota Minn. Stat. Ann., sec. 504.20 (West Supp. 1987) (Code includes statutes and amendments enacted during the 1986 Regular and First Special Session)
- Missouri Ann. Mo. Stat., sec. 535.300 (West Supp. 1987) (Code includes statutes and amendments enacted during the Second Regular Session of 1986)
- Montana Mont. Code Ann., tit. 70, secs. 25-201 to 25-206 (1985) (Code includes statutes and amendments enacted during the March 1986 Special Session)

3-4-87

Nebraska Rev. Stat. of Neb., ch. 78, sec. 1418 (1981)
(Code includes statutes and amendments enacted during the First Session of 1985)

Nevada Nev. Rev. Stat. Ann., secs. 118A-240 to 118A-260 (1988) (Code includes statutes and amendments enacted during the 1985 Session)

New Hampshire N.H. Rev. Stat. Ann., ch. 540-A, secs. 5-8 (Equity Supp. 1988) (Code includes statutes and amendments enacted during the 1985 Session)

New Jersey N.J. Stat. Ann., tit. 4B, secs. 8-18 to 8-28 (West Supp. 1986) (Code includes statutes and amendments enacted during the 1985 Regular Session)

New Mexico N.M. Stat. Ann., ch. 47, sec. 8-18 (1978 & West Supp. 1986) (Code includes statutes and amendments enacted during the 1985 Regular Session)

New York N.Y. Gen. Oblig. Law, Secs. 7-103, 7-105 (West Supp. 1987) (Code includes statutes and amendments enacted during the 1985 Session)

North Carolina Gen. Stat. of N.C., ch. 42, secs. 50 to 56 (1984) (Code includes statutes and amendments enacted during the 1986 Regular Session)

North Dakota N.D. Century Code Ann., ch. 47, sec. 18-07.1 (Smith Supp. 1985) (Code includes statutes and amendments enacted during the 1985 Session)

Ohio Ohio Rev. Code Ann., tit. 53, sec. 5321.18 (1981) (Code includes statutes and amendments enacted during the 1985 Session)

Oklahoma Okla. Stat. Ann., tit. 41, sec 115 (1986) (Code includes statutes and amendments enacted during the Second Regular Session of 1986)

Oregon Or. Rev. Stat. Ann., tit. 10, sec. 81.780 (Butterworth Supp. 1986) (Code includes statutes and amendments enacted during the 1985 session)

Pennsylvania Pa. Stat. Ann., tit. 68, Secs. 250.511 and 250.512 (West Supp. 1986) (Code includes statutes and amendments enacted during the 1985 Regular Session)

Rhode Island Gen. Laws Ann. Of R.I., sec. 34-18-18 (West Supp. 1986) (Code includes statutes and amendments enacted during the 1985 Session)

uth Carolina Code of Laws of S.C. Ann., tit. 27, sec 40-410
(Lawyers Co-op 1886) (Code includes statutes and
amendments enacted during the 1886 Session)

uth Dakota S.D. Codified Laws Ann., tit. 43, secs. 32-6.1,
32-32-24 (1883 & Michie Supp. 1886) (Code includes
statutes and amendments enacted during the 1886
Session)

ennessee. Tenn. Code Ann., sec. 86-28-301 (Michie Supp.
1986) (Code includes statutes and amendments en-
acted during the 1886 Session)

xas Tex. Property Code Ann., secs. 82-101 to 82-108
(1984) (Code includes statutes and amendments en-
acted during the Third Session of 1886)

sh Utah Code Ann., tit. 57, ch. 17, secs. 1-6
(1986) (Code includes statutes and amendments en-
acted during the 1986 General Session and the Se-
cond and Third Special Session)

rmont Vt. Stat. Ann., tit. 8, sec. 4461 (Equity Supp.
1986) (Code includes statutes and amendments en-
acted during the 1886 Session)

rginia Va. Code Ann., tit. 55, sec. 246.11 (1986)
(Code includes statutes and amendments enacted
during the 1986 Session)

shington Rev. Code of Wash. Ann., tit. 59, ch 18,
secs. 260 to 285 (West Supp. 1987) (Code includes
statutes and amendments enacted during the 1986
Regular Session)

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

HOUSE BILL NO. 309

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the landlord and tenant relation-
7 ship; relating to tenancies in property secured by
8 financial obligations; relating to the information
9 pamphlet on landlord and tenant rights and its avail-
10 ability; and amending Rule 85 of the Alaska Rules of
11 Civil Procedure and Rule 8 of the Alaska District
12 Court Rules of Civil Procedure."

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

14 * Section 1. AS 09.45.070 is amended by adding a new subsection to
15 read:

16 (c) The court shall give priority on the calendar to an action
17 filed under AS 09.45.070 - 09.45.160.

18 * Sec. 2. AS 09.45.100 is amended to read:

19 Sec. 09.45.100. REQUISITES OF NOTICE TO QUIT. A notice to quit
20 shall be in writing and shall be served upon the tenant or person in
21 possession by being delivered to the tenant or person or left at the
22 premises in case of absence from the premises, or the notice may be
23 sent by registered or certified mail, in which case an additional
24 three days shall be added to the notice period required under AS 09.-
25 45.110 [10 DAYS].

26 * Sec. 3. AS 09.45.110 is amended to read:

27 Sec. 09.45.110. PERIOD BETWEEN SERVICE OF NOTICE AND ACTION
28 BROUGHT. An action for the recovery of the possession of the premises
29 may be maintained in the cases specified in AS 09.45.090(2) when the

1 notice to quit has been served upon the tenant or person in possession
2 for the period of seven [10] days before the commencement of the
3 action. If an action for the recovery of the premises was filed
4 against the tenant within the previous 12 months, the notice to quit
5 need be served upon the tenant or the person in possession only three
6 days before the commencement of the action. If [UNLESS] the leasing
7 or occupation is for the purpose of farming or agriculture, [IN WHICH
8 CASE] the notice shall be served 90 days before the commencement of
9 the action.

10 * Sec. 4. AS 09.45.120 is amended to read:

11 Sec. 09.45.120. SUMMONS AND CONTINUANCE. Summons in actions for
12 forcible entry and detainer shall be served not less than two [NOR
13 MORE THAN FOUR] days before the date of trial. A [NO] continuance may
14 not [SHALL] be granted for a longer period than two court days unless
15 the defendant applying for the continuance deposits with [GIVES AN
16 UNDERTAKING TO THE ADVERSE PARTY, WITH SURETIES APPROVED BY] the court
17 [CONDITIONED TO THE PAYMENT OF] the rent that will [MAY] accrue during
18 the next month if judgment is rendered against the defendant.

19 * Sec. 5. AS 09.45.130 is amended to read:

20 Sec. 09.45.130. ACTION AGAINST PERSONS PAYING RENT IN ADVANCE.
21 The service of a notice to quit upon a tenant or person in possession
22 does not authorize an action to be maintained against the tenant or
23 person for the possession of the premises until the expiration of the
24 period for which that tenant or person may have paid rent for the
25 premises in advance. To authorize the [AN] action against a tenant or
26 person in possession who has paid rent in advance, the [A] notice must
27 be given under AS 09.45.110 [AT LEAST 10 DAYS] before the date the
28 rent is due again [IN CASE OF A MONTH-TO-MONTH TENANCY OR AT LEAST
29 THREE DAYS BEFORE IN THE CASE OF A WEEK-TO-WEEK TENANCY].

1 * Sec. 6. AS 22.15.040(a) is amended to read:

2 (a) When a claim for relief does not exceed \$5,000 exclusive of
3 costs, interest, and attorney fees, and request is so made, the dis-
4 trict judge or magistrate shall hear the action as a small claim
5 unless important or unusual points of law are involved. When a claim
6 for possession under AS 22.15.030(a)(6) does not exceed \$5,000 exclu-
7 sive of costs, interest, and attorney fees, the district judge or
8 magistrate shall hear the action as a small claim unless important or
9 unusual points of law are involved. The supreme court shall prescribe
10 the procedural rules and standard forms to assure simplicity and the
11 expeditious handling of small claims.

12 * Sec. 7. AS 34.03.010 is amended by adding a new subsection to read:

13 (c) A person who has not paid rent in full for the first rental
14 period under a rental agreement does not acquire rights under this
15 chapter. A person whose right to the use of premises depends upon
16 rights acquired by another person does not acquire rights unless the
17 other person has acquired rights under this chapter.

18 * Sec. 8. AS 34.03.070(a) is amended to read:

19 (a) A landlord may not demand or receive prepaid rent or a
20 security deposit, however denominated, in an amount or value in excess
21 of three [TWO] months' periodic rent.

22 * Sec. 9. AS 34.03.070(g) is amended to read:

23 (g) If the landlord or tenant gives notice that complies with
24 AS 34.03.290, the landlord shall mail the written notice and refund
25 required by (b) of this section within 14 days after the tenancy is
26 terminated and possession is delivered by the tenant to the address
27 supplied by the tenant. If the tenant does not give notice that
28 complies with AS 34.03.290, the landlord shall mail the written notice
29 and refund required by (b) of this section within 30 days after the

1 tenancy is terminated, possession is delivered by the tenant, or the
2 landlord becomes aware that the dwelling unit is abandoned. If the
3 landlord does not know the mailing address of the tenant, but knows or
4 has reason to know how to contact the tenant to give the notice re-
5 quired by (b) of this section, the landlord shall make a reasonable
6 effort to deliver the notice and refund to the tenant. If the tenant
7 does not provide the landlord with an address within 90 days after the
8 tenancy is terminated and if the landlord is unable to contact the
9 tenant, the landlord may retain the amount not applied under (b) of
10 this section.

11 * Sec. 10. AS 34.03.100(c) is amended to read:

12 (c) The landlord and tenant of a one- or two-family residence
13 may agree in writing that the tenant perform the landlord's duties
14 specified in (a)(3), (4) [(a)(4)], (5), (6), and (7) of this section.
15 The tenant may not agree to maintain elevators in good and safe work-
16 ing order. They may also agree in writing that the tenant perform
17 specified repairs, maintenance tasks, alterations, and remodeling.
18 Agreements are allowed under this subsection only if the transaction
19 is entered into in good faith and not for the purpose of evading the
20 obligations of the landlord.

21 * Sec. 11. AS 34.03.140(a) is amended to read:

22 (a) The tenant may not unreasonably withhold consent to the
23 landlord to enter into the dwelling unit in order to inspect the
24 premises, make necessary or agreed repairs, decorations, alterations,
25 or improvements, supply necessary or agreed services, remove property
26 belonging to the landlord, or exhibit the dwelling unit to prospective
27 or actual purchasers, mortgagors, tenants, workers or contractors.

28 * Sec. 12. AS 34.03.140(c) is amended to read:

29 (c) A landlord may not abuse the right of access or use it to

1 harass the tenant. Except in case of emergency or if it is imprac-
2 ticable to do so, the landlord shall, when possible, give the tenant
3 at least 24 hours notice of intention to enter and may enter only at
4 reasonable times and with the tenant's consent.

5 * Sec. 13. AS 34.03 is amended by adding a new section to article 4 to
6 read:

7 Sec. 34.03.155. ADDITIONAL TENANT OBLIGATIONS. If a landlord
8 defaults on a financial obligation that secures property occupied by a
9 tenant of the landlord, the holder of the financial obligation may
10 advise the landlord and the tenant of the landlord to make payments
11 otherwise due to the landlord directly to the holder of the financial
12 obligation for the benefit of the landlord and holder. A payment made
13 under this section to the holder of the financial obligation dis-
14 charges to that extent the debt of tenant to the landlord.

15 * Sec. 14. AS 34.03.220(a) is amended to read:

16 (a) Except as provided in this chapter, if there is a material
17 noncompliance by the tenant with the rental agreement or noncompliance
18 with AS 34.03.120 materially affecting health and safety, the landlord
19 may deliver a written notice to the tenant specifying the acts and
20 omissions constituting the breach and specifying that the rental
21 agreement will terminate upon a date not less than 20 days after
22 receipt of the notice. If the breach is not remedied in 10 days, the
23 rental agreement terminates as provided in the notice subject to the
24 provisions of this section. If a public utility providing electric-
25 ity, natural gas, or water to the premises occupied by the tenant
26 discontinues the service to the premises for failure to pay for the
27 utility service, the landlord may deliver a written notice to the
28 tenant advising that the tenancy will terminate three days after the
29 delivery of the notice. If the breach is remediable by repairs or the

1 payment of damages or otherwise and the tenant adequately remedies the
2 breach before the date specified in the notice, the rental agreement
3 will not terminate. In the absence of due care by the tenant, if
4 substantially the same act or omission that constituted a prior non-
5 compliance of which notice was given recurs within six months, the
6 landlord may terminate the rental agreement upon at least 10 days
7 written notice specifying the breach and the date of termination of
8 the rental agreement.

9 * Sec. 15. AS 34.03.220(b) is amended to read:

10 (b) If rent is unpaid when due and the tenant fails to pay rent
11 in full within 10 days after written notice by the landlord of nonpay-
12 ment and the intention to terminate the rental agreement if the rent
13 is not paid within that period of time, the tenancy terminates unless
14 the landlord agrees to allow the tenant to remain in occupancy, and
15 the landlord may terminate the rental agreement and immediately re-
16 cover possession of the rental unit. Only [; ONLY] one written notice
17 of default need be given the tenant by the landlord as to any one
18 default. A landlord who has given written notice to the tenant under
19 this subsection may accept a partial payment of the rent due under the
20 rental agreement and extend the date for the eviction accordingly.

21 * Sec. 16. AS 34.03.230(b) is amended to read:

22 (b) During an absence of the tenant in excess of seven days, the
23 landlord may enter the dwelling unit at times reasonably necessary as
24 provided in AS 34.03.140. The landlord may reenter the dwelling unit
25 and terminate the rental agreement when the rent has not been paid,
26 the tenant failed to give the landlord notice of the absence, and the
27 tenant
28 (1) in a week-to-week tenancy has been absent for three
29 days;

1 (2) in a month-to-month tenancy has been absent for 10
2 days.

3 * Sec. 17. AS 34.03.260(a) is repealed and reenacted to read:

4 (a) Unless the tenant requests the landlord in writing to store
5 property owned by the tenant before termination of a tenancy including
6 but not limited to a termination after expiration of a lease or by
7 surrender or abandonment of the premises and the landlord agrees, the
8 landlord may consider personal property, including an automobile, left
9 on the premises to be abandoned and give notice to the tenant demand-
10 ing that the property be removed within the dates set out in the
11 notice but not less than 15 days after delivery or mailing of the
12 notice, and advising that if the property is not removed within the
13 time specified, it may be sold at a public sale. The landlord may
14 dispose of perishable commodities and personal property that is rea-
15 sonably determined by the landlord to be valueless or of such little
16 value that the cost of storing and conducting a public sale would
17 probably exceed the amount that would be realized from the sale in any
18 manner the landlord considers fit.

19 * Sec. 18. AS 34.03.260(b) is repealed and reenacted to read:

20 (b) A landlord who has agreed to store property of a tenant
21 under this section shall store the property in a place of safekeeping
22 and shall exercise reasonable care of the property, but is not respon-
23 sible to the tenant for loss not caused by the landlord's deliberate
24 or negligent act. If the landlord has agreed to store the property on
25 the premises previously demised, the storage cost may not exceed the
26 fair rental value of the premises. If the tenant's property is re-
27 moved to a commercial storage company, the storage cost includes the
28 actual charge for the storage and removal from the premises to the
29 place of storage.

1 * Sec. 19. AS 34.03.260(c) is repealed and reenacted to read:

2 (c) If the landlord has not agreed to store the personal proper-
3 ty of the tenant but the tenant makes response in writing that is
4 timely under (a) of this section of an intention to remove the per-
5 sonal property from the premises but does not remove the property
6 within the time specified in (a) of this section, it is conclusively
7 presumed that the tenant has abandoned the property. If the tenant
8 removes the property after the termination of the tenancy, the land-
9 lord is entitled to the cost of storage for the period the property
10 has remained in the landlord's safekeeping.

11 * Sec. 20. AS 34.03.260(d) is amended to read:

12 (d) The landlord is not liable [MAY NOT BE HELD TO RESPOND] in
13 damages in an action by a tenant claiming loss by reason of the land-
14 lord's storage [ELECTION, DESTRUCTION,] or disposition of property
15 under this section. A [, OR SALE. IF, HOWEVER, THE] landlord who
16 deliberately or negligently violates the provisions of this section [,
17 THE LANDLORD] is liable for actual damages and penal damages of an
18 amount not to exceed actual damages.

19 * Sec. 21. AS 34.20.090 is amended by adding a new subsection to read:

20 (d) A lease or a periodic tenancy created by the party or the
21 assigns of the party executing the deed of trust continue according to
22 the terms of the lease or periodic tenancy.

23 * Sec. 22. AS 42.30 is amended by adding a new section to read:

24 ARTICLE 6. RIGHTS OF LANDLORDS IN UTILITY SERVICE.

25 Sec. 42.30.400. RIGHTS OF LANDLORDS TO RECEIVE NOTICE OF THE
26 DISCONTINUANCE OF SERVICE. A public utility that provides electric-
27 ity, natural gas, or water to individual customers shall permit a
28 landlord to register as the owner of an improvement served by the
29 public utility. The public utility may not discontinue service to a

1 tenant of the improvement until 10 days after the public utility has
2 provided to the landlord written notice of an intention to discontinue
3 service.

4 * Sec. 23. AS 44.23.020(b)(8) is amended to read:

5 (8) prepare, publish and revise as it becomes useful or
6 necessary to do so an information pamphlet on landlord and tenant
7 rights and the means of making complaints to appropriate public agen-
8 cies concerning landlord and tenant rights [; THE CONTENTS OF THE
9 PAMPHLET AND ANY REVISION SHALL BE APPROVED BY THE DEPARTMENT OF LAW,
10 DIVISION OF CONSUMER PROTECTION, BEFORE PUBLICATION].

11 * Sec. 24. Rule 85(a)(3) of the Alaska Rules of Civil Procedure is
12 amended to read:

13 (3) Continuances. No continuance shall be granted for a
14 longer period than 2 days [,] unless the defendant applying for a
15 continuance deposits with [THEREFOR SHALL GIVE AN UNDERTAKING TO THE
16 ADVERSE PARTY, WITH SURETIES APPROVED BY] the court [, CONDITIONED TO
17 THE PAYMENT OF] the rent that will [MAY] accrue during the next month
18 if judgment is rendered against defendant.

19 * Sec. 25. Rule 85 of the Alaska Rules of Civil Procedure is amended by
20 adding a new paragraph to read:

21 (c) Priority on the Calendar. The trial court shall give pri-
22 ority on the calendar to an action brought under the forcible entry or
23 detainer provisions of law.

24 * Sec. 26. Rule 8 of the Alaska District Court Rules of Civil Procedure
25 is amended by adding a new paragraph to read:

26 (d) Notwithstanding (a) - (c) of this rule, when a claim for
27 possession under AS 22.15.030(a)(6) does not exceed \$5,000 exclusive
28 of costs, interest, and attorney fees, the district judge or magis-
29 trate shall hear the action as a small claim unless important or

1 unusual points of law are involved.

2 * Sec. 27. The Legislative Affairs Agency shall make copies of the
3 pamphlet prepared by the Department of Law under AS 44.23.020(b)(8), as
4 amended in sec. 23 of this Act, available to members of the public at
5 Legislative Information Offices throughout the state.

6

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE COUNCIL
ALASKA
1989


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 23, 1989

SUBJECT: Landlord and tenant
(Work Order No. 6-0846)

TO: Representative Dave Donley

FROM: Richard A. Bradley
Legislative Counsel 

Michael Ward has requested a revision of the draft.

Several brief observations might be in order.

In the amendment to AS 34.03.100(c), you asked that the provision be amended to prevent the assumption by the tenant of maintenance of elevators. I have added such a provision. Note, however, that the agreement by the tenant is only appropriate (under AS 34.03.100(c)) if the agreement occurs within a "one- or two- family residence". Not too many of those will have elevators.

I have added "when possible" to the provisions of AS 34.03.140(c). The amendment is probably unnecessary since the existing language of the section provides an escape "in case of emergency or if it is impractical" to provide the notice.

Regarding the amendment to AS 34.03.230(b), I am concerned that "presumptions" cloud the situation. Please review my language; I believe I have achieved your goal.

I have added "water" in the two places requested, the amendment to AS 34.03.220(a) and Sec. 42.30.400. The alternative to the increasing list is simply to deal generically with services from public utilities.

Finally, you requested a possible amendment that would deal with the situation where the landlord of rented premises has defaulted to the mortgagee bank and disappears from the scene; the tenant is unaware of the identity of the bank and uncertain of his responsibilities. While these relation-

Representative Dave Donley
Page 2
March 23, 1989

ships may be complicated because of the varying fact patterns possible, I suggest:

"* Sec. . AS 34.03 is amended by adding a new section to Article 5 to read:

Sec. 34.03.155. ADDITIONAL TENANT OBLIGATIONS. If a landlord defaults on a financial obligation that secures property occupied by a tenant of the landlord, the holder of the financial obligation may advise the tenant of the landlord to make payments otherwise due to the landlord directly to the holder of the financial obligation for the benefit of the landlord and holder.

If I may be of further assistance, please advise.

RAB:gc
WKG8/061

STEVE COWPER, GOVERNOR

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

March 17, 1989

REPLY TO

XX

1031 W 4th SUITE 110
ANCHORAGE ALASKA 99501
PHONE (907) 263-0428

276-3550
1st INTERNATIONAL CENTER
100 CUSHMAN SUITE 400
FAIRBANKS ALASKA 99701
PHONE (907) 456-2548

S S FULLER BLDG
4th & HARRIS SUITE 214
P O BOX K
JUNEAU ALASKA 99801
PHONE (907) 485-3882

STATE COURTHOUSE ROOM 28
P O BOX 871
VALDEZ ALASKA 99686
PHONE (907) 835-2482

Honorable Dave Donley
Chairman, Committee on Labor and Commerce
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Proposed amendments to landlord-tenant laws

Dear Representative Donley:

Thank you for providing the opportunity to comment on proposed amendments to the landlord-tenant law at last week's committee work session. As you requested, I am supplementing my oral comments with this letter.

In the course of hearing complaints and inquiries to the Consumer Protection Section from numerous landlords and tenants, and in the course of preparing to revise the section's booklet explaining Alaska's landlord-tenant law (a copy of which is enclosed for your reference), we have identified several issues that might benefit from legislative clarification. Consequently, if your committee does decide to proceed with amendments to the relevant landlord-tenant laws, it might wish to consider including additional amendments that would address these issues.

1. Problems Relating to the Landlord's Default under a Mortgage (Deed of Trust)

Typically, deeds of trust give the lender the right to collect rents upon the borrower's default, and in the current real estate market many tenants find themselves facing demands for payment of rent to the lender. Unfortunately, in some cases the landlord also continues to demand payment of rent, threatening eviction if it is paid to anyone but the landlord. This of course places the tenant in a very uncomfortable position, because if the tenant pays a person who is not legally entitled to collect the rents, the tenant will still owe the rent to the other party. Tenants usually are not in a position to hire an attorney to get legal advice in such situations.

One possible remedy would be to provide for an informal sort of "interpleader" procedure in small claims court, whereby a tenant faced with conflicting demands for payment of rent could pay the rent into the court registry and notify the other

parties, who would then be left to fight it out between themselves. Such payment would be a defense to an eviction action for nonpayment of rent.

Another problem frequently encountered by tenants in today's market occurs when the property has gone through a foreclosure sale. Often the purchaser (generally speaking the lender) wants the property to be vacated and will sometimes give the tenant only 10 days notice to vacate, presumably in accordance with AS 09.45.110 or 09.45.130. In the usual case of a month-to-month tenancy, although AS 09.45.130 will prevent an eviction action during the month for which rent has been paid in advance, the lenders apparently take the position that the tenant's rights in the property have been extinguished by the foreclosure sale, and that pursuant to AS 34.20.090(b) the lender is "entitled to the possession of the premises described in the deed as against . . . any other person [such as a tenant] claiming by, through or under [the party executing the deed of trust]."

I am not aware of Alaska case law deciding whether a month-to-month tenant continues to have the right to a 30-day notice even after foreclosure. In some states with "anti-eviction statutes" that essentially prohibit termination of tenancies except for cause, courts have held that tenants' rights thereunder continue in effect even after foreclosure; in other states the opposite rule is recognized.

One way to clarify the law in Alaska would be to provide by statute that the notice requirement for terminating a periodic tenancy remains in effect even after foreclosure of the landlord's interest.

2. Abandoned Property

AS 34.03.260 (both in its current form and under the proposed amendments) provides for public sale of certain abandoned property. However, the statute does not expressly state what the landlord should or may do with the proceeds of the sale. AS 34.03.260(e) incorporates the notice provision of the statute governing execution sales, and by analogy to such sales the tenant would presumably be entitled to any surplus over the landlord's costs. However, execution sales are not a wholly comparable situation because of the role of the court, service of process, and so on. Moreover, what if the landlord attempts to pay the surplus to the tenant but the tenant cannot be located? The surplus funds in that situation might be considered unclaimed intangible property under AS 34.45.110, in which case the

landlord would apparently have to pay it to the Department of Revenue after five years.

Because of the uncertainty surrounding the landlord's obligation in this area, legislative clarification might be helpful.

3. Late Charges

The current act does not address the question of late charges, but some landlords do assess such charges, sometimes at a very substantial rate. In a 1985 general business advisory, not directed at residential tenancies, our office has previously cautioned that late charges might be considered interest subject to the usury laws, but to our knowledge this issue has not been decided by the courts. Nor is it clear whether late charges of any amount are permissible under the landlord-tenant act, although no express prohibition appears in the act. To clarify this issue the legislature could provide either that no late charges may be assessed or that late charges up to a certain reasonable amount (e.g., four or five percent of the late rental payment) may be assessed if the rental agreement so provides in writing.

4. Security Deposits

Our office has received complaints from tenants that security deposits have disappeared when the landlord abandons the property or the property is foreclosed upon. Although AS 34.03.070(d) allows an aggrieved tenant to recover twice the amount of the security deposit in such cases of willful failure to return the deposit, this remedy is more academic than practical when a landlord either has no money left or is gone. The only practical protection I know would be a requirement that security deposits either be held in a bona fide escrow or placed in a bank account that requires the signature of both landlord and tenant to withdraw funds.

Another issue concerns interest on security deposits. Although the current act does not address this issue, general trust law principles would suggest that if a landlord earns interest on a tenant's security deposit, the tenant is entitled to that interest. An amendment explicitly establishing, or negating, the landlord's obligation regarding interest could serve to clarify the law in this area.

In addition to the above issues, I should also mention what appears to be an inconsistency that could result from the

Honorable Dave Donley

March 17, 1989
Page 4

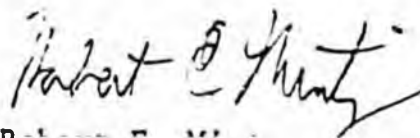
proposed bill. Section 4 of the proposed bill would amend AS 09.45.110 to reduce from 10 days to five days the period between service of a notice to quit and commencement of an action to recover possession. I gather from listening to the testimony at the work session that this change was intended to enable landlords to begin eviction procedures for nonpayment of rent in a shorter period of time than is currently allowed. However, AS 34.03.220(b) still requires a notice period of 10 days in such cases, as does AS 09.45.090(1).

I hope this information is helpful.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:


Robert E. Mintz
Assistant Attorney General

REM/ssr
Encl.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH - STATE CAPITOL
BUREAU ALASKA 998
357 465 1800

MEMORANDUM

June 20, 1989

SUBJECT: Landlord and tenant relationships (etc.)
Sectional analysis: HB 309

TO: Representative Dave Donley

FROM: Richard A. Bradley
Legislative Counsel *RB*

Michael Ward has requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill adds a new subsection to AS 09.45.070. It requires the court to "give priority on the calendar" of the court to the forcible entry or detainer (FED) action.

Section 2 of the bill amends AS 09.45.100 (requisites of notice to quit). The section is a conforming amendment to the amendment made to AS 09.45.110 in section 3 of the bill.

Section 3 of the bill amends AS 09.45.110 (period between service of notice and action brought). The amendment reduces to seven days (from the existing 10 days) the period for the "notice to quit" from the landlord. It also provides that if an action had been brought against the tenant within the previous 12 months, the period for the "notice to quit" may be reduced to three days.

Section 4 of the bill amends AS 09.45.120 (summons and continuance). The amendment deletes the requirement that a notice not be served more than four days before the date of trial; it continues the existing requirement that the notice

be served not less than two days before the date of trial. The amendment repeals the requirement for a "financial undertaking" before any continuance may be granted and authorizes the continuance if "the defendant . . . deposits with the court the rent that will accrue during the next month"

Section 5 of the bill amends AS 09.45.130 (action against persons paying rent in advance). The amendment is a conforming amendment for the changes made in AS 09.45.110, in bill section 3.

Section 6 of the bill amends AS 22.15.040(a) (small claims). The amendment provides that when the district judge or a magistrate is hearing a case involving a FED claim of \$5,000 or less, the court shall hear the matter as a small claim unless important or unusual points of law are involved.

Section 7 of the bill amends AS 34.03.010 (purpose and construction of the landlord and tenant act) by adding a new subsection. The amendment provides that a person who has not paid the first month's rent in full does not acquire rights under AS 34.03. It also provides that a person whose right to the use of premises depends upon rights acquired by another person does not acquire rights unless the other person has acquired rights.

Section 8 of the bill amends AS 34.03.070(a) (security deposits and prepaid rent) by authorizing a landlord to request and receive prepaid rent or a security deposit in the amount of three months' rent, up from the existing two months' rent.

Section 9 of the bill amends AS 34.03.070(g) (security deposits and prepaid rent). It provides that the landlord shall mail the security deposit or prepaid rent that has not been applied to unpaid rent or damages to the tenant at the address provided by the tenant. It further amends the law to provide that if the tenant has not provided the landlord with a forwarding address within 90 days after the tenancy is terminated, the right of the tenant to the amounts otherwise due to the tenant lapses and the landlord may retain the money not applied to unpaid rent or damages.

Section 10 of the bill amends AS 34.03.100(c) (landlord to maintain fit premises). The amendment authorizes the

landlord and tenant to agree that the tenant in a one- or two-family residence may undertake the landlord's responsibility to maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, (etc.) facilities and appliances supplied or required to be supplied by the landlord. The maintenance of elevators is excluded from the section.

Section 11 of the bill amends AS 34.03.140(a) (access). The amendment adds to the lists of conduct prohibited to a tenant the removal of property belonging to the landlord.

Section 12 of the bill amends AS 34.03.140(c) (access). The amendment provides that "when possible", the landlord shall give at least 24 hours notice to the tenant of an intention to enter property rented to the tenant.

Section 13 of the bill amends AS 34.03 by adding a new sec. 34.03.155 (additional tenant obligations). It provides that when a landlord defaults on a financial obligation that secures property occupied by a tenant, the holder of the financial obligation may require the tenant to make payments directly to the holder of the financial obligation.

Section 14 of the bill amends AS 34.03.220(a) (noncompliance with rental agreement; failure to pay rent). The amendment authorizes the landlord to terminate a tenancy on three days' notice when a public utility providing electricity or natural gas to the premises discontinues the service to the premises for the tenant's failure to pay for the utility services.

Section 15 amends AS 34.03.220(b) (noncompliance with rental agreement; failure to pay rent). The amendment provides that if the rent due is not paid in full after notice by the landlord, the tenancy terminates. It also permits a landlord who does receive a partial payment of rent to extend the tenancy on the basis of the amount of the rent received.

Section 16 of the bill amends AS 34.03.230(b) (remedies for absence, nonuse, and abandonment). The amendment provides that the landlord may reenter the dwelling unit and terminate the agreement when the rent has not been paid and, in a week-to-week tenancy, the tenant has been absent for three days or, in a month-to-month tenancy, the tenant has been absent for ten days.

Representative Dave Donley

Page 4

June 20, 1989

Section 17 of the bill amends AS 34.03.260(a) (disposition of abandoned property). The amendment provides that unless a landlord has agreed to store personal property left by a tenant at the end of the tenancy, the property left by the tenant, including an automobile, is considered to have been abandoned. The landlord may give notice to the tenant that if the property is not removed within 15 days after receipt of the notice, the landlord may sell the property at a public sale. Perishable commodities and property determined by the landlord to be valueless or to have little value may be disposed of in the landlord's discretion.

Section 18 of the bill amends AS 34.03.260(b) (disposition of abandoned property). Section 19 of the bill amends AS 34.03.260(c). Section 20 of the bill amends AS 34.03.-260(d). The amendments made by bill sections 18 - 20 are nonsubstantive and conform the law to the changes made in (a) of the section by section 17 of the bill.

Section 21 of the bill amends AS 34.20.090 (title, interest, possessory rights and redemption under deeds of trust). The section deals with an apparent ambiguity under the section that the Supreme Court interpreted in Interior Energy Corporation v. Alaska Statebank, ___ P.2d ___ (No. 3424, April 14, 1989). The amendment would reverse the opinion of the Supreme Court; the amendment provides that a "lease or a periodic tenancy created by the party or the assigns of the party executing the deed of trust continues according to [its] terms"

Section 22 of the bill adds a new Sec. 42.30.400 (rights of landlords to receive notice of the discontinuance of service). The section permits landlords whose tenants receive electricity or natural gas from public utilities to register as the owner of property with the public utility and the public utility may not thereafter discontinue utility service until ten days after providing the landlord with notice of an intention to discontinue the service.

Section 23 of the bill amends AS 44.23.020(b)(8) (duties of attorney general). The amendment deletes extraneous material within the section.

Section 24 of the bill amends Rule 85(a) of the Alaska Rules of Civil Procedure. The amendment conforms the Civil Rules to the changes made in section 4 of the bill regarding continuances in FED actions.

Representative Dave Donley

Page 5

June 20, 1989

Section 25 of the bill amends Rule 85 of the Alaska Rules of Civil Procedure. The amendment conforms the Civil Rules to the substantive changes made in section 1 of the bill regarding priority for FED actions on the calendar.

Section 26 of the bill amends Rule 8 of the Alaska District Court Rules of Civil Procedure by providing that when a FED action does not involve a claim in excess of \$5,000, the district judge or magistrate shall hear the action as a small claim unless unusual or important points of law are involved. The amendment conforms the Civil Rules to the substantive changes made in section 6 of the bill.

Since the bill amends rules of practice and procedure, the bill title specifically acknowledges the changes and a special vote must be taken by each house of the legislature on the rules changes. See art. IV, sec. 15 of the Alaska Constitution.

If I may be of further assistance, please advise.

RAB:mi
wkmi4/033

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH 4 STATE CAPITOL
JUNEAU ALASKA 998
707 463 3800

MEMORANDUM

April 19, 1989

SUBJECT: Landlord and tenant, etc.
(Work Order No. 6-0846A)

TO: Representative Dave Donley

FROM: Richard A. Bradley
Legislative Counsel

I have been working with Michael Ward on the landlord and tenant bill that you have requested.

One of the questions that has arisen during the consideration of the bill has been the meaning of AS 34.20.090(b). Sec. 21 of the 4/3/89 draft seeks to clarify the understandings of what is meant by the section.

The provision provides:

(b) The purchaser at a sale and the heirs and assigns of the purchaser are, after the execution of a deed to the purchaser by the trustee, entitled to the possession of the premises described in the deed as against the party executing the deed of trust or any other person claiming by, through or under that party, after recording the deed or trust in the recording district where the property is located. [Emphasis added.]

The question arose whether a lessee was protected on the foreclosure of the deed of trust. In my view the answer was yes since I would have interpreted the phrase in AS 34.20.090 that provides that the purchaser of the property at the foreclosure sale is "entitled to the possession of the premises described in the deed as against the party executing the deed of trust or any other person claiming by, through or under that party" [AS 34.20.090(b)] as protecting the lessee.

A recent Alaska Supreme Court opinion disagrees. The court analyzed the question in Interior Energy Corporation v.

Representative Dave Donley
Page 2
April 19, 1989

Alaska Statebank, P.2d (No. 3424, April 14, 1989). [Copy enclosed.]

The court gives no particular attention to the possible variety of meanings that the section might have, simply stating that AS 34.20.090(b) "provides that a purchaser of property at a foreclosure sale is entitled to possession of the property as against the party who executed the deed of trust or any person claiming by, through or under that party. The logical effect of this right of possession, at least where the purchaser chooses to exercise his right, is to extinguish the existing leasehold interest." At page 14 of the slip opinion.

The court fails to acknowledge the distinction between those who "claim by, through, or under the party"-- as heirs or grantees-- and those whose claims are in a sense adverse to the party even though also "by, through, or under the party"-- as a lessee under a 50 year lease. There is business logic to extinguish the former and none to extinguish the latter, assuming that the lessee is up to date on its obligations.

Nonetheless, the amendment in Sec. 21 is now not so much a clarification of ambiguous rights as a necessary protection to lessee rights, if that is your goal.

One other point that is extraneous to the comments above. In Sec. 23 of the bill, the material after "tenant rights" on line 8 through "publication" on line 10 is logically redundant to what precedes it and I would like to repeal it in any further revision of the bill.

If I may be of further assistance, please advise.

RB:kb
wkk4/026

Enclosure

The practical pointers and sample forms, in this pamphlet are adapted from Procedures for Eviction, by Julie G. Wade, a paper presented at a 1986 Washington State Bar Association seminar entitled Residential and Mobile Home Landlord-Tenant Law in Washington. Landlord-Tenant law is subject to change, as evidenced by the 1988 Act. It is a landlord's responsibility to remain current on the law or seek legal advice any time s/he intends to exercise his/her legal rights.

3-DAY NOTICE TO QUIT FOR DRUG-RELATED ACTIVITY

TO _____

Seattle, WA 98 _____

YOU, AND EACH OF YOU, ARE HEREBY NOTIFIED to quit the below-described premises:

Seattle, King County, Washington, and to surrender possession thereof within three (3) days of service of this notice upon you.

YOU ARE HEREBY REQUIRED to quit the premises, and deliver them to the owner, not later than midnight on _____, 19__.

You are being required to vacate the premises within three (3) days from the date of service of this Notice on the grounds that you have violated a substantial obligation of your tenancy under RCW 59.18.130(6) by engaging in drug-related activity.

If you do not surrender possession of the premises as required by this Notice within three (3) days, judicial action will be commenced against you, all in accordance with Chapter 59.12 and 59.18 RCW and SMC 22.206.160.

This Notice supersedes and replaces all prior eviction notices DATED at Seattle, Washington this _____ day of _____, 19__.

/s/ _____, Owner

By _____, Agent

Address: _____

Phone: _____

DECLARATION OF SERVICE OF NOTICE TO QUIT

I, _____, certify under penalty of perjury under the laws of Washington that:

1. At all times mentioned I was and now am a resident of the State of Washington, a citizen of the United States, and a competent person over the age of eighteen

2. I served a copy of the Notice to Quit dated _____ by _____ (Complete only 1 of the following 3 subparagraphs);

a. Handing the Notice to the person to whom it is addressed,

_____ on _____

(Name of tenant)

(Date)

at _____ in the _____

(Address where delivered)

City of _____ Washington

b. (If the tenant was not at the premises), leaving a copy of the Notice with _____ (Name of Person) a person of suitable age and discretion at the premises, at _____

_____ (Address where served)

on _____, 1988 (Date)

and making a copy of the Notice on _____ (Date)

_____ (Address where delivered)

to _____ (Name of Tenant)

at _____ (Address letter sent to)

c. (If the address of the tenant is not known or no one of suitable age and discretion can be found on the premises), posting a copy of the Notice in a conspicuous place on the premises.

_____ (Describe place posted)

on _____, 1988, delivering a copy to _____ (Name) (if anyone was at the premises)

on _____, 1988 (Date)

and making a copy addressed to the tenant at the address of the property on _____, 1988 (Date)

3. I certify that the above statements are true and correct Dated this _____ day of _____, 1988

at _____, Washington

_____ (Signature)

PC
C.B.

DRUG RELATED EVICTIONS LANDLORD INFORMATION



SEATTLE POLICE DEPARTMENT
CRIME PREVENTION DIVISION

Neighborhood Crime Center
500 Wall Street, Suite 206
Seattle WA 98121

TAKE CONTROL OF YOUR PROPERTY

Prevent unwanted people
and activities in your
business or on your
premises

Neighborhood Crime Center
500 Wall Street, Suite 206
Seattle, WA 98121
729-0903

Eliminate Drug Related Activity at Residential Rentals *Suggestions for Landlords and Property Owners*

Screening:

*Initial screening can help you avoid
the inconvenience, expense and time spent
evicting a problem tenant.*

- 1) Require references from the applicant's prior landlords, as well as personal references, and check them.
- 2) Check criminal conviction record - if the prospective tenant has been residing locally, get written permission from the subject and have the police department run a criminal history record check on the individual.
- 3) Check the applicant's credit record.
- 4) Employ a professional tenant screening service. Caution: Tenant screening cannot be based on discriminatory reasons (such as those based on an applicant's race, color, creed, religion, ancestry, national origin, age, sex, marital status, parental status, sexual orientation, political ideology or handicap).

Trespass/Unlawful Occupancy

Drug dealers often occupy, but are not the tenants of rental property. The actual tenants may have abandoned the premises.

- 1) If the original tenant has established a permanent residence elsewhere or has otherwise evidenced an intent to abandon the rented premises, and

- 2) If the premises have been occupied by persons who have paid no and the landlord has accepted no compensation from them in lieu of rent, ;
- 3) If the occupants have been notified by the landlord that the premises are abandoned and their occupancy is unlaw

Then investigating police officers, with the cooperation of landlord, can take appropriate trespass enforcement action.

Posting of Common Areas Within Apartment Complexes

You can help prevent illegal drug trafficking in your apartment building by utilizing the criminal trespass ordinance regulate activity on apartment common areas.

- 1) Post "Tenants Only No Litter" signs in parking lots and exterior common areas. (Signs available, call 726-0903)
- 2) Send a letter to the local police precinct notifying them that you have posted signs and authorize officers to enforce the ordinance.
- 3) Be willing to testify against violators

Expedited Evictions

Drug trafficking at a residential rental by a tenant is grounds for eviction. A landlord may serve a 3 day notice to evict a nuisance. Obtain legal advice about the eviction process. Resorting to self-help methods to remove tenants is not permitted under the Residential Landlord-Tenant

The information in this pamphlet has been developed by Seattle Police Department, Crime Prevention Division, 684-7555, and the Neighborhood Crime Center, 726-0903.

EXPEDITED EVICTIONS FOR DRUG-RELATED ACTIVITIES

PREFACE

This flyer discusses tenant screening and the procedures for drug-related evictions of tenants in the City of Seattle covered by the Residential Landlord-Tenant Act (RCW 59.18.04). It does not include residents of nursing homes, hospitals, educational and religious institutions, hotels and motels, employment related tenancies and mobile home tenancies.

The flyer is intended to be an outline only, giving owners and tenants general guidance as to their rights and responsibilities and directing them to the applicable statutes and rules. It is not meant to provide detailed legal advice and should not be relied upon for that purpose. Anyone wanting more detailed information should contact his/her own source of legal advice.

Contested evictions usually require two steps: (1) terminating the tenancy, and (2) an unlawful detainer action (eviction) filed in Court. Before an eviction action can be filed in court, the tenancy must be terminated.

TERMINATING THE TENANCY

The process for terminating a tenancy was not changed by the 1988 legislature, although they did pass a statute regarding evictions for drug related activities.¹

¹The 1988 Washington State Legislature recognized the need for landlords to evict quickly and efficiently those persons who engage in drug related activities at rental premises. The new law provides: (1) a tenant has a responsibility not to engage in drug related activity (narcotics possession or sale or other felony drug crimes) at rental premises, or allow a subtenant, sublessee, resident or anyone else to engage in such activity with the knowledge or consent of the tenant, and (2) law enforcement has a responsibility to make reasonable efforts to identify and notify a landlord when illegal drugs are seized at rental premises.

In order to terminate a tenancy a proper written notice of termination must be properly served on the tenant. A landlord may use a 3-day notice to quit for nuisance when the eviction is for drug-related activities. A sample 3-day notice to quit for nuisance is attached as Exhibit 1.

Service of the notice must be made: (1) by personally serving a copy on the person to be evicted; or (2) if the tenant is absent from the premises, by leaving a copy at the premises and sending a copy through the mail addressed to the person to be evicted; or (3) if the tenant's address and whereabouts are not known or no one is on the premises, by affixing a copy of the notice in a conspicuous place on the premises, delivering a copy to a person residing on the premises, if there is one, and sending a copy through the mail addressed to the person to be evicted.

A record of the way the notice was served, called a *declaration of service*, must be kept and attached to the unlawful detainer action. A sample declaration of service is attached as Exhibit 2.

B. PRACTICAL RULES FOR EXPEDITED EVICTIONS

The following practical rules should be followed in preparing and serving the notice to terminate a tenancy.

1. Notices must be in writing.
2. The notice should state the date upon which the tenancy will be terminated. If it is the 3-day of notice attached to this handout, the date should be 3 days after the date the notice is served.
3. The notice should contain an adequate description of the premises involved, preferably both the legal description and any common description known to the parties to the tenancy.

4. The notice should state the reasons for terminating the tenancy and refer to the portion of the statute under which it is given. If engaging in or allowing others to engage in drug related activity is the basis for termination of the tenancy, that reference is RCW 59.18.130(6), and RCW 59.12.030(5).

5. Notices should be signed by the landlord or in the landlord's name by an agent, and not in the agent's name.

6. Where husband and wife are involved as parties to the tenancy, both should sign the notice, or the signature should be in the names of both by an agent.

7. If a husband and wife are parties to the lease, copies of the notice should be served on both.

B. THE UNLAWFUL DETAINER ACTION

If the tenants still remain after expiration of the notice to terminate, the next step is to file suit in Superior Court for unlawful detainer and seek a writ of restitution from the court. This is the proper procedure for eviction of tenants. Resorting to self help to remove tenants who refuse to leave is not permitted under the Residential Landlord-Tenant Act.²

²Landlords can only enter the dwelling unit with the consent of the tenant after giving the tenant two days notice, except in the case of an emergency or upon the tenant abandoning the premises. RCW 59.18.150. A landlord cannot lock the tenant out of the premises without court ordered authorization. Such an action will expose the landlord to liability for the actual damages of the tenant and the tenant's costs of suit and attorney fees. RCW 59.18.290(1). The landlord cannot terminate the tenant's utility services. Such an action will expose the landlord to liability for the actual damages of the tenant, the tenant's costs of suit and attorney fees, and a penalty of up to one hundred dollars for each day or part thereof the tenant is deprived of any utility service. RCW 59.18.300. A landlord cannot take or detain the personal property of a tenant to enforce the payment of rent. Such an action will expose the landlord to liability for the actual damages of the tenant, the tenant's costs of suit and attorney fees, and a penalty of up to fifty dollars per day but not to exceed one thousand dollars, for each day or part of a day that the tenant is deprived of his property. RCW 59.18.230.

In addition, under the Seattle Housing and Building Maintenance Code, SMC 22.206.180-190 certain acts by landlords may constitute criminal harassment or retaliation. Those acts include a landlord entering a tenant's unit, except in an emergency without the tenant's continuing utilities; removing doors, fixtures, furniture, etc.; or removing a tenant, except through the proper eviction process authorized by law. Penalties upon conviction are a fine not exceeding five thousand dollars and imprisonment for a term not exceeding one year. SMC 22.206.290.

C. TENANT SCREENING

Evicting tenants is often a difficult, time consuming and expensive burden that landlords can avoid by minimal screening of potential renters. The simple act of requiring references and contacting those references may be sufficient to reveal a poor tenant risk. If the prospective tenant has been residing locally, a criminal conviction records check may be useful. Landlords should obtain the written permission of the subject to obtain their criminal conviction records. SPD charges \$7.00 to conduct the check if there is no record, and \$15.00 to conduct the check if a conviction record exists. A landlord can obtain further information through credit checks and employing a professional tenant screening service.

Landlords are cautioned, however, that selection of a tenant must be made for non-discriminatory reasons. A choice among prospective tenants may only be made on the basis of factors other than race, color, religion, ancestry, national origin, age, sex, marital status, parental status, sexual orientation, political ideology, creed or presence of any sensory, mental or physical handicap. SMC 14.08.100B.

Neighborhood Crime Center
500 Wall Street, Suite 206
Seattle WA 98121

TAKE CONTROL OF YOUR PROPERTY

Prevent unwanted people
and activities in your
business or on your
premises

Neighborhood Crime Center
500 Wall Street, Suite 206
Seattle, WA 98121
728-0903

Eliminate Drug Related Activity at Residential Rentals *Suggestions for Landlords and Property Owners*

Screening:

*Initial screening can help you avoid
the inconvenience, expense and time spent
evicting a problem tenant.*

- 1) Require references from the applicant's prior landlords, as well as personal references, and check them.
- 2) Check criminal conviction record--if the prospective tenant has been residing locally, get written permission from the subject and have the police department run a criminal history record check on the individual.
- 3) Check the applicant's credit record.
- 4) Employ a professional tenant screening service. Caution: Tenant screening cannot be based on discriminatory reasons (such as those based on an applicant's race, color, creed, religion, ancestry, national origin, age, sex, marital status, parental status, sexual orientation, political ideology or handicap).

Trespass/Unlawful Occupancy

Drug dealers often occupy, but are not the tenants of rental property. The actual tenants may have abandoned the premises.

- 1) If the original tenant has established a permanent residence elsewhere or has otherwise evidenced an intent to abandon the rented premises, and

2) If the premises have occupied by persons who have and the landlord has accepted compensation from them in the

3) If the occupants have notified by the landlord that the abandoned and their occupanc

Then Investigating officers, with the coope landlord, can take approp trespass enforcement ac

Posting of Common Area Apartment Complexes

You can help prevent i trafficking in your apartment bu utilizing the criminal trespass o regulate activity on apartment c areas.

- 1) Post "Tenants Only" signs in parking lots and exterior areas. (Signs available, call 72
- 2) Send a letter to the l precinct notifying them that you signs and authorize officers to i ordinance.
- 3) Be willing to testify a violators.

Expedited Evictions

Drug trafficking at a resu by a tenant is grounds for evicti landlord may serve a 3 day notk nuisance. Obtain legal advice s eviction process. Resorting to : methods to remove tenants is u under the Residential Landlord

*The information in th
has been developed by the
Department, Crime Prevent
684-7355, and the Neighbor
Center 728-0903.*

**Criminal Trespass:
Prevent Unwanted People In
Your Business or
On Your Apartment Premises**

Under Seattle's criminal trespass ordinance a citizen owning or occupying a premise has the authority to exclude people.

**Provisions of the Law
It is permissible to:**

Prohibit non-customers from entering a retail business, or entering or loitering in the parking lot or adjoining grounds owned by the business.

Allow only a specified number of juveniles to enter or remain in a retail business at one time.

Ask an individual to leave a retail business or adjoining parking lot because he/she is not a customer, or is disruptive, or is suspected of shoplifting or for similar non-discriminatory reasons relating to that individual.

Prohibit non-residents from parking lots and common areas in apartment buildings.

It is not permissible to:

Discriminate against certain classes of people.

Enforcement

Notification: The trespasser must be notified that he/she is not privileged to enter or remain either verbally, by clearly posted sign or both.

Police Enforcement: If the trespasser(s) remains or returns, dial 911 and report the incident. The police will respond. The police can cite the trespasser for violation of the trespass law which carries a penalty of up to one year in jail and a fine up to \$5,000, and remove the trespasser(s) from the premises.

Citizen Commitment: citizens wishing enforcement of the criminal trespass ordinance on their property should call or write to their local precinct commander.

12A.08.040 Criminal Trespass

A. A person is guilty of criminal trespass if he or she knowingly enters or remains in or upon the premises of another when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.
B. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him or her by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.
C. In any prosecution under subsection A it is an affirmative defense that:

1. A building involved was abandoned; or
2. The actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him or her to enter or remain; or
3. The actor was attempting to serve legal process, which includes any document required or allowed to be served upon persons or property by any statute, ordinance, governmental rule or regulation, or court order, excluding delivery by the mails of the United States. This defense is available only if the actor did not enter into a private residence or other building not open to the public and the entry onto the premises was reasonable and necessary for service of the legal process.

**TRESPASS ENFORCEMENT
AUTHORIZATION**

(I, We) _____, as (owner and/or manager or agent thereof) of property located at _____ in the City of Seattle do hereby request and authorize officers of the Seattle Police Department, in their official police capacity, to go upon or within those common areas generally open to the public and/or tenants, including hallways, entrances, laundry facilities, lawn and yard areas. I further request and authorize officers to go upon or within those areas not open to tenants, as tenants, including furnace rooms, storage areas, etc. This authority does not permit entry to the premises reserved exclusively for tenants.

The purpose of this authority is to prevent criminal activity including trespassing/loitering, vandalism, thefts, illegal drug trafficking and prostitution which may be occurring at the above described premises.

I have posted the public areas with signs stating "Criminal Trespass Prohibited, No Loitering".

Officers are further authorized to act on my behalf in requesting person(s) found upon the property without legitimate/legal purpose to leave the premises.

I agree to cooperate in the prosecution of trespass and other criminal offenses occurring on the premises, including appearing in court to testify, if necessary.

This authority shall remain in effect until rescinded by written notice to the appropriate Precinct Commander (North, South, East, West).

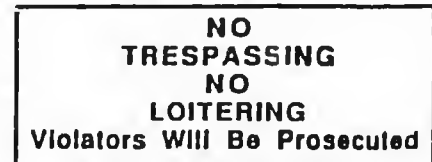
Seattle Police Dept.
Date _____

Trespass Ordinance, the Neighborhood Crime Center is selling two signs:

For use in retail businesses:



For use in non-retail businesses and apartments



These signs are 12" by 18" and are made of styrene to withstand weather. They are available from the Neighborhood Crime Center for \$4 each, plus postage and handling.

Please use the attached order form to order your signs. Send the form, with your check or money order, to:

Neighborhood Crime Center
500 Wall Street, Suite 206
Seattle, WA 98121

Sign Order Form

Company: _____
Contact: _____
Address: _____
City: _____ Zip: _____
Telephone: _____

I would like to order the following sign:

No Trespassing Customers Only: _____ @ \$4.00 per sign _____
No Trespassing No Loitering: _____ @ \$4.00 per sign _____
(Over 15, \$3 per sign)
Postage and Handling: 1-4 signs \$2.00
5-15 signs \$2.75
over 15.....no charge

Total Due _____

Writing on the wall tips police to drug gangs' presence

By Jean Lamming
Times Writer

A.T. SUN
4/17/88

By the time police in Portland, Ore., realized members of rival Los Angeles drug gangs had moved into their city, it was too late.

Less than two years after the first telltale marks of gang presence were spotted on walls in North Portland neighborhoods, police are battling a well-armed and well-established army of gangsters at least 170 people strong.

Though the flux of the L.A.-based gangs into cities around the country is much publicized today, 20 months ago Portland police came to the realization piece by piece, according to Sgt. Steve Hollingsworth, who works in a special force in Portland schools.

The first clue in Portland was writing on the walls.

"We started seeing graffiti in neighborhoods, and we thought it was kids acting out," said Hollingsworth.

Scrawled across the walls were innocuous letters and numbers, like ES43 Hitmen, Deuce, R00, IVC.

Police soon learned they were turf markings of groups or "sets" of Bloods

and Crips. They stood for: Eastside 43rd Street Hitmen; 66th Street Crips; the Rolling 60s Crips (from streets like 61st, 62nd and 63rd); and the Imperial Village Crips.

Next came the wars between rival gangs jockeying for the lucrative Portland market.

"We started seeing drive-by shootings on a regular basis," Hollingsworth said. At least one of the three gang-related homicides the city has seen in the last 18 months involved innocent bystanders hit with bullets in the indiscriminate shootings, he said.

Police came face to face with the L.A. gangsters in undercover busts of the city's crack houses.

"They'd bust a crack house and they'd find all these guys wearing blue rags (bandannas) or red rags," said Hollingsworth.

They'd also find guns the likes of which they hadn't seen from Portland's free-lance dealers, independents who were suddenly complaining that California gangs were terrorizing them, Hollingsworth said.

"We used to seize little 22s or 25

autos," Hollingsworth said. "Now we're taking 36s, 357s, 9 millimeters and sawed-off shotguns. With the money they're making they can buy sophisticated weapons and police scanners."

Their money also attracted teens who were looking for identity and an answer to their poverty. One Portland police officer estimated 60 percent of the 170 known gang members in the city are local recruits.

This month, Portland schools are introducing a gang education class for grades four, five and seven to teach children about the gangs and why they should "say no to gangs," Hollingsworth said.

Police in Seattle are also battling a 2-year-old influx of the L.A. drug gangs.

But they have been able to team up with city prosecutors and community groups in a push to drive the Crips and Bloods out, according to Officer Don Church of the Seattle Police Department.

Unlike Anchorage, where the Crips arrested on illegal weapons charges bailed out of jail, Seattle prosecutors try

to keep the suspects behind bars for prosecution.

"By identifying these as people from California we get immediate help from the prosecutor. We also get high bail or no bail," Church said.

In June a new eviction law will go into effect in Seattle allowing landlords to almost immediately kick out tenants they suspect of selling drugs.

Also, the city has a new abatement order that allows the community to direct police to board up a house where narcotics are sold if the landlord doesn't act to evict.

The abatement order lets police bypass the time-consuming process of gaining evidence for a search warrant and serving it, a process they could carry out repeatedly on the same house to no avail, Church said.

In the last two years, federal agencies like the Drug Enforcement Administration have started a system of taking Seattle police cases that are nearly complete and making the arrests so tougher, federal charges can be levied against the gang members, Church said.

ALASKA LANDLORD — TENANT LAW

December 1983
2nd Revision

Cooperative Extension Service
University of Alaska

and

State of Alaska
Department of Law

This booklet is a revision of P-98 "Alaska's Landlord-Tenant Law," originally prepared by Alaska Legal Services with the Cooperative Extension Service in 1974. Revised editions were prepared in 1975 and 1980.

The 1983 revision was prepared with the assistance of Alaska Legal Services, the Alaska Law Library, the Consumer Protection Section of the Alaska Department of Law, the Alaska Court System, and private attorneys. This booklet has been approved and printed by the Consumer Protection Section of the Alaska Department of Law, as required in Alaska Statutes 44.23.020. The most recent revision (referred to as 2nd Revision) was completed in October of 1983.

In addition to the revisions noted above, a supplement was prepared in August of 1983 to address previously unanswered issues of concern to both landlords and tenants. These issues are described in this booklet as the subjects of Attorney General research and the supplement represents the product of that research.

INTRODUCTION

This booklet was prepared directly from AS 34.030.010-.380. Where appropriate, the actual portion of the law that pertains is cited so that if you need to go to court, you can either use this booklet or can refer directly back to the law. The reference will be the letters "AS" (short for Alaska Statute) followed by some numbers (these are the title, chapter and article numbers of the law, respectively). For example, AS 34.03.330. You can get a copy of the actual law at your nearest courthouse, public library or magistrate's office.

In this booklet, several terms are used that mean the same thing.

LANDLORD means the owner or manager or rental agent for the dwelling.

DWELLING UNIT, **PROPERTY** and **PREMISES** means the rental unit, whether it is a home, apartment, mobile home, mobile home park space, etc.

TENANT means any of the people who rent a dwelling.

PRE-PAID RENT is the amount of money paid at the beginning of the agreement to insure that rent will be paid but does not include deposits or first month's rent.

Other definitions may be found in AS 34.03.360.



ALASKA LANDLORD TENANT LAW
(Supplement - August 1985)

INTRODUCTION

This pamphlet is a supplement to the December, 1983 revised edition of "Alaska Landlord-Tenant Law," which was published jointly by the Cooperative Extension Service, University of Alaska, and the State of Alaska, Department of Law.

The 1983 edition of the pamphlet noted that the Attorney General's office was researching the legality of several practices of some landlords which were considered to be questionable. This supplement has been prepared to address the legality of those landlord practices.

This supplement has been approved and printed by the Consumer Protection Section of the Alaska Department of Law, as authorized by AS 46.23.020.

The specific practices and the Attorney General's conclusions discussed in this supplement include the following:

A. A landlord's policy that the tenant's security deposit is forfeited to the landlord, regardless of the condition of the unit, if the tenant terminates the rental agreement in less than a certain period of time. **THIS PRACTICE IS UNLAWFUL.**

B. A landlord's policy requirement that prospective tenants pay an "application fee" which becomes the security deposit if the prospective tenant actually occupies the dwelling unit; however, the "application fee" is forfeited to the landlord if, for any reason, the prospective tenant decides not to rent the dwelling unit when it is offered. **THIS PRACTICE IS UNLAWFUL.**

C. A fee charged to tenants, at the beginning of the rental agreement, as a "non-refundable cleaning fee" (or similarly denominated fee) in addition to a security deposit and prepaid rent, which is not refunded to the tenant even if the tenant thoroughly cleans the unit. **THIS PRACTICE IS UNLAWFUL.**

D. A fee charged to prospective tenants as a non-refundable "application fee" to cover the actual, reasonable cost of checking the tenant's credit history and otherwise processing the application. **THIS PRACTICE IS PROBABLY LAWFUL.**

E. A landlord's gaining possession of a dwelling unit by changing the locks, and holding or removing the

tenant's property. Sometimes a landlord claims the right to do this pursuant to a waiver contained in an agreement signed by the tenant, to pay overdue rent or vacate the premises by a certain date. **THESE PRACTICES, WITH OR WITHOUT THE TENANT'S WAIVER, ARE UNLAWFUL.**

DEPOSITS AND OTHER FEES PAID AT THE COMMENCEMENT OF A LEASE

The Uniform Residential Landlord and Tenant Act, AS 34.03.010 - .380, contains a number of provisions regarding security deposits. These provisions limit the amount of deposit that a landlord may legally require at the beginning of a tenancy, limit the landlord's right to retain the deposit, and require the landlord to take actions to minimize "mitigate" damages when the tenant fails to abide by the terms of an agreement.

Specifically, the law states:

1. The total amount collected for security deposit and prepaid rent (other than the first month's rent) cannot exceed two months rent (AS 34.03.070).

2. The landlord cannot withhold the security deposit to cover repair of wear resulting from "ordinary use" of the premises (AS 34.03.070).

3. In all cases, the landlord has an affirmative duty to mitigate the landlord's damages resulting from a tenant's breach (AS 34.03.320).

4. Whenever a tenant abandons a dwelling unit, the landlord must make a reasonable effort to re-rent the dwelling unit, as soon as possible, at the fair market value (AS 34.03.230).

A number of the practices listed above should be analyzed according to these provisions.

A. Automatic Forfeiture of "security deposit"

As noted in the December 1983 revision of this pamphlet (page 9), some landlords have adopted a policy that unless the tenant stays in a unit for a certain time period (6 months, for example), the tenant automatically forfeits all or a specific portion of the security deposit.

This practice is unlawful. The Act allows landlords to retain and apply security deposits to accrued back rent and to damages suffered because of a tenant's failure to comply with AS 34.03.120 (which requires the tenant to keep the unit clean and to use the unit reasonably). The Act also requires landlords to mitigate

damages, and specifically requires landlords to re-rent the dwelling, at fair rental value, as soon as possible after the tenant abandons the unit.

A provision that the tenant automatically forfeits the security deposit if the tenant stays in the unit less than a certain period is contrary to the landlord's legal duty to mitigate damages and re-rent the unit as soon as possible, and contrary to the statutory provision that the security deposit can be withheld only to cover accrued rent and damages. Any such provision in a rental agreement is thus unenforceable under the Act (AS 34.03.040).

It should be emphasized that such a policy is unlawful whether or not it is expressly disclosed to the tenant. Such a policy is simply contrary to the Act, and unlawful, even if it is disclosed to and agreed to by the tenant.

B. Forfeiture of "application fee"

Another practice quite similar to the one just discussed involves an "application fee" which the prospective tenant must pay to a landlord when seeking an apartment, which fee then becomes the security deposit if the prospective tenant actually occupies the dwelling unit, but which fee is forfeited to the landlord if the prospective tenant does not occupy the unit when it actually becomes available and is offered to the prospective tenant.

This practice is unlawful for many of the same reasons as discussed above regarding forfeiture of security deposits. The landlord has a duty to mitigate damages, and even if the application clearly requires the prospective applicant tenant to accept the unit if offered, the disappointed landlord has a duty to rent the unit to some other tenant, as soon as possible. The tenant who did not occupy is responsible, at most, only if the landlord cannot rent the premises to someone else, and perhaps for the actual costs (such as re-printing the newspaper ad) of securing another tenant.

C. Charging "non-refundable cleaning fees" or similar fees

Some landlords have adopted a practice of charging tenants a "non-refundable cleaning fee," or similar fee, in addition to a security deposit and prepaid rent. This "non-refundable cleaning fee" is never refunded to the tenant regardless of the

condition of the unit when the tenancy terminates.

This landlord practice is unlawful, even if the nature of the fee is clearly disclosed to the tenant at the commencement of the lease.

Tenants have a duty to keep their unit as clean and safe as the condition of the premises permit" (AS 34.03.120). If the tenant performs that duty to keep the unit clean, there is no expense for which the landlord may use the cleaning fee. Thus, the purpose of the "cleaning fee" is to protect the landlord against the tenant's failure to perform that duty. See Bauman v. Islay Investments, 100 Cal. Rptr. 889, Cal. App. 1973). Indeed, the tenant's failure to perform that duty is one of the few reasons for which the Alaska Act allows the landlord to retain the security deposit (AS 34.03.070). Since the real purpose of the cleaning fee is to protect the landlord from the tenant's failure to perform, it is simply another name for a security deposit. The requirements of the Act apply to a security deposit "however denominated", (AS 34.03.070), so the fact that the charge is called a "cleaning fee" rather than a security deposit does not remove it from the requirements of the Act.

Nor does the fact that the cleaning or security fee is disclosed as "non-refundable" remove it from the requirements of the Act. The fact that the tenant agrees to a non-refundable fee is, in effect, nothing more than an attempted waiver by the tenant of the Act's provisions that a security deposit must be refunded except under certain conditions. However, the Act provides that an agreement to waive a tenant's rights is unenforceable (AS 34.03.040). Thus, the tenant's waiver of the right to have the deposit refunded is not enforceable.

D. Tenant application fees to cover actual processing costs

The practice of charging tenants a non-refundable application fee to cover the landlord's actual, reasonable costs of performing services, such as checking the tenant's credit history, appears to be lawful. This practice is distinguishable from the others previously discussed, since it does not involve the landlord withholding funds for damages which must be mitigated, nor does it involve holding funds to cover a possible future breach by the

tenant at the tenant's cleaning duties. Thus, it would appear that such a fee is not controlled by the Act.

An argument could be made that one of the purposes of the Act, specifically AS 34.03.070, is to limit the total amount of money a tenant would have to pay at the commencement of a lease to a maximum of two month's rent (plus rent for the first month). The intent may have been to aid tenants who do not have a large lump sum of money, but who could pay the monthly rent. If so, the legislature may have intended AS 34.03.070 to apply to all sums paid at the commencement of the lease, "however denominated." Based on this rationale, it could be argued that the application fee for the cost of checking the credit history is controlled by the Act.

However, the legislative intent here is not clear. Since the language of the Act controls prepaid rent and security deposits and the application fee here is not a disguised security deposit or prepaid rent, it appears that the better interpretation of our statute is that it does not preclude such an application fee if it is only for the actual, reasonable cost of processing the tenant's application.

LOCKOUTS, and HOLDING TENANTS' PROPERTY FOR RENT

The Uniform Residential Landlord and Tenant Act specifically defines the landlord's rights to access to the dwelling unit. The landlord has the right to:

1. Enter the dwelling unit, at reasonable times, to inspect, make necessary repairs or improvements, and for similar purposes. This should normally be done only after 24 hours notice to the tenant.
2. Enter the dwelling unit in an emergency.
3. Enter and take over the unit if the tenant has abandoned or voluntarily surrendered the dwelling unit.

Except in these limited circumstances, the landlord must obtain a court order to regain possession of a unit (AS 34.03.104(d)). The landlord does not have the right to obtain possession by changing the locks on the unit, thus "locking out" the tenant.

It appears that some landlords have engaged in this practice of "locking out" tenants. This may occur after the landlord had already once given a 10-day Notice to Quit,

and perhaps even begun a court action, but agreed to drop it when the tenant signed an agreement to pay the back rent or vacate the premises by a certain date. Even if the agreement states that the tenant waives notice and eviction procedures, the landlord must still obtain a court order for possession if the tenant does not voluntarily, physically vacate the premises. Since the Act specifically provides that a tenant's waiver of rights is unenforceable, such a waiver and subsequent "lock-out" by the landlord is unlawful.

It is also unlawful for the landlord to withhold a tenant's personal property as an offset (credit) against rent due. The Act specifically abolishes "distraint for rent" and liens against the tenant's personal property (AS 34.03.250). The only circumstances in which the landlord has the right to hold or dispose of a tenant's personal property is if the tenant leaves the personal property on the premises after surrender or abandonment of the premises, or expiration of the lease, and the landlord reasonably believes that the tenant has abandoned the personal property [Abandoning the personal property means not just that the tenant has left it temporarily, but that the tenant does not intend to return for it and has given up all rights of ownership to the property.] Even in these circumstances, the landlord must follow the requirements of the Act regarding abandoned property, AS 34.03.260, which includes giving notice as best possible to the tenants, before taking any action such as selling or destroying the property.

The requirements that a landlord obtain a court order to evict a tenant who will not move voluntarily may, at times, seem burdensome to landlords. Similarly, the landlord may find it burdensome to follow strict procedures before disposing of property the tenant leaves on the premises. However, these are the requirements of the Uniform Residential Landlord and Tenant Act, as passed by the Alaska State Legislature. The Act was passed after careful consideration of the concerns of both landlords and tenants, and landlords must follow these requirements unless and until they are amended by the legislature.

CONCLUSION

It should be emphasized that this supplement does not replace the December 1992 revision, but should be used as a supplement to that version.

moving into rental housing

—ALASKA'S LANDLORD-TENANT LAW

In 1974 the Alaska Legislature passed the Uniform Residential Landlord and Tenant Act (AS 34 03 010-380). The purpose of the Act was to simplify, clarify, and modernize Alaskan laws relating to the rental of dwellings. It was also intended to encourage both landlords and tenants to maintain and improve the quality of housing. Since 1974 there have been three amendments to the original law relating to security deposits and rules for mobile home parks. While the law does not cover every problem a landlord or tenant may have, it was written to protect the rights of both parties.

—NOT PROTECTED UNDER THE LAW

The landlord-tenant law does not cover certain types of rental housing. These are:

1. Residency in an institution (school, dorm, jail, hospital, nursing home, etc.).
2. Hotels, motels, and other transient housing.
3. Condominiums occupied by the owner.
4. Occupancy under a contract of sale, such as "lease with option to buy."
5. Occupancy of a dwelling owned by a fraternal or social organization of which you are a member.
6. Live-in employment (apartment managers, housekeepers, etc.).
7. Occupancy when the premises are used primarily for agricultural purposes.

If you live in or own one of the above types of housing and have a problem, you may need to see an attorney. Other Alaska laws may apply to your situation.

Written notices

Putting things in writing does not mean the landlord and tenant are enemies or do not trust each other. It is simply a good way to do business. Oral agreements made in good faith are legal; however, under the law, a written notice or agreement may be your only protection if something goes wrong, because without written proof of an agreement or a conversation even two honest people can disagree on what was actually said in the past. Written agreements often provide additional protections under the law. Some people hesitate to put agreements in writing because they don't know what to say. There are examples of various notices in the section "Setting Landlord-Tenant Disputes."

Eviction and moving notices and notices for repairs needed must be in writing. Here are some additional things that should be in writing:

1. Receipts for payments of any kind.
2. Promises to fix things.
3. Rental agreements.
4. Details of what needs to be done to get back a deposit.

It cannot be emphasized strongly enough how important this is:

GET IT IN WRITING!



rental agreements

Rental agreements may be either written or oral, but written is best. If any disagreement occurs later, both tenants and landlords will have evidence to back their claims.

If a tenant signs a rental agreement, moves in, and begins paying rent, the written agreement is still legally binding even if the landlord did not sign it. (AS 34 03 030a1)

If the landlord shows the tenant a rental agreement to which the tenant agrees, moves in, and begins paying rent, the written agreement is still legally binding even if the tenant did not sign it. (AS 34 03 030b1)

It is critical that tenants and landlords review and discuss any rental agreements and rules before anyone moves in or money changes hands.

A lease is a type of rental agreement that tells how long the tenant will stay (usually four, six, or 12 months). If there is a lease, the landlord cannot raise the rent or evict the tenant unless the tenant breaks promises in the lease. If there is a lease but the tenant decides to move, the tenant is still responsible for the rent or the rest of the lease period, unless the dwelling can be re-rented. Unsigned leases are valid for no more than a year, even if the lease specified a longer time. (AS 34 03 030)

Here are some things which should appear in a rental agreement:

1. Name and address of the owner and his/her manager or agent as well as the tenant's name and address (AS 34 03 080)
2. The amount of rent, when it is due, where and how it is to be paid.
3. Whether this is a month-to-month agreement or a lease with a definite time limit.
4. When the rent will be considered overdue and what penalty will be imposed.

A small flat fee late charge per month is allowed if the fee approximates reasonable outdated damages. If a per diem percentage rate is applied, however, the rate cannot exceed the 10.54% per annum rate allowed by AS 45.45.010.

5. What is included in the rent (heat, light, water, etc.) and what is provided (driveway, garage, furnishings, kitchen appliances, snow removal, storage, laundry, etc.).

6. Total number of full-time occupants and pets allowed.

7. A list of prohibited equipment (snow-mobles, motorcycles, musical equipment, etc.).

8. The amount and type of deposit (cleaning, security, pets, etc.) and what has to be done to get it back.

9. A list of landlord and tenant repair and maintenance duties.

10. Regulations on subleasing or assignment of the property.

RENTAL AGREEMENTS CANNOT

1. Force a tenant or landlord to waive any legal rights. (AS 34 03 040(a)(1)), or
2. Let the landlord get the tenant to sign a document agreeing that the landlord wins an automatic judgment against the tenant (called a "confession of judgment") (AS 34 03 040(a)(2)).
3. Require the tenant to agree in advance to pay the landlord's attorney should you go to court. (AS 34 03 040(a)(4)).

4. Limit the liability of landlords or tenants when either has failed to perform their responsibilities. (AS 34 03 040(a)(3)).

5. Excuse the landlord or tenant from any legal responsibilities such as keeping common areas safe, repairing appliances, providing access to valves and water, etc. (AS 34 03 030).

6. Force either the landlord or tenant to automatically assign a power of attorney to the other.

7. Allow the landlord to take a tenant's personal belongings. (AS 34 03 250).

Legal provisions in a rental agreement or lease are not enforceable against a tenant even if the tenant signed the agreement.

In addition to the legal provisions above, if the rental agreement contains any of the following items they should be removed before signing:

1. Agreeing to let the landlord come in to the dwelling whenever he/she wants.
2. Agreeing to immediate eviction for nonpayment of rent.
3. Agreeing that the tenant will make all repairs.
4. Excusing the landlord from liability in case of accidents due to his/her neglect.
5. Giving up the tenant's right to the deposit.

TO REMOVE ILLEGAL WORDING put a line in ink through the words, clause or provision that is not legally binding. Both the landlord and tenant should then initial the agreement next to each item removed.

rental agreements for mobile homes

Rental agreements between mobile home park operators and mobile home park tenants:

1. May not prohibit the tenant from seeing his mobile home. Exceptions can be made only if the mobile home is in violation of laws or ordinances, the proposed buyer doesn't agree with the terms of the existing rental agreement, or the buyer does not have sufficient financial responsibility. If the park operator refuses to allow sale, the operator must notify the tenant of his/her objection to the proposed new owner, in writing, 30 days after the tenant gives a written notice of intent to sell the mobile home to a specified buyer. (AS 34 03 040(c)(1)).

2. May not require the mobile home tenant to provide permanent improvements to park property (the tenant can be required to maintain existing conditions). (AS 34 03 040(c)(2)).

3. May not require the tenant or prospective buyer to pay a fee to see or transfer the mobile home (unless services are actually performed by the park operator to assist the sale or transfer, and the tenant was notified in writing of these charges before he/she moved into the park). (AS 34 03 040(c)(3)).

4. May not require a fee to allow the tenant to set up or move a mobile home in or out of the park unless the park actually assists with the move or set-up and the tenant was notified in writing of these fees before he/she moved into the park. (AS 34 03 040(c)(4)).



In addition, mobile home park operators must give prospective tenants a list of all capital or permanent improvements that will be required (skirting, utility hookups, tie-downs, etc.) before the tenant moves in. Even though park operators may specify the type of equipment tenants cannot be required to buy their equipment from the park operator or a related company.

rules and regulations

Almost every landlord has rules and regulations. The law requires that the landlord show the tenant the rules before they move in and that a copy of the rules shall be posted on the premises where everyone living there can see it (AS 34.03.130). Tenants should review the rules carefully and if they find they cannot live by the rules, the tenant should not make a commitment to a rental agreement on that dwelling.

Rules must be reasonable, must apply to all tenants equally, and must be clearly defined. Rules may be enforced only if their purpose is to promote the convenience, safety, health or welfare of the tenants, to preserve the landlord's property from abuse, or to make a fair distribution of services and facilities. The landlord cannot make rules that allow the landlord to avoid his/her obligations.

Remember that once the tenant has seen the rules and moved in, he/she is agreeing to abide by these rules. Failure to abide by the rules could lead to an eviction. See the section "Moving Out of Rental Housing."

If the tenant has a lease, the rules may not change until the lease expires.

If the tenant does not have a lease, the landlord may change the rules by posting the new rule, and giving the tenant reasonable advance notice of the change. The time period for the notice must be adequate to allow the tenant to make the change requested. If the new rule is a substantial modification of the rental agreement, such as no longer allowing pets or raising the rent, the notice must be delivered to the tenant at least 30 days in advance of the rental due date the rule will take effect. Tenants who cannot accept the change in rules must give a 30-day written notice to move. (AS 34.03.130)

change your mind?

Providing the landlord did not misrepresent the place, once an agreement to rent has been made, all or part of the deposit and/or pre-paid rent has been paid, and then the tenant doesn't move in, he/she may not be able to have all his/her money returned. If this happens on a month-to-month agreement (written or oral), the tenant is responsible for as much as one month's rent or pre-paid rent on a day-to-day basis, whichever is less. If a lease was signed, the tenant may owe rent until the place is re-rented, or the lease period ends, whichever is less. In any case, the landlord must make a reasonable effort to re-rent the dwelling, as soon as possible, at a fair rental price. (AS 34.03.230)

After an agreement has been made, all or part of the deposit and/or rent paid by the tenant, if the landlord refuses to allow the tenants to move into the rental dwelling, the tenants may:

1. Terminate the agreement with a 10-day written notice and at the time of the 10 days receive back all security deposit and pre-paid rent, or

2. Demand the landlord allow them to move in and also sue the landlord and a 3rd person wrongfully living there for damages. (AS 34.03.170)

In addition, if the landlord's refusal to allow the tenants to move in is not due to circumstances beyond the landlord's control and is, in fact, waste and not in good faith, the tenant may sue for 1 1/2 times the tenant's actual damages.

Illegal discrimination

It is illegal for landlords to refuse to rent to someone because of sex, race, religion, national origin, color, marital status, pregnancy or changes in marital status, unless the housing is specifically designated for singles only, in advance. (AS 18.80.210 and AS 18.80.240) Within the Municipality of Anchorage, it is also illegal to refuse to rent to someone because of age or because the person has children. (M.C.S. 10.010 and § 20.020) Other cities may have similar specific ordinances. Check with your local Equal Rights Commission. Exceptions are sometimes made to these regulations when a legitimate business reason can be shown for the invitation. Determinations are made on a case-by-case basis.

It is unlikely that a landlord will openly refuse to rent to someone for an illegal reason. There are some indications that a landlord may be practicing discrimination in renting when:

- The apartment the tenant called about is suddenly "already taken" when the landlord sees the tenant.

- A place the tenant was told is "rented" remains vacant.

- The rent or deposit is much higher than advertised or charged for similar units.

- Rules will be different for one tenant than for others in the same apartment house or court. (For example, others have pets, but you cannot. A landlord may decide to allow no more pets, but he/she must stick to the new rules as far as all new tenants are concerned.)

- The tenant is not referred to a rental listing in a real estate office that fits his/her needs.

- An advertisement indicates a preference based upon race, color, religion, sex, marital status, or national origin.

Everyone should have a free choice about where to live, and there are legal methods of fighting discriminatory practices. If you feel you have been discriminated against and want to do something about it, you can complain to the State Human Rights Commission. The Commission's investigation costs you nothing.

For more help on legal discrimination, contact the Equal Rights Commission in your town or:

Alaska State Commission for Human Rights
431 W. 7th Avenue
Anchorage, Alaska 99501
Phone: 274-4882

Alaska State Commission for Human Rights
Northern Regional Office
875 7th Avenue, Station H
Fairbanks, AK 99701
Phone: 452-1561

Alaska State Commission for Human Rights
Southeastern Regional Office
1488 Pouch AM
314 Goldenrod Bldg
Juneau, AK 99811
Phone: 448-3880

Anchorage Equal Rights Commission
Pouch 6-850
Anchorage, AK 99502
Phone: 264-4342
TTY: 279-4725

who's responsible?

The law says a specific person must be responsible for the landlord's duties such as maintenance, repairs, collecting rent, and receiving notices from tenants or from the court. It is a requirement that when a tenant moves in, he/she must be told in writing the name and address of the owner (or who the owner's agent will be). This information must be kept up-to-date.

If the information is not provided, whoever made the rental agreement or receives the rent becomes the legally responsible person for the landlord. Then, when the tenant is required to give a written notice or wants to sue, he/she should:

1. Contact the owner or his/her agent, or
2. If that information was never officially given to the tenant, contact the person who made the original agreement or issued the rent. (AS 34.03.080)

deposits, prepaid rents and fees

Deposits are often collected for pets, children, cleaning or security before a tenant moves in. Sometimes the tenant will also be asked to pay the last month's rent (pre-paid rent) or a non-refundable fee. The total amount collected for all deposits and pre-paid rent, except for the first month's rent, cannot exceed two month's rent. (AS 34.03.070)

Deposits and pre-paid rent along with the first month's rent can make total move-in costs high. Here are some examples of how these move-in costs might be set:

Legal Examples

(Assuming that rent is \$600.00 a month)

1. \$600 first month's rent
\$600 last month's rent
\$800 security deposit
\$1,800 total to move in
2. \$600 first month's rent
\$250 cleaning deposit
\$150 security deposit
\$600 last month's rent
\$1,600 total to move in

Illegal Examples

3. \$600 first month's rent
\$600 last month's rent
\$800 security deposit
\$2,000 total to move in
4. \$600 first month's rent
\$300 cleaning deposit
\$400 security deposit
\$600 last month's rent
\$1,900 total to move in

In example 3, the deposits are higher than allowed, making the total amount collected (not counting the first month's rent) more than two month's worth of rent. In example 4, the sum of the two deposits plus the last month's rent also exceeds two month's worth of rent.

WHERE DOES THE DEPOSIT AND PRE-PAID RENT GO?

The deposit and any pre-paid rent must be deposited by the landlord in a separate trust account in a bank, savings and loan association or with a licensed escrow agent. (AS 34.03.070) A trust account can be any separate savings or checking account opened (name of apartment), Ren-

Trust Account" as long as the landlord uses the account only for the holding of deposits and prepaid rents. (Exceptions might be made for rural Alaska if there is no bank in town and it would be impractical to bank the money.) Be sure a receipt is written when deposits or prepaid rent is collected. Landlords are required to provide tenants with the terms and conditions under which the prepaid rents or deposit or any portion of those monies may be withheld by the landlord, however, at this time state law does not require interest to be paid to the tenant.

In several Alaskan cities, some landlords have started new and questionable practices of collecting non-refundable fees from tenants, such as an "administrative service fee" at move-in or an "application fee" to get on a waiting list for an apartment. At this time the Attorney General's Office is researching the legality of such fees. It appears that such non-refundable fees may not comply with the law's intent about deposits and therefore may be illegal. If you have questions, see an attorney.

Since security deposits and prepaid rents are required to be held in trust by landlords, these funds should be transferred to the new landlord when rental property is sold. Trust monies not transferred may have been improperly used. Whoever represents him/herself as the landlord at the time the tenant moves out is legally responsible for return of the deposit. Tenants should ask their current landlord about security deposit return. In some cases the former landlord may also be held responsible for deposit return by both the tenant and/or the new landlord. If you have questions, see an attorney (AS 34 03 070(f)).

Inspections

While the law does not specify that an inspection must be done, it is a good idea for the landlord and tenant to inspect the dwelling together before anyone moves in. Make a list of items needing repair and the date the work should be completed (10 days is standard). Make another list of damage that will not be changed or repaired. Both the landlord and the tenant should sign and date these lists. Each of you should keep a copy. These lists will be handy when the tenant is ready to move out.



WHILE RENTING

paying rent/rent increases

The landlord is not required to ask tenants each month for their rent before they are "required" to pay it. If the time and place for payment of rent was not agreed upon when the tenant moved in, it is assumed that the rent will be collected at the dwelling.

If the tenant rents monthly, the rent is due every 30 days, unless otherwise agreed. So, if the tenant moves in on the 8th, the rent is due on or before the 8th of every month.

Rent increases may be made as the landlord sees fit (except with a written lease), however, the law is unclear regarding the notice period which the landlord is required to give. The general interpretation is that a notice of a rent increase is

1. A termination by the landlord of the tenancy agreement at the old rental rate and an offer to rent the same unit at a higher rate; or,

2. A modification of a rule or regulation

in either case, the landlord should give the tenants a written notice of rent increase at least 30 days before the next rental due date. If the tenant does not agree with the rent increase or cannot pay, he/she may give notice to move. Since the law is not clear, landlords and tenants should seek legal advice if they are unsure about a proposed rent increase. Remember, if there is a signed lease, rent may not be increased during the lease period (AS 34 03 290(b) and AS 34 03 130(b)).

If you receive a housing subsidy or live in a federal or state housing project, you may have rights in addition to those provided by state law. For example, the U.S. Department of Housing and Urban Development (HUD) may control rent increases in projects where HUD has provided the loan guarantees to the owner. Contact the HUD office if you have questions.

subleasing

When a lease is signed, the tenant is promising to stay for a certain length of time (usually four, six or 12 months). The tenant is telling the landlord that each and every month, whether the tenant still lives in the apartment or not, he/she will be responsible for paying the rent. Unless the landlord signs a paper saying it's okay with him/her for someone else to move in if the tenant moves out, the tenant cannot just have someone else "take over" the place.

There are usually only two ways for a tenant to get out of a lease:

1. If the landlord breaks his/her part of the bargain (what is written in the lease), the tenant can move, after giving 30 days written notice.

2. Ask the landlord to agree to let the tenant sublease the place. Under the law the landlord has a right to ask for certain information, in writing, about the proposed new tenants. The landlord can reject the new tenants only for certain reasons, and cannot unreasonably prevent subleasing (AS 34 03 080).

The information the landlord can ask for about the new sublease tenant includes:

1. Name, age and present address.
2. Occupation, present employment and name and address of employer.
3. Marital status.
4. How many people will live in the apartment.
5. Two credit references.
6. Names and addresses of all landlords of the person for the last three years.

Once this information has been given to the landlord, he/she has 14 days to answer the request. No answer within 14 days is considered the same as consent, so the tenant can go ahead and sublease if the answer is "no." The landlord must give written reasons for the decision.

The only legal reasons a landlord may use to refuse to allow a proposed sublease tenant to take over the lease are:

1. Bad credit record;
2. Too many people;
3. Too many children;
4. Unwillingness of new tenant to accept rental agreement;
5. Tenant's pets are not acceptable.

6. Tenant's proposed business activity would violate local zoning regulations.

7. Bad report from former landlord of the new tenant.

If the landlord says "no" to the suggested new tenant, but doesn't give one of the reasons in the above list of legal rejection reasons, the law says the old tenant can either go ahead with the sublease or move out. However, to move out because of the landlord's invalid refusal to sublease, the tenant must give a WRITTEN NOTICE to the landlord 30 days in advance of the rental due date by which the tenant plans to move out.

privacy

A common problem landlords and tenants have is that of the tenant's right to privacy. Many landlords feel they can come and go from their rental property whenever they please. Some tenants feel they never have to let a landlord come in.

To clear up the confusion, the law says a landlord must give a tenant 24 hours notice that he/she would like to come for the purpose of making repairs, maintenance, an inspection or showing the place. The landlord may enter only with the tenant's consent and only at reasonable times.

TWO EXCEPTIONS. No such notice is required if it is not possible to contact the tenant by ordinary means, OR if there is an emergency (smoke, water, explosion, etc.).

Landlords cannot abuse their right to request entry or use it to harass tenants, and tenants cannot unreasonably keep a landlord from entering.

If a tenant has a nosy landlord who believes he/she can come and go as he/she pleases, it might be a good idea to get a copy of the law to show the landlord the section called "ACCESS" (AS 34 03 140) if the landlord comes in and will not leave, call the police.

When a landlord does abuse his/her right to enter by coming in without the tenant's permission or repeatedly without need, the tenant can ask a court to demand that the landlord stop (called an injunction). The tenant may also sue for actual damages or one month's rent, whichever is greater, plus court costs and attorney fees if the tenant wishes to move because the landlord has abused the access privilege. A 10-day written notice from tenant to landlord is required (AS 34 03 300(b)).

If the tenant unreasonably refuses to allow the landlord in, the landlord can get an injunction. The landlord may also sue for actual damages or one month's rent, whichever is greater, or evict the tenant with a 10-day written notice (AS 34 03 300(a)).

landlord duties

These are the things tenants can expect their landlords to do, as required by the law (AS 34 03 100):

1. Make all repairs to keep the dwelling in a livable condition.
2. Keep all common areas such as stairs, halls, yard and garbage area clean and safe, including snow and ice removal and adequate lighting.
3. Keep in safe and working condition all electrical, plumbing, toilet, air conditioning, ventilating (fans, windows), heating, kitchen and other appliances or fixtures supplied by the landlord.
4. Provide and maintain garbage cans and arrange for removal service.

