ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5787 HOUSE JUDICIARY

WISCONSIN	NO SECURITY DEPOSIT STATUTE
WYOMING	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

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

LABAMA	NO SECURITY DEPOSIT STATUTE
LASKA	sec. 34.03.080 (tenant may recover an amount not to exceed twice the actual amount withheld)
RIZONA	sec. 33-1321(D) (tenant may recover the money and property due and twice the amount wrongfully withheld)
RKANSAS	sec. 50-528 (tenant may recover the money and property due and twice the amount wrongfully withheld, costs, and reasonable attorney's fees)
ALIFORNIA	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)
OLORADO	sec. 38-12-103(2),(3) (failure to comply works as a forfeiture of rights to withhold any portion; wilfull retention renders landlord liable twice the amount wrongfully withheld, reasonable attorney's fees, court costs)
ONNETICUIT	sec. 47a-21(d)(2) (tenant may recover twice the amount wrongfully withheld)
ELAWARE	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)
.C	sec. 309.3 (tenant may recover the full security deposit including any interest)
LORIDA	no penalty provision provided in the statute
EORGIA	sec. 61-606 (tenant may recover the security deposit in full for non-compliance with notice requirements; three times the amount improperly withhheld plus reasonable attorney's fees for failure to return the security deposit due)
AWAII	sec. 521-44(c) (tenant may recover the security deposit in full)
DAHO	sec. 6-320 (tenant may file an action for damages and specific performance)
LLINOIS	sec. 80. para. 101 (tenant may recover twice the amount of

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	the security deposit due; court costs; and reasonable attorney's fees)
NDIANA	NO SECURITY DEPSOIT STATUTE
OWA	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)
ANSAS	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)
ENTUCKY	No penalty provision provided in the statute
OUISIANA	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)
AINE	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)
ARYLAND	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)
ASSACHESETTS	ch. 186, sec. 15B(6),(7) (tenant may recover the security deposit in full, wilfull retention entitles tenant to three times the security plus 5% interest from when payment due, court costs and attorney's fees)
ICHIGAN	ch. 554.611 (tenant may recover security deposit in full)
INNESOTA	sec. 504.20 (tenant may recover the security deposit in full plus 5.5% interest and the amount wrongfully withheld plus 5.5% interest)
ISSISSIPPI	NO SECURITY DEPOSIT STATUTE
ISSOURI	sec. 535.300 (tenant may recover as damages not more than twice the amount wrongfully withheld by landlord)
ONTANA	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)
EBRASKA	ch. 76, sec. 1417 (tenant may recover the property and money due him and reasonable ettorney's fees)
EVADA	sec. 118A.242 (tenant entitled to an amount equal the entire deposit)
EW 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)
EW 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)
EW MEXICO	ch. 47, sec. 8-37 (security deposit in full, court costs, reasonable ettorney's fees)
EW YORK	art. 7, sec. 105 (failure to comply is a misdemeanor)
ORTH CAROLINA	sec. 42-55 (tenant amy institute civil action to require the accounting of and the recovery of the balance of the deposit; may recover damages)
ORTH DAKOTA	ch. 47, sec. 16-07.2 (treble damages for any security deposit money withheld without reasonable justification)
HIO	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)
KLAHOMA	tit. 41, sec. 115(E) (tenant may recover the security and damage deposit and prepaid rent, if any)
REGON	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)
ENNSYLVANIA	tit. 68, sec. 250.512 (failure to send list of damages entitles tenant to full security deposit plus int est; failure to return security deposit entitles to an action for twice the wrongfully withheld amount)

HODE ISLAND	sec. 34-18-18 (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)
OUTH CAROLINA	tit. 27, sec. 40-410 (tenant may recover the property and money in an amount equal to three times the amount wrongfully withheld)
OUTH DAKOTA	tit. 43, sec. 32-24 (security deposit in full; wilfull retention entitles tenant to punitive damages not to exceed two hundred dollars)
ENNESSEE	sec. 66-28-501 (damages, injunctive relief, and reasonable attorney's fees upon giving 14 days' written notice)
EXAS	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)
TAH	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)
ERMONT	tit. 9, sec. 4461 (security deposit in full; willful retention entitles tenant to twice the amount wrongfully withheld, court costs, attorney's fees)
IRGINIA	tit. 55, sec. 248.11 (the security deposit due, actual damages, and reasonable attorney's fees)
ASHINGTON	tit. 59, ch. 18, secs. 260 to 285 (security deposit in full; wilful retention may, in the court's discretion, entitle the tenant to up to twice the amount of the deposit)
EST VIRGINIA	NO SECURITY DEPSOIT STATUTE
ISCONSIN	NO SECURITY DEPOSIT STATUTE
YOMING	NO SECURITY DEPOSIT STATUTE

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STATES WITH LAWS ON SECURITY DEPOSITS

Alaska	Alas. Stat., tit. 34, sec. .03.070 (1985) (Code includes statutes and amendments enacted during the Regular Session of 1985)
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. 1985) (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 1985)
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 1985)
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. 6-321 (1979) (Code includes statutes and amendments enacted during the 1986

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	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. 562A.12 (West Supp. 1986) (Code includes statutes and amendments enacted during the 1986 Regular Session)
Kansas	Kan. Stat. Ann., ch 58, sec. 2550 (1983) (Code includes statutes and amendments enacted during the 1986 Session)
Kentucky	Ky. Rev. Stat., ch. 383.580 (Michie Supp. 1986) (Code includes statutes and amendments enacted during the 1986 Regular Session)
Louisiana	La. Rev. Stat. Ann., secs. 8-3201 to 8-3254 (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)

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Nebraska	Rev. Stat. of Neb., ch. 76, sec. 1416 (1981) (Code includes statutes and amendments enacted during the First Session of 1985)
Nevada	Nev. Rev. Stat. Ann., secs. 118A-240 to 118A-250 (1986) (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. 1986) (Code includes statutes and amendments enacted during the 1986 Session)
New Jersey	N.J. Stat. Ann., tit. 46, secs. 8-18 to 8-26 (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 1986 Regular Session)
New York	N.Y. Gen. Oblig. Laws. Secs. 7-103, 7-105 (West Supp. 1987) (Code includes statutes and amendments enacted during the 1986 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. 16-07.1 (Smith Supp. 1985) (Code includes statutes and amendments enacted during the 1985 Session)
Ohio	Ohio Rev. Code Ann., tit. 53, sec. 5321.16 (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. 91.760 (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 1986 Session)

uth Carolina	Code of Laws of S.C. Ann., tit. 27, sec 40-410 (Lawyers Co-op 1986) (Code includes statutes and amendments enacted during the 1986 Session)
uth Dakota	S.D. Codified Laws Ann., tit. 43, secs. 32-6.1, 32-32-24 (1983 & Michie Supp. 1986) (Code includes statutes and amendments enacted during the 1986 Session)
nnessee	Tenn. Code Ann., sec. 66-28-301 (Michie Supp. 1986) (Code includes statutes and amendments enacted during the 1986 Session)
xas	Tex. Property Code Ann., secs. 82-101 to 82-108 (1984) (Code includes statutes and amendments enacted during the Third Session of 1986)
ah	Utah Code Ann., tit. 57, ch. 17, secs. 1-5 (1986) (Code includes statutes and amendments enacted during the 1986 General Session and the Second and Third Special Session)
rmont	Vt. Stat. Ann., tit. 8, sec. 4461 (Equity Supp. (1986) (Code includes statutes and amendments enacted during the 1985 Session)
rginia	Va. Code Ann., tit. 55, sec. 248.11 (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)

Introduced: 4/21/89
Referred: Labor & Commerce
and Judiciary

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

HOUSE BILL NO. 309

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "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."

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

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

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

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

Sec. 09.45.100. REQUISITES OF NOTICE TO QUIT. A notice to quit shall be in writing and shall be served upon the tenant or person in possession by being delivered to the tenant or person or left at the premises in case of absence from the premises, or the notice may be sent by registered or certified mail, in which case an additional three days shall be added to the notice period required under AS 09.45.110 [10 DAYS].

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

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

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

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

Sec. 09.45.120. SUMMONS AND CONTINUANCE. Summons in actions for forcible entry and detainer shall be served not less than two [NOR MORE THAN FOUR] days before the date of trial. A [NO] continuance may not [SHALL] be granted for a longer period than two court days unless the defendant applying for the continuance deposits with [GIVES 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 the defendant.

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

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

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

(a) When a claim for relief does not exceed $5,000 exclusive of costs, interest, and attorney fees, and request is so made, the district judge or magistrate shall hear the action as a small claim unless important or unusual points of law are involved. 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. The supreme court shall prescribe the procedural rules and standard forms to assure simplicity and the expeditious handling of small claims.

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

(c) A person who has not paid rent in full for the first rental period under a rental agreement does not acquire rights under this chapter. 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 under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

* Sec. 13. AS 34.03 is amended by adding a new section to article 4 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 landlord and 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. A payment made under this section to the holder of the financial obligation discharges to that extent the debt of tenant to the landlord.

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

(a) Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or noncompliance with AS 34.03.120 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and specifying that the rental agreement will terminate upon a date not less than 20 days after receipt of the notice. If the breach is not remedied in 10 days, the rental agreement terminates as provided in the notice subject to the provisions of this section. <u>If a public utility providing electricity, natural gas, or water to the premises occupied by the tenant discontinues the service to the premises for failure to pay for the utility service, the landlord may deliver a written notice to the tenant advising that the tenancy will terminate three days after the delivery of the notice.</u> If the breach is remediable by repairs or the

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

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

(b) If rent is unpaid when due and the tenant fails to pay rent <u>in full</u> within 10 days after written notice by the landlord of nonpayment and the intention to terminate the rental agreement if the rent is not paid within that period of time, the tenancy terminates unless the landlord agrees to allow the tenant to remain in occupancy, and the landlord may terminate the rental agreement and immediately recover possession of the rental unit. <u>Only</u> [; ONLY] one written notice of default need be given the tenant by the landlord as to any one default. <u>A landlord who has given written notice to the tenant under this subsection may accept a partial payment of the rent due under the rental agreement and extend the date for the eviction accordingly.</u>

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

(b) During an absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary as provided in AS 34.03.140. <u>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</u>

<u>(1) in a week-to-week tenancy has been absent for three days;</u>

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

* Sec. 17. 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 13 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. 18. 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 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. 19. 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. 20. AS 34.03.260(d) is amended to read:

(d) The landlord <u>is not liable</u> [MAY NOT BE HELD TO RESPOND] in damages in an action by a tenant claiming loss by reason of the landlord's <u>storage</u> [ELECTION, DESTRUCTION,] or disposition of property <u>under this section. A</u> [, OR SALE. IF, HOWEVER, THE] landlord <u>who</u> 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. 21. 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. 22. 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. 23. 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. 24. 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 <u>for a continuance deposits with</u> [THEREFOR SHALL GIVE AN UNDERTAKING TO THE ADVERSE PARTY, WITH SURETIES APPROVED BY] the court [, CONDITIONED TO THE PAYMENT OF] the rent that <u>will</u> [MAY] accrue <u>during the next month</u> if judgment is rendered against defendant.

* Sec. 25. 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.

* Sec. 26. 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. 27. 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. 23 of this Act, available to members of the public at Legislative Information Offices throughout the state.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V, STATE CAPITOL
JUNEAU, ALASKA 998
[illegible]

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-

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

REPLY TO
XX 1031 W 4th SUITE 110
ANCHORAGE ALASKA 99501
[redacted]
276-3550
1st NATIONAL CENTER
100 CUSHMAN SUITE 400
FAIRBANKS ALASKA 99701
PHONE (907) 456-8588
S S FULLER BLDG
4th & HARRIS SUITE 214
P O BOX K
JUNEAU ALASKA 99811
PHONE (907) 465-3692
STATE COURTHOUSE ROOM 26
P O BOX 671
VALDEZ ALASKA 99686
PHONE (907) 835-2462

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

March 17, 1989

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

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
Robert E. Mintz
Assistant Attorney General

REM/ssr
Encl.

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 9981
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.

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 V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 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 of 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.

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 the 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 the 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 59.18RCW and SMC 22.206.160

This Notice supercedes 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 mailing 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 _____ (If anyone was at the premises)
(Name)

on _____, 1988,
(Date)

and mailing 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)

P/
C.B.C

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
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 been occupied by persons who have paid no r and the landlord has accepted no compensation from them in lieu of rent, a

3) If the occupants have been notified by the landlord that the premises abandoned and their occupancy is unlav

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 dru trafficking in your apartment building by utilizing the criminal trespass ordinance regulate activity on apartment common areas.

1) Post "Tenants Only No Loite signs in parking lots and exterior comm areas. (Signs available, call 728-0903.)

2) Send a letter to the local poli precinct notifying them that you have p signs and authorize officers to enforce t ordinance.

3) Be willing to testify against violators.

Expedited Evictions

Drug trafficking at a residential r by a tenant is grounds for eviction. A landlord may serve a 3 day notice to evi nuisance. Obtain legal advice about th eviction process. Resorting to self-hel methods to remove tenants is not perm unde. .he Residentia. Landlord-Tenant

The information in this pam hee been developed by Seattle Po Department, Crime Prevention Divi 684-7555, and the Neighborhood C Center, 728-0903.

EXPEDITED EVICTIONS FOR DRUG-RELATED ACTIVITIES

PREFACE:

This flier 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 flier 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.

A. 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]

[1]The 1988 Washington State Legislature recognized the need for landlords to evict quickly and efficiently those persons who engage in drug related activities at rented 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 a 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 with a person of suitable age and discretion 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.

C. 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]

[2]Landlords 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. RCW59.18.230.

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 14.08.1000.

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 hav
occupied by persons who hav
and the landlord has accepted
compensation from them in lie

3) If the occupants ha
notified by the landlord that th
abandoned and their occupan

Then investigating
officers, with the cooper
landlord, can take appro
trespass enforcement ac

**Posting of Common Area
Apartment Complexes**

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

1) Post "Tenants Only
signs in parking lots and exteric
areas. (Signs available, call 72

2) Send a letter to the
precinct notifying them that yo
signs and authorize officers to
ordinance.

3) Be willing to testify a
violators.

Expedited Evictions

Drug trafficking at a res
by a tenant is grounds for evict
landlord may serve a 3 day noti
nuisance. Obtain legal advice
eviction process. Resorting to
methods to remove tenants is
under the Residential Landlord

*The information in th
has been developed by Sea
Department, Crime Prevent
684-7555, and the Neighbo
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 licenced, invited, or otherwise privileged to so enter or remain.

B. A licence or privilege to enter or remain in a building which is only partly open to the public is not a licence 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 licence and privilege unless notice against trespass is personally communicated to him or her by theowner 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 licenced 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/lawful 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).

_____ Owner/Manager
_____ SeattlePolice Dept
_____Date

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

For use in retail businesses:

NO LOITERING
CUSTOMERS ONLY

For use in non-retail businesses and apartments

NO
TRESPASSING
NO
LOITERING
Violators Will Be Prosecuted

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 signs:

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

A.T. SUN 4/17/88

By Jean Lamming
Times Writer

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 invicious letters and numbers, like ES43 Hitmen, 6Deuce, R80, 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 38s, 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 R-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 by 1985.

In addition to the revisions noted above, a supplement was prepared in August of 1985 to address previously unanswered issues of concern to both landlords and tenants. These issues are described in the 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 44.23.020.

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 or 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(a), 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 1983 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, "Settling 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 34.03.030(a))

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 34.03.030(b))

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 liquidated damages. If a per diem percentage rate is applied, however, the rate cannot exceed the 10.5% per annum rate allowed by AS 45.45.010.

5. What is included in the rent (heat, lights, 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 (snowmobiles, 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 utilities and water, etc. (AS 34.03.050);

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)

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

In addition to the illegal 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 into 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 selling 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's give 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 sell 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 into 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 pro-rated rent on a day-to-day basis until someone else rents the place, 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 ten-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 any 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 willful and not in good faith, the tenant may sue for 1½ 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. 5.10.010 and 5.20.020) 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 limitation. 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 illegal discrimination, contact the Equal [illegible]hts Commission in your town or:

Alaska State Commission for Human Rights
431 W. 7th Avenue
Anchorage, Alaska 99501
Phone: 274-4692

Alaska State Commission for Human Rights
Northern Regional Office
675 7th Avenue, Station H
Fairbanks, AK 99701
Phone: 452-1561

Alaska State Commission for Human Rights
Southeastern Regional Office
Mail Pouch AH
314 Goldstein Bldg.
Juneau, AK 99811
Phone: 465-3560

Anchorage Equal Rights Commission
Pouch 6-650
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 takes 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 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
   $600 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 labeled "(name of apartment) Ren-

tal 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. Whomever 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 a 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 either:

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's 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 34.03.060).

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 this person for the last three years.

Once the 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 nosey 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 liveable 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 facilities supplied by the landlord;

4. Provide and maintain garbage cans and arrange for removal service.

5 Supply running water and reasonable amounts of hot water and heat at all times unless there is a severe energy shortage or the furnace or hot water heater is in the complete control of the tenant (as in a house)

6 If requested by the tenant, supply and maintain adequate locks and keys. (If the lock can be easily broken it does not provide adequate protection. A tenant can demand that a proper lock be put on the door.)

If the dwelling is in an isolated area where a public sewer or water service is not available, the landlord does not have to provide those services. However, if the landlord privately provides these services at the beginning of the rental agreement, he/she must maintain the services (AS 34.03.100(b))

In the renting of a house or duplex, the landlord and tenant may agree IN WRITING that the tenant will be responsible for (4), (5) and (6) of the LANDLORD DUTIES listed above. Also, if it is done in good faith, the landlord and tenant of any dwelling may agree that the tenant will do specific repairs, remodeling or maintenance jobs in exchange for payment or reduction of rent, etc. THE LANDLORD CANNOT FORCE A TENANT TO AGREE TO THIS KIND OF ARRANGEMENT TO GET OUT OF HIS/HER OBLIGATIONS AS A LANDLORD. It must be made in WRITING, signed by both parties. Also, this agreement cannot be made if it will reduce or endanger the services to the other tenants. (AS 34.03.100(c))

This is a check list of the main things the landlord should repair and maintain:

—doors, windows, roof, floors, walls, and casings that leak or have holes;

—plumbing fixtures (must work, not leak and provide a reasonable amount of running, hot and cold water at a reasonable water pressure level);

—a working and safe stove and oven;

—a reliable heating system which provides heat to all rooms in a reasonable amount;

—a safe electrical system (no loose or exposed wires, sockets that do not spark and enough power so the system does not blow fuses when used normally);

—windows or fans that provide fresh air when wanted;

—enough garbage cans to provide an adequate and safe trash removal service;

—extermination service if roaches, rats, mice or other pests infest the building, apartment or property;

—proper maintenance of any vacuum cleaners, washing machines, dish washers, etc. supplied by the landlord (when not abused or broken by the tenant).

tenant remedies

If there is a serious problem with something mentioned above that is not the tenant's fault, the law provides remedies for the tenant. The landlord must be given a reasonable chance to fix the problem, but if he/she won't fix it, here is what the tenant can do:

1 MOVE. The tenant gives the landlord a WRITTEN notice describing the problem and saying that if the problem is not fixed within 10 days, he/she will move within 20 days. If the problem is fixed within 10 days, but the tenant still wants to move, a regular 30-day notice is required. (AS 34.03.160(a))

2 EMERGENCY REPAIR AND RENT DEDUCTIONS. If an essential service (heat, water, sewer, electricity or plumbing) breaks down, the tenant may get the problem fixed and deduct the actual and reasonable expenses from the next month's rent. But first, the tenant must give the landlord a written notice that this is what he/she plans to do, and if the problem is major, the tenant must provide the landlord with a copy of the estimated repair costs. However, once written notice is given, the tenant may immediately proceed with repairs. If the cost is very great, it is advisable to contact a lawyer before starting the repairs. If the problem cannot be fixed right away and it makes the dwelling unlivable, the tenant can give the landlord written notice that he/she is moving into substitute housing. The tenant is excused from paying rent until the problem is cured and may charge the landlord for the cost in excess of rent of staying in a hotel or other substitute housing until the problem is fixed. (AS 34.03.160)

3 WITHHOLD RENT. In some cases where the problem is really serious, it may reduce the value of the dwelling. If this happens, tenants may give written notice to their landlord that they refuse to pay a part of their rent until the problem is fixed. Since landlords and tenants often disagree on what is a serious problem, it is wise to see a lawyer before using the remedy.

4 SUE FOR DAMAGES. In addition to the remedies listed above, the tenant can sue if the tenant or his/her family have suffered because the landlord failed to fix something after written notice. If the total amount is less than $2,000.00, the tenant may sue in the state small claims court. For larger claims, the tenant should see a lawyer. (AS 34.03.160(b))

If the tenant notified the landlord IN WRITING of a problem, and the landlord fixed it within the time allowed, BUT through the landlord's negligence, virtually the same thing happens again within 6 months, the tenant may terminate the rental agreement with a 10-day written notice. The notice must specify the problem and the date of termination. Tenants may not terminate a rental agreement for problems they themselves have caused. (AS 34.03.190)

condemned dwellings

Buildings inspected and found to be very unsafe may be condemned. The city or borough housing inspector will tell the landlord that he/she must repair the problem or he/she will be taken to court. If the problems are so serious that the inspector feels the building is beyond repair, the inspector will order that it be torn down.

If a building is condemned, the tenant may come home one day and find a sign posted on the building saying that the place is unsafe for anyone to live there. Tenants should immediately find out when the inspector and landlord expect all the tenants to move. They should also see an attorney before paying any more rent.

fire/casualty damage

If the dwelling is substantially damaged by a fire or other casualty (earthquake, flood, etc.), depending on the amount of damage, there are a couple of things the tenant can do:

1 Partial damage: When only a part of the dwelling is damaged and it is lawful for the tenant to continue to live there, the tenant should move out of the damaged part. The rent can be reduced to an amount which reflects the fair value of the undamaged part of the dwelling. (AS 34.03.200(b))

2 Total destruction: If the tenant can no longer live in the place, he/she can move out, notify the landlord and stop paying rent. The rental agreement and responsibility to pay rent ends when the tenant moves. (AS 34.03.200(a))

After the tenant moves, the landlord must return any deposits and/or pre-paid rent to the tenant. Rent paid for the time the tenant didn't live in the dwelling must be returned (counted from the day of the casualty and including the day of the casualty) to the tenant. (AS 34.03.200)

HOUSING CODES

The primary objective of a housing code is the protection of the health and safety of the people who live in houses and apartments. A minimum standard of maintenance is set, making the landlord (not his tenants) responsible for keeping rental property in decent shape. The section of this leaflet called LANDLORD DUTIES explains what the landlord is expected to repair and maintain.

The law protects tenants who use their right to report code violations. If they call to complain and ask for an inspection, the landlord cannot take revenge by evicting or harassing the tenant. Alaska has a statewide fire code but does not have a statewide housing code.

The following places do have local housing codes. Report substandard conditions to:

Anchorage

Building Safety Division at 786-8211

Health & Environmental Protection at 264-4720

Fairbanks

Fairbanks Bldg. Official - 452-1881

Juneau

Engineering Department Building Division - 586-5231

Ketchikan

City Building Inspector - 225-3111

Seldovia

City Clerk - 234-7643

Seward

City Building Inspector - 224-3331

Kenai

City Building Inspector - 283-7537

Soldotna

City Building Inspector - 262-9107

Homer

Planning & Zoning - 235-8121

Palmer

Building Department - 745-2105

tenant duties

These are the duties which the law says tenants must perform to keep their part of the rental agreement. (AS 34.03.120)

1 Do keep the dwelling as clean and safe as they can.

2. Do dispose of garbage and other waste in a clean and safe manner;

3. Do keep plumbing fixtures clean;

4. Do pay the rent on time;

5. Do use all facilities and appliances provided reasonably, in the manner in which intended;

6. Do not deliberately or carelessly damage, destroy, deface or remove any part of the premises or facilities (or allow their guests to do so);

7. Do replace or repair anything damaged or destroyed because of the tenant's accident or carelessness;

8. Do conduct themselves in a manner that does not unreasonably disturb their neighbors' peaceful enjoyment of the premises. (AS 34.03.120)

If tenants do not uphold their end of the bargain, the landlord can evict them. Eviction notices must be in writing and be specific about the problem in question.

If the tenants were notified of a problem and remedied the problem within the time allowed, but the problem occurs again within 6 months, the landlord may evict the tenant using a 10-day written notice. The notice must specify the problem and the date of termination.

absence/abandonment by the tenant

When the landlord specifies in his/her rental agreement, tenants can be required to tell their landlord every time they plan to be gone for more than 7 days. If the tenant plans to be gone only 2 or 3 days, then finds that he/she will actually be gone for more than a week, the tenant must notify the landlord as soon as possible. This is to help protect the property from pipes freezing, etc. Tenants who willfully fail to give notice of being gone can be sued by their landlord for 1½ times the actual damages of any such calamity which occurs during their absence. When tenants are gone, the landlord may go into their place only if there is an emergency or with proper notice. See the section titled "Privacy." (AS 34.03.230)

A landlord may assume the dwelling has been abandoned when (AS 34.03.360(1)):

1. The tenant is behind in rent, and

2. The tenant has left his/her personal belongings in the dwelling but has been gone for more than 7 straight days, and

3. The tenant did not notify the landlord they would be gone for more than seven days, providing their rental agreement requested this.

When a dwelling has been abandoned, the landlord may enter, clean up the place and re-rent it. The obligation of the former tenant to pay rent stops when a new tenant moves in (providing the landlord makes a good faith effort to promptly re-rent the place at a fair rental value) (AS 34.03.230(c)).

If a tenant abandons a dwelling and leaves personal belongings behind, the landlord must notify the tenant of where the property is being held and that the tenant has a minimum of 15 days to remove the property. Property not removed within the time allowed may be:

1. sold at public sale (property not sold may be disposed of);

2. disposed of as the landlord sees fit if it is food or something perishable;

3. destroyed or otherwise disposed of (such as a charitable donation) when the cost of having a public sale would exceed the value of the items.

The landlord's notice to the tenant must specify what the landlord plans to do with the items if the tenant doesn't re-claim them.

The landlord has to exercise reasonable care over the tenant's belongings and keep them in a safe place but is not responsible for loss not caused by the landlord's own neglect or deliberate action. If the tenant's property is stored in the dwelling, storage charges may not be more than the rent. When the property is held at a commercial storage company, the landlord can pass these costs on to the tenant. (AS 34.03.260(b))

To hold a public sale, the landlord should post a written or printed sale notice in 3 specific places within 5 miles of the place of the sale not less than 10 days prior to the sale. One of the notices shall be posted at the post office nearest the place of the sale. (AS 09.35.130)

Tenants cannot make claims against a landlord who has fairly exercised his rights regarding abandonment, however, when a landlord deliberately or negligently violates the law governing abandonments, the tenant may sue for actual damages and an equal amount of penal damages. (AS 34.03.260(d))

MOVING OUT

proper notice

When a tenant wants to move from a month-to-month tenancy (not a lease), the law requires that he/she give a written notice to the landlord at least 30 days before the rental due date specified as the termination date in the notice. If the tenant wishes to move between rental due dates, the notice must be delivered on or before the rental due date which falls at least 30 days before the move-out date.

For example, if rent is due the 8th of each month and the tenant wishes to move March 8, the notice must be delivered to the landlord by February 8. If this same tenant wished to move on March 21st, notice would still need to be delivered by February 8th.

Tenants who wish to terminate a week-to-week tenancy must give a written notice to the landlord at least 14 days before the termination date specified in the notice. For example, a week to week tenant wishing to move on July 26th, must give notice by July 12th.

Tenants on a month-to-month tenancy who do not give proper notice are responsible for rent for one rental period or until the place is re-rented, whichever is less. This does not include tenants who are moving because of serious problems which the landlord has not fixed. In addition, tenants who give improper notice may experience a delay in getting their deposit back - see the section "Deposit Return."

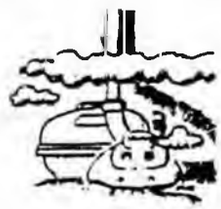
When the landlord accepts a moving notice but the tenant doesn't move when they said they would, the landlord may sue for eviction. If the tenant stayed beyond the specified move-out date willfully and not in good faith, the landlord may also sue for 1½ times actual damages.

cleaning and damages

Tenants are expected to clean the dwelling completely before moving including the bathtub, toilet and all appliances. Other cleaning responsibilities should have been listed in the rental agreement, lease or the landlord's posted rules. In general, tenants are expected to leave a place as clean as they found it. This is where a third-party inspection would be helpful - see the section "Moving into Rental Housing."

When the place has been cleaned, the tenant and landlord should inspect the place together, using the damage list prepared when the tenant first moved in as a guide. Tenants cannot be charged for ordinary wear and tear. (See definition of ordinary use at AS 34.03.360(18).) But, since landlords and tenants sometimes disagree on what "ordinary wear and tear" is, here are some guidelines:

1. A family with children or pets will ordinarily wear things out faster - this type of wear is the landlord's responsibility because the landlord can expect this condition when renting to such a family.



2. If something cannot be cleaned because of the landlord's act or negligence it is the landlord's responsibility (non-washable paint on the walls, water leaks from faulty plumbing staining the walls, etc.) (AS 34.03.360(f)).

3. Draperies, shampooing carpets, washing walls, etc. are major cleaning tasks and the law is unclear about whose responsibility these are. If landlords wish tenants to perform these tasks, they should be listed in the rental agreement, lease or the landlord's posted rules.

4. Painting the walls, repairing holes in the carpet, replacing draperies, etc. are tenant responsibilities only if such repair or replacement was needed due to tenant negligence.

Damages caused by the tenant are the tenant's responsibility, even if they were caused by an accident or a guest. The damage deposit can be kept by the landlord in the amount needed to make the repairs. If the tenant has purposely destroyed the landlord's property (throwing a rock through the window, writing on the walls, smashing furniture, etc.) the tenant may be guilty of vandalism and face up to one year in prison, a $500 fine and will still have to pay for the damage.

deposit return

When the tenant gives proper notice for moving out, the landlord must return a written itemized list of accrued rent and damages together with the amount due the tenant within 14 days of the tenant vacating the dwelling (AS 34.03.070(g)). The notice may be hand-delivered or mailed to the tenant's last known address. If the landlord does not know the new mailing address of the tenant but knows or has reason to know how to contact the tenant, the landlord must make a reasonable effort to deliver the notice and refund to the tenant (AS 34.03.070(g)).

If the tenant does not give proper notice or abandons the dwelling the landlord may take up to 30 days after the tenancy is terminated (or after he/she becomes aware of the abandonment) to return the deposit or a written notice of accrued rent and damages. (AS 34.03.070(g))

WHAT MAY THE LANDLORD KEEP FROM THE DEPOSIT?

The law says deposit money may be kept only if the tenant:

—causes damage;

—owes back rent;

—doesn't leave the place as clean as it was when he/she moved in (other than ordinary wear and tear that cannot be removed by cleaning), or

—does not comply with previously agreed upon requirements of deposit return as specified in the lease, rental agreement or landlord's posted rules. (AS 34.03.070(b))

Some landlords try to get around the law by specifying that unless tenants stay for a certain time period (6 months, for example) that the tenant automatically forfeits a portion of the security deposit. The Attorney General's Office is researching the legality of such automatic deposit forfeitures. It appears that since such a practice does not comply with the law's definitions of a deposit, it may be illegal. Check with an attorney.

more on moving out: eviction

There are 4 types of eviction notices that may be given by the landlord:

1. Late rent, refusal to allow access, and second notice of tenant's breaking agreement.

—A 10 day written notice is required when a landlord is evicting because the tenant is behind in his/her rent. If the rent is paid before the 10 days are up, the tenant may stay. The notice must tell tenants they have the choice of paying or moving (AS 34.03.220(b)).

Ten days notice is also required when the landlord is evicting because the tenant has refused the landlord's reasonable requests to enter the dwelling (AS 34.03.300(a)), or has substantially broken the rental agreement more than once in a six-month period (AS 34.03.220(a)). If a landlord accepts a partial rent payment after giving a 10-day notice for nonpayment of rent, the landlord's right to terminate the tenancy may be waived. (AS 34.03.240)

2. Tenant Breach of Other Duties

—A 20 day written notice is required when the landlord is evicting because the tenant has broken an important part of the rental agreement, such as using the place illegally, etc., or if the tenant fails to maintain the rental unit with the result that the health and safety of others are endangered. The landlord may deliver a written notice to correct the problem within 10 days of the receipt of the notice, or the tenant will have to move within 20 days. If the problem is corrected, the tenant may stay (AS 34.03.220(a)).

When there is a breach of a lease, it is recommended that a 20-day notice be given. Leases may not be terminated without cause.

3. Landlord's Choice to Terminate a Month-to-Month Rental

— A 30-day written notice is required when the landlord wishes to evict a tenant on a month-to-month rental agreement for general reasons. This notice must be delivered 30 days in advance of the rental due date specified in the notice as the termination date. For example, if a tenant's rent is due on the 15th of the month and the landlord wishes the tenant to move by October 15th, the tenant must receive the notice on or before September 15th. The 30-day notice does not have to specify the reason for the eviction but it is a good idea to list the reason so both the landlord and the tenant clearly understand the notice. Thirty-day evictions may not be used when there is a lease. (To terminate a lease, the landlord must have a valid reason, such as the tenant's breaking of the lease. See the paragraph 2 this section.)

4. Mobile Home Evictions

A one-year written notice is required when a mobile home park operator wishes to evict tenants and their mobile homes because the operator is converting the land to a common interest community, such as condominiums.

More Rules on Mobile Home Evictions

While most renters can be evicted for a variety of reasons, the law says mobile home park tenants can be evicted from the park only for the reasons stated in AS 34.03.225, which are:

1. the tenants are behind in the space rent;

2. the tenants are violating a law or ordinance, and the violation endangers the health, safety or welfare of the others in the park; or

3. the tenant has violated a provision of the rental agreement or lease signed by both parties, and the provision being violated is reasonable and normally enforceable by state law; or

4. there is to be a change in the use of the land on which the park is located. (This reason requires the landlord to give at least 90 days notice.)

Except for item number 4 above, the same notices are required to evict mobile home park tenants as for other types of tenants. (AS 34.03.040(c), 34.03.080(d), 34.03.130(c) and 34.03.225)

Evictions, General Information

Many people think that tenants cannot be evicted in the winter in Alaska or if they have small children. This is not true.

Notices to Quit (eviction) from the landlord must be in writing and must be served to the tenant by:

1. delivering the notice in person, or

2. leaving the notice at the dwelling when the tenant is absent from the premises, or

3. sending the notice by registered or certified mail, in which case an additional 3 days is added to the required notice period. (AS 09.45.100)

Once the tenants receive notice to terminate, notice to quit, or eviction notice from the landlord, they may move at any time during the notice period. They owe rent up until the end of the notice period, however.

Lockouts, Utility Shutoffs or Threats

The landlord may not harass the tenant by:

—shutting off utilities

—changing the locks

—taking the tenant's belongings

—taking possession of the dwelling by force without a court hearing.

If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services, the tenant may sue the landlord to regain entry to the premises or terminate the rental agreement and in either case recover up to 1½ times actual damages.

Utilizing a charge or threat of criminal trespass against tenants in order to evict them without the benefit of a court hearing is an abuse of the landlord-tenant law. Police who participate in such an action may be guilty of official misconduct. Tenants may sue both the landlord and the police for conspiracy to abuse the law. See an attorney. (AS 11.56.850)

Subsidized Housing

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, if you receive a section 8 subsidy from ASHA, the landlord may not be able to evict you without good cause. Contact your local ASHA office if you have questions.

-Retaliation by landlord is Prohibited (AS 34.03.310)

The landlord may not "retaliate" (explained below) against a tenant because:

1. the tenant complains to the landlord about the landlord's failure to perform the landlord's responsibilities; OR

2. the tenant used his/her legal rights under the Alaska Landlord-Tenant Law; OR

3. the tenant organizes or joins a tenant union or similar organization; OR

4. the tenant complains to a government agency responsible for enforcement of governmental housing controls.

The law prohibits "retaliation" by the landlord. This means the landlord cannot:

1. raise the rent; OR

2. decrease services (such as shutting off utilities, etc.); OR

3. evict or threaten to evict the tenant (AS 34.03.310(a)).

If the tenants feel illegal retaliation has occurred against them, they can move out or stay and in either case sue for as much as 1½ times their actual damages (AS 34.03.210).

An eviction is not considered illegal retaliation if the landlord evicts because:

—the tenant is behind in the rent; or

—the landlord must make repairs to meet code requirements or big changes that require a vacant dwelling;

—the tenant is using the place for illegal purposes;

—the landlord wants to use the place for something other than a rental dwelling for at least 6 months, or for personal purposes;

—the property is being sold and the new owner intends to use it for personal use, substantially remodel or demolish or change it from rental use (AS 34.03.310 (c))

Rent increases are not considered illegal retaliation if the landlord can show, in good faith:

—a recent sizeable increase in taxes or cost of maintaining the property (not including the cost of repairing something because of a tenant's complaint) (AS 34.03.310(dX1)); or

—that similar dwellings are being rented for a higher rate, and in fact, the landlord has been undercharging (AS 34.03.310 (dX3)); or

—that the true costs of major improvements made to the property are being passed on to all tenants fairly and equally (AS 34.03.310(dX2))

- What if the Tenant Won't Move

If the tenant refuses to move at the end of the notice to quit period the landlord must go to court to evict.

The landlord may not take over the rental dwelling by force or by locking out the tenant.

The court calls most eviction suits by landlords "Forcible Entry and Detainer" (F.E.D.) cases. Here is how an F.E.D. case works.

The landlord files his/her claim with the court. The tenant will receive a complaint and summons to appear in court. The hearing will be scheduled 2-4 days after the summons is served. At the hearing, both the landlord and the tenant will have an opportunity to tell their side of the story.

If the judge finds in favor of the tenant, the tenant will be allowed to stay and the landlord may have to pay the tenant's attorney fees.

If the judge finds in favor of the landlord, the tenant will be served a court order to move. The judge will decide how long before the tenant has to be out. If the tenant still doesn't move, the landlord can get a writ of assistance from the courts that will permit the police to assist in the eviction. In addition, the tenant may have to pay the landlord's attorney fees.

Some Anchorage judges have granted the right to a jury trial when requested by the landlord or the tenant. To date, there has been no Alaska appellate decision affirming the right in an F.E.D. action.

F.E.D. cases are usually handled by district court. For more information on evictions, read AS 09.45.060-.160, Forcible Entry and Detainer. Information on preparing an eviction suit may be found in the Alaska Rules of Court-Civil Rules (read rule 85) and in the Alaska Rules of Court-Civil Forms (review forms 170 and 171). The Rules of Court are available in the Alaska Law Library or your local magistrate's office. More specific answers to questions on F.E.D.'s may be found in a booklet prepared by the Administrative Office of the Alaska Court System. Inquire at your local court or magistrate's office.

Tenants may have a legal defense or claim against the landlord which could prevent an eviction. Tenants should act quickly if they don't want to be evicted. See an attorney.

settling landlord/tenant disputes

When landlords and tenants disagree, sometimes tempers flare and things may be said and/or done which are wholly outside the law. Sometimes the disagreement becomes just plain picky.

If there is disagreement on any issue, remember that the court looks favorably on "good faith" reasonable actions; that is, action taken in an honest, forthright manner. Try to remain calm. Be sure you are doing everything you can to prevent the situation from getting worse. Gather

your facts and PUT THEM IN WRITING. Be sure to pay attention to sections of the law that require written notices and that specify the number of days allowed for landlords or tenants to remedy disagreeable situations. Present your problem to the other party in writing, clearly stating what you want to change and what you will do if the situation doesn't change.

Generally speaking, the rental of dwellings is a business, and as in any other business, both parties should conduct themselves in a fair, honest manner. There are not many agencies that will mediate landlord/tenant disputes, and problems are frequently not serious enough to require a lawyer or go to court. Most landlord/tenant problems could be solved by both parties acting "in good faith."

If serious problems do arise, it is always advisable to see a lawyer. But first, give the other person a chance by trying to work it out together.

- Common Rental Problems

The most common problem facing landlords and tenants is a failure to get things in writing. In many sections of the law written notices are required; in other cases, getting things in writing is just good business. Written evidence will help people remember what was agreed upon and may be helpful if you should need to go to court. Putting things in writing will often trigger other legal protections.

Other common problems and their remedies are:

1. Problem:

Landlord tells a tenant to move immediately or cuts off essential services without warning.

Remedy:

Evictions are controlled by specific sections of the law. Tenants do not have to move if these rules are not followed and may sue for 1½ times actual damages.

2. Problem:

Tenant refuses to move after receiving an eviction notice.

Remedy:

The landlord should go to court for an eviction order; the State Troopers or city police will carry out the order. In addition the landlord may sue for 1½ times the actual damages. See the section on Moving Out of Rental Housing.

3. Problem:

The tenant's deposit is not returned and the landlord did not give in writing justifiable reasons for keeping the deposit.

Remedy:

Tenants may sue for twice the amount kept; see the section on Moving Out.

4. Problem:

Tenant is habitually late with rent or repeatedly breaks rules.

Remedy:

Late rent and other problems which are repeated within a 6-month period may be grounds for eviction. (see the section on "Moving Out" or see a lawyer.)

Where to Go For Help

Both landlords and tenants can get help from the following sources:

1. The Cooperative Extension Service can provide you with copies of this publication but cannot give legal advice.

Anchorage	786-1060
Bethel	543-2503
Cordova	424-3446
Fairbanks	452-1530
Homer	235-8178
Juneau	586-7102
Ketchikan	225-3290
Delta Junction	895-4215
Kodiak	486-5369
Nome	443-2320
Palmer	745-3360
Sitka	747-6065
Soldotna	262-5824

2. For non-judicial dispute assistance, Anchorage residents can contact the Conflict Resolution Center, P.O. Box 102109, Anchorage, 277-9136 (landlord-tenant line). The (non-profit) Center can assist you in resolving your dispute through conciliation, mediation and/or arbitration for a nominal fee.

3. To file a complaint about the landlord's false advertising, chronic misuse of deposit money or fraud, or for copies of this publication, see the Consumer Protection Section, Alaska Department of Law:

Anchorage:
1031 W. 4th, Suite 300
Anchorage, AK 99501
279-0428

Fairbanks
1st National Center
100 Cushman, Suite 400
Fairbanks, AK 99701
456-3568

Juneau:
Pouch K, State Capitol
(S.S. Fuller Bldg., Suite 214 4th & Harris)
Juneau, AK 99811
465-3692

Valdez:
District Attorney's Office, Courthouse
P.O. Box 671
Valdez, AK 99686
835-2462

4. Tenants with low incomes may call Alaska Legal Services for attorney help if your landlord tries to evict you. Be sure you mention the eviction when you call Legal Services:

Anchorage	272-9431
Barrow	852-2311
Bethel	543-2237
Dillingham	843-5663
Fairbanks	452-5401 or 452-5181
Juneau	586-6425
Ketchikan	225-6420 or 225-6440
Kodiak	486-4178
Kotzebue	442-3396 or 442-3496
Nome	443-2961 or 443-2952
Unalaska	581-1025

5. If you need a lawyer but don't qualify for Alaska Legal Services, see the low-cost legal clinics in your town or call the statewide Lawyer Referral Services at 272-0352 in Anchorage. They may be able to refer you to a lawyer in your area.

6. For complaints against state government officials or agencies, contact the State Ombudsman Office:

Anchorage:
3201 "C", Room 606
Anchorage, AK 99503
563-3673

Fairbanks
315 Barnette Street
P.O. Box 74358
Fairbanks, AK 99707
452-4001

Juneau
529 Village Street
Pouch WO
Juneau, AK 99811
465-4970

7. For complaints against Municipality of Anchorage employees or departments, contact the Municipal Ombudsman Office at 264-4461.

8. To file a claim for damages of $2,000 or less, see the Clerk or magistrate at your local courthouse and ask for their publication, "Alaska Small Claims Handbook."

9. For complaints against federal housing projects, call HUD (Housing and Urban Development) at 271-4343.

10. For complaints against state housing projects, call your project manager or ASHA (Alaska State Housing Authority) Central Office at 562-2813.

11. For information on and filing discrimination complaints contact the Anchorage Equal Rights Commission, 620 E. 10th, Anchorage, AK 99501, phone: 264-4342 or the Equal Rights Commission in your town.

12. Some cities/towns in Alaska have tenants' unions, tenant advocacy organizations, landlord associations and similar groups that might help you. Check your local phone book for groups in your town.

forms and notices

The following notices were prepared as samples of what is necessary. These samples may not apply in all situations but could be helpful.

LANDLORD NOTICE TO TENANT OF TERMINATION OF TENANCY
(NOTICE TO QUIT)

(Date)

TO _____ (Tenant)
_____
_____
_____ (Address)

You are notified that your tenancy is terminated and that you must move from the address listed above on the rent due date which occurs at least 30 days from the date you receive this notice. Your rent is due on the _____ day of each month so you must be gone by the _____ day of _____, 19__.

The reason you are being evicted is as follows:

_____
_____
_____

If you are not gone by that date, a lawsuit will be filed to evict you.

Signed _____
(Landlord)

Receipt:
I received this notice on the _____ day of _____, 19__ at _____ am/pm.

_____
(Tenant)

KEEP A COPY OF THIS NOTICE

LANDLORD NOTICE TO TENANT OF EVICTION FOR VIOLATION OF AGREEMENT AND/OR THE LAW

(Date)

TO

(Tenant)

(Address)

You are notified that you have seriously violated your agreement with me and/or your duties under the law. The violation(s) is (are) set out specifically as follows:

If you do not remedy the violation(s) listed above within TEN DAYS after the date you receive this notice, your tenancy will terminate in not less than TWENTY DAYS from the date you receive this notice, and you must move. Failure to remedy the violation(s) listed above will mean you must move out by the ___ day of ____, 19___.

If you have not remedied the problem(s) and have not moved by the date listed above, a lawsuit will be filed to evict you. If you remedy the problem(s) within TEN DAYS you may stay.

Signed:

(Landlord)

Receipt

I received this notice on the ____ day of ____, 19___ at ____ am/pm.

(Tenant)

KEEP A COPY OF THIS NOTICE

TENANT NOTICE TO LANDLORD OF DEFECTS IN ESSENTIAL SERVICES

(Date)

TO

(Landlord)

(Address)

You are notified that you are failing to provide (water/hot water/heat/sewer service or other essential services) at the above address. The specific defect(s) is (are) as follows:

If you do not fix this defect WITHIN 24 HOURS, I have a right to:

1) have it fixed myself and deduct the cost from my rent;

2) sue you for damages, or

3) move out, stop paying rent, and hold you responsible for my expenses of moving.

Signed:

(Tenant)

Receipt

I received this notice on the ____ day of ____, 19___ at ____ am/pm.

(Landlord)

KEEP A COPY OF THIS NOTICE

LANDLORD NOTICE TO TENANT OF EVICTION FOR NON-PAYMENT OF RENT

(Date)

TO

(Tenant)

(Address)

You are notified that you owe rent in the amount of $ _____
If you do not pay this rent within TEN DAYS of the day you receive this notice, your tenancy is terminated and you must move. You MUST pay your rent in cash, money order or certified check.

If you have not paid the rent or moved within TEN DAYS, a lawsuit will be filed to evict you. If you deliver your rent to me on or before the TEN DAY period, you may stay.

Signed

(Landlord)

Receipt

I received this notice on the _____ day of _____, 19 _____ at _____ am/pm

_____
(Tenant)

KEEP A COPY OF THIS NOTICE

TENANT NOTICE TO LANDLORD OF TERMINATION OF TENANCY (BY TENANT)

(Date)

TO

(Landlord)

(Address)

You are notified that I am terminating the tenancy effective on the rent due date which occurs at least 30 days from the date you receive this notice. My rent is due on the _____ of each month, so I will be gone by the _____ day of _____, 19

Please send my security deposit of $ _____ or an explanation of how it was used, to my new address:

(New address)

I understand that by law my deposit must be returned within 14 days of the date I move.

Signed

(Tenant)

Receipt

I received this notice on the _____ day of _____, 19 _____ at _____ am/pm

_____
(Landlord's Signature)

KEEP A COPY OF THIS NOTICE

TABLE OF CONTENTS

For copies of this publication, see the Consumer Protection Section, Alaska Department of Law:

Anchorage:

1031 W. 4th, Suite 300
Anchorage, AK 99501
279-0428

Fairbanks:

1st National Center
100 Cushman, Suite 400
Fairbanks, AK 99701
456-8586

Juneau:

Pouch K, State Capitol
(S.S. Fuller Bldg.,
Suite 214
4th & Harris
465-3692

Writing on the wall tips police to drug gangs' presence

A.T. SUN 4/17/88

By Jean Lamming
Times Writer

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, 6Deuce, R60, 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 38s, 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.

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 9981
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.

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 V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 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 of 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.

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

STATE OF ALASKA
THE LEGISLATURE

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-

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

REPLY TO:
XX
1031 W 4th SUITE 110
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550
1st NATIONAL CENTER
100 CUSHMAN SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 456-8588
S.S. FULLER BLDG
4th & HARRIS, SUITE 214
P.O. BOX K
JUNEAU, ALASKA 99811
PHONE: (907) 465-3692
STATE COURTHOUSE ROOM 26
P.O. BOX 671
VALDEZ, ALASKA 99686
PHONE: (907) 835-2462

DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

March 17, 1989

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

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
Robert E. Mintz
Assistant Attorney General

REM/ssr
Encl.

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 by 1985.

In addition to the revisions noted above, a supplement was prepared in August of 1985 to address previously unanswered issues of concern to both landlords and tenants. These issues are described in the 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.

Supplement - August 1983

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 44.23.020.

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, when the 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 re-rent the dwelling unit 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

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 permits" (AS [illegible]). 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, 108 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.

3. 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 refunded, nor does it involve holding funds to cover a possible future breach by the [illegible]. 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(a), 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, 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 1983 revision, but should be used as a supplement to that version.

In 1974, the Alaska Legislature passed the Uniform Residential Landlord and Tenant Act (AS 34.03.010- 340). 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: "Settling 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!

[illegible] the agreement 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 34.03.030(a))

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 34.03.030(b))

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 liquidated damages. If a per diem percentage rate is applied, however, the rate cannot exceed the 10.5% per annum rate allowed by AS 45.45.010.

5. What is included in the rent (heat, lights, 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 (snowmobiles, 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)).

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 utilities and water, etc. (AS 34.03.050).

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)

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

In addition to the illegal 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 into 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 selling 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 tenants give 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 sell 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 into 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)).

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 outlining 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 pro-rated rent on a day-to-day basis until someone else rents the place, **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 ten-day written notice and at the time of the 10 days receive back all security deposit and pre-paid rent; or

have it and also sue the landlord and any 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, willful and not in good faith, the tenant may sue for 1½ 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. 5.10.010 and 5.20.020) 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 limitation. 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 illegal discrimination, contact the Equal Rights Commission in your town or:

Alaska State Commission for Human Rights
431 W. 7th Avenue
Anchorage, Alaska 99501
Phone: 274-4692

Alaska State Commission for Human Rights
Northern Regional Office
675 7th Avenue, Station H
Fairbanks, AK 99701
Phone: 452-1561

Alaska State Commission for Human Rights
Southeastern Regional Office
Mail Pouch AH
314 Calistein Bldg.
Juneau, AK 99811
Phone: 465-3560

Pouch B-66d
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 this 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 takes 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 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
   $600 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 labeled "(name of apartments) Ren-

used 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. Whomever represents himherself 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 charged 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 a 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 either:

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's 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 34.03.060)

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 this 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.

would violate locale 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 nosey 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 months' 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 liveable 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 facilities supplied by the landlord.

4. Provide and maintain garbage cans and arrange for removal service.

amounts of hot water and heat at all times unless there is a severe energy shortage or the furnace or hot water heater is in the complete control of the tenant (as in a house).

6. If requested by the tenant, supply and maintain adequate locks and keys. (If the lock can be easily broken, it does not provide adequate protection. A tenant can demand that a proper lock be put on the door.)

If the dwelling is in an isolated area where a public sewer or water service is not available, the landlord does **not** have to provide those services; however, if the landlord privately provides these services at the beginning of the rental agreement, he/she must maintain the services. (AS 34.03.100(b))

In the **renting of a house or duplex**, the landlord and tenant may agree IN WRITING that the tenant will be responsible for (4), (5) and (6) of the LANDLORD DUTIES listed above. Also, if it is done in good faith, the landlord and tenant of any dwelling may agree that the tenant will do specific repairs, remodeling or maintenance jobs in exchange for payment or reduction of rent, etc. THE LANDLORD CANNOT FORCE A TENANT TO AGREE TO THIS KIND OF ARRANGEMENT TO GET OUT OF HIS/HER OBLIGATIONS AS A LANDLORD. It must be made in WRITING, signed by both parties. Also, this agreement cannot be made if it will reduce or endanger the services to the other tenants. (AS 34.03.100(c))

This is a check list of the main things the landlord should repair and maintain.

—doors, windows, roof, floors, walls, and ceilings that leak or have holes.

—plumbing fixtures (must work, not leak and provide a reasonable amount of running, hot and cold water at a reasonable water pressure level).

—a working and safe stove and oven.

—a reliable heating system which provides heat to all rooms in a reasonable amount.

—a safe electrical system (no loose or exposed wires, sockets that do not spark and enough power so the system does not blow fuses when used normally).

—windows (or fans) that provide fresh air when wanted.

—enough garbage cans to provide an adequate and safe trash removal service.

—extermination service if roaches, rats, mice or other pests infest the building, apartment or property.

—proper maintenance of any vacuum cleaners, washing machines, dish washers, etc. supplied by the landlord (when not abused or broken by the tenant).

tenant remedies

If there is a serious problem with something mentioned above that is not the tenant's fault, the law provides remedies for the tenant. The landlord must be given a reasonable chance to fix the problem, but if he/she won't fix it, here is what the tenant can do:

1. MOVE. The tenant gives the landlord a WRITTEN notice describing the problem and saying that if the problem is not fixed within 10 days, he/she will move within 20 days. If the problem is fixed within 10 days, but the tenant still wants to move, a regular 30-day notice is required. (AS 34.03.160(a))

DEDUCTIONS. If an **essential service** (heat, water, sewer, electricity or plumbing) breaks down, the tenant may get the problem fixed and deduct the actual and reasonable expenses from the next month's rent. But first, the tenant must give the landlord a written notice that this is what he/she plans to do, and if the problem is major, the tenant must provide the landlord with a copy of the estimated repair costs. However, once written notice is given, the tenant may immediately proceed with repairs, if the cost is very great it is advisable to contact a lawyer before starting the repairs. If the problem cannot be fixed right away and it makes the dwelling unlivable, the tenant can give the landlord written notice that he/she is moving into substitute housing. The tenant is excused from paying rent until the problem is cured and may charge the landlord for the cost in excess of rent of staying in a hotel or other substitute housing until the problem is fixed. (AS 34.03.180)

3. WITHOLD RENT. In some cases where the problem is really serious, it may reduce the value of the dwelling. If this happens, tenants may give written notice to their landlord that they refuse to pay a part of their rent until the problem is fixed. Since landlords and tenants often disagree on what is a serious problem, it is wise to see a lawyer before using this remedy.

4. SUE FOR DAMAGES. In addition to the remedies listed above, the tenant can sue if the tenant or his/her family have suffered because the landlord failed to fix something after written notice. If the total amount is less than $2,000.00, the tenant may sue in the state small claims court. For larger claims, the tenant should see a lawyer. (AS 34.03.160(b))

If the tenant notified the landlord IN WRITING of a problem, and the landlord fixed it within the time allowed, BUT through the landlord's negligence, virtually the same thing happens again within 6 months, the tenant may terminate the rental agreement with a 10-day written notice. The notice must specify the problem and the date of termination. Tenants may **not** terminate a rental agreement for problems they themselves have caused. (AS 34.03.190)

condemned dwellings

Buildings inspected and found to be very unsafe may be condemned. The city or borough housing inspector will tell the landlord that he/she must repair the problem or he/she will be taken to court. If the problems are so serious that the inspector feels the building is beyond repair, the inspector will order that it be torn down.

If a building is condemned, the tenant may come home one day and find a sign posted on the building saying that the place is unsafe for anyone to live there. Tenants should immediately find out when the inspector and landlord expect all the tenants to move. They should also see an attorney before paying any more rent.

fire / casualty damage

If the dwelling is substantially damaged by a fire or other casualty (earthquake, flood, etc.), depending on the amount of damage, there are a couple of things the tenant can do:

1. **Partial damage:** When only a part of the dwelling is damaged and it is unlawful for the tenant to continue to live there, the tenant should move out of the damaged part. The rent can be reduced to an [illegible] damaged part of the dwelling. (AS 34.03.200(b))

2. **Total destruction:** If the tenant can no longer live in the place, he/she can move out, notify the landlord and stop paying rent. The rental agreement and responsibility to pay rent ends when the tenant moves. (AS 34.03.200(a))

After the tenant moves, the landlord must return any deposits and/or pre-paid rent to the tenant. Rent paid for the time the tenant didn't live in the dwelling must be returned (counted from the day of the casualty and including the day of the casualty) to the tenant. (AS 34.03.200)

HOUSING CODES

The primary objective of a housing code is the protection of the health and safety of the people who live in houses and apartments. A minimum standard of maintenance is set, making the landlord (not his tenants) responsible for keeping rental property in decent shape. The section of this leaflet called LANDLORD DUTIES explains what the landlord is expected to repair and maintain.

The law protects tenants who use their right to report code violations. If they call to complain and ask for an inspection, the landlord cannot take revenge by evicting or harassing the tenant. Alaska has a statewide fire code but does not have a statewide housing code.

The following places do have local housing codes. Report substandard conditions to:

Anchorage
Building Safety Division at 786-8211

Health & Environmental Protection at 264-4720

Fairbanks
Fairbanks Bldg. Official - 452-1881

Juneau
Engineering Department Building Division - 586-5231

Ketchikan
City Building Inspector - 225-3111

Seldovia
City Clerk - 234-7643

Seward
City Building Inspector - 224-3331

Kenai
City Building Inspector - 283-7537

Soldotna
City Building Inspector - 262-9107

Homer
Planning & Zoning - 235-8121

Palmer
Building Department - 745-2105

tenant duties

These are the duties which the law says tenants must perform to keep their part of the rental agreement. (AS 34.03.120)

1. Do keep the dwelling as clean and safe as they can.

2. Do dispose of garbage and other waste in a clean and safe manner;

3. Do keep plumbing fixtures clean;

4. Do pay the rent on time;

5. Do use all facilities and appliances provided reasonably, in the manner in which intended;

6. Do not deliberately or carelessly damage, destroy, deface or remove any part of the premises or facilities (or allow their guests to do so);

7. Do replace or repair anything damaged or destroyed because of the tenant's accident or carelessness;

8. Do conduct themselves in a manner that does not unreasonably disturb their neighbors' peaceful enjoyment of the premises. (AS 34.03.120)

If tenants do not uphold their end of the bargain, the landlord can evict them. Eviction notices must be in writing and be specific about the problem in question.

If the tenants were notified of a problem and remedied the problem within the time allowed, but the problem occurs again within 6 months, the landlord may evict the tenant using a 10-day written notice. The notice must specify the problem and the date of termination.

absence/abandonment by the tenant

When the landlord specifies in his/her rental agreement, tenants can be required to tell their landlord every time they plan to be gone for more than 7 days. If the tenant plans to be gone only 2 or 3 days, then finds that he/she will actually be gone for more than a week, the tenant must notify the landlord as soon as possible. This is to help protect the property from pipes freezing, etc. Tenants who willfully fail to give notice of being gone can be sued by their landlord for 1½ times the actual damages of any such calamity which occurs during their absence. When tenants are gone, the landlord may go into their place only if there is an emergency or with proper notice. See the section titled "Privacy." (AS 34.03.230)

A landlord may assume the dwelling has been abandoned when (AS 34.03.360(11))

1. The tenant is behind in rent, and

2. The tenant has left his/her personal belongings in the dwelling but has been gone for more than 7 straight days, and

3. The tenant did not notify the landlord they would be gone for more than seven days, providing their rental agreement requested this.

When a dwelling has been abandoned, the landlord may enter, clean up the place and re-rent it. The obligation of the former tenant to pay rent stops when a new tenant moves in (providing the landlord makes a good faith effort to promptly re-rent the place at a fair rental value) (AS 34.03.230(c))

If a tenant abandons a dwelling and leaves personal belongings behind, the landlord must notify the tenant of where the property is being held and that the tenant has a minimum of 15 days to remove the property. Property not removed within the time allowed may be:

1. sold at public sale (property not sold may be disposed of);

2. disposed of as the landlord sees fit if it is food or something perishable;

3. destroyed or otherwise disposed of (such as a charitable donation) when the cost of having a public sale would exceed the value of the items.

The landlord's notice to the tenant must specify what the landlord plans to do with the items if the tenant doesn't re-claim them.

The landlord has to exercise reasonable care over the tenant's belongings and keep them in a safe place but is not responsible for loss not caused by the landlord's own neglect or deliberate action. If the tenant's property is stored in the dwelling, storage charges may not be more than the rent. When the property is held at a commercial storage company, the landlord can pass these costs on to the tenant. (AS 34.03.260(b))

To hold a public sale, the landlord should post a written or printed sale notice in 3 specific places within 5 miles of the place of the sale not less than 10 days prior to the sale. One of the notices shall be posted at the post office nearest the place of the sale. (AS 09.35.130)

Tenants cannot make claims against a landlord who has fairly exercised his rights regarding abandonment, however, when a landlord deliberately or negligently violates the law governing abandonments, the tenant may sue for actual damages and an equal amount of penal damages. (AS 34.03.260(d))

MOVING OUT

proper notice

When a tenant wants to move from a month-to-month tenancy (not a lease), the law requires that he/she give a written notice to the landlord **at least 30 days before the rental due date specified as the termination date** in the notice. If the tenant wishes to move between rental due dates, the notice must be delivered **on or before the rental due date** which falls at least 30 days before the move-out date.

For example, if rent is due the 8th of each month and the tenant wishes to move March 8, the notice must be delivered to the landlord by February 8. If this same tenant wished to move on March 21st, notice would still need to be delivered by February 8th.

Tenants who wish to terminate a week-to-week tenancy must give a written notice to the landlord at least 14 days before the termination date specified in the notice. For example, a week to week tenant wishing to move on July 26th, must give notice by July 12th.

Tenants on a month-to-month tenancy who do not give proper notice are responsible for rent for one rental period or until the place is re-rented, whichever is less. This does not include tenants who are moving because of serious problems which the landlord has not fixed. In addition, tenants who give improper notice may experience a delay in getting their deposit back - see the section "Deposit Return."

When the landlord accepts a moving notice but the tenant doesn't move when they said they would, the landlord may sue for eviction. If the tenant stayed beyond the specified move-out date willfully and not in good faith, the landlord may also sue for 1½ times actual damages.

cleaning and damages

Tenants are expected to clean the dwelling completely before moving, including the bathtub, toilet and all appliances. Other cleaning responsibilities should have been listed in the rental agreement, lease or the landlord's posted rules. In general, tenants are expected to leave a place as clean as they found it. This is where a third-party inspection would be helpful - see the section "Moving into Rental Housing."

When the place has been cleaned, the tenant and landlord should inspect the place together, using the damage list prepared when the tenant first moved in as a guide. Tenants cannot be charged for ordinary wear and tear. (See definition of ordinary use at AS 34.03.360(18).) But, since landlords and tenants sometimes disagree on what "ordinary wear and tear" is, here are some guidelines:

1. A family with children or pets will ordinarily wear things out faster - this type of wear is the landlord's responsibility because the landlord can expect this condition when renting to such a family.

2. If something cannot be cleaned because of the landlord's act or negligence it is the landlord's responsibility (non-washable paint on the walls, water leaks from faulty plumbing staining the walls, etc.) (AS 34.03.360(f)).

3. Draperies, shampooing carpets, washing walls, etc. are major cleaning tasks and the law is unclear about whose responsibility these are. If landlords wish tenants to perform these tasks, they should be listed in the rental agreement, lease or the landlord's posted rules.

4. Painting the walls, repairing holes in the carpet, replacing draperies, etc. are tenant responsibilities only if such repair or replacement was needed due to tenant negligence.

Damages caused by the tenant are the tenant s resoonsibility, even if they were caused ov an accident or a guest. The damage deposit can be kept by the landiord in the amount needed to make the repairs. If the tenant has purposely destroyed the landiord s property (throwing a rock through the window, writing on the walls, smashing furniture, etc.) the tenant may be guilty of vandalism and face up to one year in prison, a $500 fine and will still have to pay for the damage.

deposit return

When the tenant gives proper notice for moving out, the landiord must return a written itemized list of accrued rent and damages together with the amount due the tenant within 14 days of the tenant vacating the dwelling (AS 34.03.070(g)). The notice may be hand-delivered or mailed to the tenant s last known address. If the landiord does not know the new mailing address of the tenant but knows or has reason to know how to contact the tenant, the landiord must make a reasonable effort to deliver the notice and refund to the tenant (AS 34.03.070(g)).

If the tenant does not give proper notice or abandons the dwelling the landiord may take up to 30 days after the tenancy is terminated (or after he/she becomes aware of the abandonment) to return the deposit or a written notice of accrued rent and damages. (AS 34.03.070(g))

WHAT MAY THE LANDLORD KEEP FROM THE DEPOSIT?

The law says deposit money may be kept only if the tenant:

—causes damage,

—owes back rent;

—doesn t leave the place as clean as it was when he/she moved in (other than ordinary wear and tear that cannot be removed by cleaning); or

—does not comply with previously agreed upon requirements of deposit return as specified in the lease, rental agreement or landiord s posted rules. (AS 34.03.070(b))

Some landiords try to get around the law by specifying that unless tenants stay for a certain time period (6 months, for example) that the tenant automatically forfeits a portion of the security deposit. The Attorney General's Office is researching the legality of such automatic deposit forfeitures. It appears that since such a practice does not comply with the law s definitions of a deposit, it may be illegal. Check with an attorney.

more on moving out: eviction

There are 4 types of eviction notices that may be given by the landiord:

1. **Late rent, refusal to allow access, and second notice of tenant's breaking agreement.**

—A **10 day written notice** is required when a landiord is evicting because the tenant is behind in his/her rent. If the rent is paid before the 10 days are up, the tenant may stay. The notice must tell tenants they have the choice of paying or moving (AS 34.03.220(b)).

Ten days notice is also required when the landiord is evicting because the tenant has refused the landiord s reasonable requests to enter the dwelling (AS 34.03.300(a)), or has substantially broken the rental agreement more than once in a six-month period (AS 34.03.220(a)). If a landiord accepts a partial rent payment after giving a 10-day notice for nonpayment of rent, the landiord s right to terminate the tenancy may be waived. (AS 34.03.240)

2. **Tenant Breach of Other Duties**

—A **20 day written notice** is required when the landiord is evicting because the tenant has broken an important part of the rental agreement, such as using the place illegally, etc., or if the tenant fails to maintain the rental unit with the result that the health and safety of others are endangered. The landiord may deliver a written notice to correct the problem within 10 days of the receipt of the notice, or the tenant will have to move within 20 days. If the problem is corrected, the tenant may stay (AS 34.03.220(a)).

When there is a breach of a lease, it is recommended that a 20-day notice be given. Leases may not be terminated without cause.

3. **Landlord's Choice to Terminate a Month-to-Month Rental**

— **A 30-day written notice** is required when the landiord wishes to evict a tenant on a month-to-month rental agreement for general reasons. This notice must be delivered 30 days in advance of the rental due date specified in the notice as the termination date. For example, if a tenant s rent is due on the 15th of the month and the landiord wishes the tenant to move by October 15th, the tenant must receive the notice on or before September 15th. The 30 day notice does not have to specify the reason for the eviction but it is a good idea to list the reason so both the landiord and the tenant clearly understand the notice. Thirty-day evictions may not be used when there is a lease. (To terminate a lease, the landiord must have a just reason, such as the tenant s breaking of the lease. See the paragraph 2 this section.)

4. **Mobile Home Evictions**

A one-year written notice is required when a mobile home park operator wishes to evict tenants and their mobile homes because the operator is converting the land to a common interest community, such as condominiums.

More Rules on Mobile Home Evictions

While most renters can be evicted for a variety of reasons, the law says **mobile home park tenants** can be evicted from the park only for the reasons stated in AS 34.03.225, which are:

1. the tenants are behind in the space rent;

2. the tenants are violating a law or ordinance, and the violation endangers the health, safety or welfare of the others in the park; or

3. the tenant has violated a provision of the rental agreement or lease signed by both parties, and the provision being violated is reasonable and normally enforceable by state law; or

4. there is to be a change in the use of the land on which the park is located. (This reason requires the landiord to give at least 90 days notice.)

Except for item number 4 above, the same notices are required to evict mobile home park tenants as for other types of tenants. (AS 34.03.040(c), 34.03.080(d), 34.03.130(c) and 34.03.225)

Evictions, General Information

Many people think that tenants cannot be evicted in the winter in Alaska or if they have small children. This is not true.

Notices to Quit (eviction) from the landiord must be in writing and must be served to the tenant by:

1. delivering the notice in person, or

2. leaving the notice at the dwelling when the tenant is absent from the premises, or

3. sending the notice by registered or certified mail, in which case an additional 3 days is added to the required notice period. (AS 09.45.100)

Once the tenants receive notice to terminate, notice to quit, or eviction notice from the landiord, they may move at any time during the notice period. They owe rent up until the end of the notice period, however.

Lockouts, Utility Shutoffs or Threats

The landiord may not harass the tenant by:

—shutting off utilities

—changing the locks

—taking the tenant s belongings

—taking possession of the dwelling by force without a court hearing.

cludes the tenant from the premises or willfully diminishes services, the tenant may sue the landlord to regain entry to the premises or terminate the rental agreement and in either case recover up to 1½ times actual damages.

Utilizing a charge or threat of criminal trespass against tenants in order to evict them without the benefit of a court hearing is an abuse of the landlord-tenant law. Police who participate in such an action may be guilty of official misconduct. Tenants may sue both the landlord and the police for conspiracy to abuse the law. See an attorney. (AS 11.56.850)

Subsidized Housing

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, if you receive a section 8 subsidy from ASHA, the landlord may not be able to evict you without good cause. Contact your local ASHA office if you have questions.

-Retaliation by landlord is Prohibited (AS 34.03.310)

The landlord may not "retaliate" (explained below) against a tenant because:

1. the tenant complains to the landlord about the landlord's failure to perform the landlord's responsibilities; OR

2. the tenant uses his/her legal rights under the Alaska Landlord-Tenant Law; OR

3. the tenant organizes or joins a tenant union or similar organization; OR

4. the tenant complains to a government agency responsible for enforcement of governmental housing controls.

The law prohibits "retaliation" by the landlord. This means the landlord cannot:

1. raise the rent; OR

2. decrease services (such as shutting off utilities, etc.); OR

3. evict or threaten to evict the tenant (AS 34.03.310(a)).

If the tenants feel illegal retaliation has occurred against them, they can move out or stay and in either case sue for as much as 1½ times their actual damages (AS 34.03.210).

An eviction is not considered illegal retaliation, if the landlord evicts because:

—the tenant is behind in the rent; or

—the landlord must make repairs to meet code requirements or big changes that require a vacant dwelling.

—the tenant is using the place for illegal purposes;

—the landlord wants to use the place for something other than a rental dwelling for at least 6 months, or for personal purposes;

—the property is being sold and the new owner intends to use it for personal use, substantially remodel or demolish, or change it from rental use (AS 34.03.310 (c))

Rent increases are not considered illegal retaliation if the landlord can show, in good faith,

cost of maintaining the property (not including the cost of repairing something because of a tenant's complaint) (AS 34.03.310(d)(1)); or

—that similar dwellings are being rented for a higher rate, and in fact, the landlord has been undercharging (AS 34.03.310 (d)(3)); or

—that the true costs of major improvements made to the property are being passed on to all tenants fairly and equally (AS 34.03.310(d)(2))

- What If the Tenant Won't Move

If the tenant refuses to move at the end of the notice to quit period the landlord **must go to court to evict.**

The landlord may not take over the rental dwelling by force or by locking out the tenant.

The court calls most eviction suits by landlords "Forcible Entry and Detainer" (F.E.D.) cases. Here is how an F.E.D. case works.

The landlord files his/her claim with the court. The tenant will receive a complaint and summons to appear in court. The hearing will be scheduled 2-4 days after the summons is served. At the hearing, both the landlord and the tenant will have an opportunity to tell their side of the story.

If the judge finds in favor of the tenant, the tenant will be allowed to stay and the landlord may have to pay the tenant's attorney fees.

If the judge finds in favor of the landlord, the tenant will be served a court order to move. The judge will decide how long before the tenant has to be out. If the tenant still doesn't move, the landlord can get a writ of assistance from the courts that will permit the police to assist in the eviction. In addition, the tenant may have to pay the landlord's attorney fees.

Some Anchorage judges have granted the right to a jury trial when requested by the landlord or the tenant. To date, there has been no Alaska appellate decision affirming this right in an F.E.D. action.

F.E.D. cases are usually handled by district court. For more information on evictions, read AS 09.45.060-.160. Forcible Entry and Detainer. Information on preparing an eviction suit may be found in the Alaska Rules of Court-Civil Rules (read rule 85) and in the Alaska Rules of Court-Civil Forms (review forms 170 and 171). The Rules of Court are available in the Alaska Law Library or your local magistrate's office. More specific answers to questions on F.E.D.'s may be found in a booklet prepared by the Administrative Office of the Alaska Court System. Inquire at your local court or magistrate's office.

Tenants may have a legal defense or claim against the landlord which could prevent an eviction. Tenants should act quickly if they don't want to be evicted. See an attorney.

settling landlord/tenant disputes

When landlords and tenants disagree, sometimes tempers flare and things may be said and/or done which are wholly outside the law. Sometimes the disagreement becomes just plain picky.

If there is disagreement on any issue, remember that the court looks favorably on "good faith" reasonable actions: that is, action taken in an honest, forthright manner. Try to remain calm. Be sure you are doing everything you can to prevent the situation from getting worse. Gather

your facts and **PUT THEM IN WRITING.** Be sure to pay attention to sections of the law that require written notices and that specify the number of days allowed for landlords or tenants to remedy disagreeable situations. Present your problem to the other party in writing, clearly stating what you want to change and what you will do if the situation doesn't change.

Generally speaking, the rental of dwellings is a **business**, and as in any other business, both parties should conduct themselves in a fair, honest manner. There are not many agencies that will mediate landlord/tenant disputes, and problems are frequently not serious enough to require a lawyer or go to court. Most landlord/tenant problems could be settled by both parties acting "in good faith."

If serious problems do arise, it is always advisable to see a lawyer. But first, give the other person a chance by trying to work it out together.

- Common Rental Problems

The most common problem facing landlords and tenants is a failure to get things in writing. In many sections of the law **written notices are required;** in other cases, getting things in writing is just good business. Written evidence will help people remember what was agreed upon and may be helpful if you should need to go to court. Putting things in writing will often trigger other legal protections.

Other common problems and their remedies are:

1. **Problem:**

Landlord tells a tenant to move immediately or cuts off essential services without warning.

Remedy:

Evictions are controlled by specific sections of the law. Tenants do not have to move if these rules are not followed and may sue for 1½ times actual damages.

2. **Problem:**

Tenant refuses to move after receiving an eviction notice.

Remedy:

The landlord should go to court for an eviction order; the State Troopers or city police will carry out the order. In addition, the landlord may sue for 1½ times the actual damages. See the section on **Moving Out of Rental Housing.**

3. **Problem:**

The tenant's deposit is not returned and the landlord did not give, in writing, justifiable reasons for keeping the deposit.

Remedy:

Tenants may sue for twice the amount kept; see the section on **Moving Out.**

4. **Problem:**

Tenant is habitually late with rent or repeatedly breaks rules.

Remedy:

Late rent and other problems which are repeated within a 6-month period may be grounds for eviction; reread the section on Moving Out or see a lawyer.

Where to Go For Help

Both landlords and tenants can get help from the following sources:

1. The Cooperative Extension Service can provide you with copies of this publication but cannot give legal advice.

Anchorage	786-1080
Bethel	543-2503
Cordova	424-3446
Fairbanks	452-1530
Homer	235-8178
Juneau	586-7102
Ketchikan	225-3290
Delta Junction	895-4215
Kodiak	486-6369
Nome	443-2320
Palmer	745-3360
Sitka	747-6085
Soldotna	262-5824

2. For non-judicial dispute assistance, Anchorage residents can contact the Conflict Resolution Center, P.O. Box 102105, Anchorage, 277-8136 (landlord-tenant line). The (non-profit) Center can assist you in resolving your dispute through conciliation, mediation and/or arbitration for a nominal fee.

3. To file a complaint about the landlord's false advertising, chronic misuse of deposit money or fraud, or for copies of this publication, see the Consumer Protection Section, Alaska Department of Law:

Anchorage:
1031 W. 4th, Suite 300
Anchorage, AK 99501
279-0428

Fairbanks:
1st National Center
100 Cushman, Suite 400
Fairbanks, AK 99701
456-8588

Juneau:
Pouch K, State Capitol
(S.S. Fuller Bldg., Suite 214 4th & Harris)
Juneau, AK 99811
465-3692

Valdez:
District Attorney's Office, Courthouse
P.O. Box 671
Valdez, AK 99686
835-2462

4. Tenants with low incomes may call Alaska Legal Services for attorney help if your landlord tries to evict you, be sure you mention the eviction when you call Legal Services:

Anchorage	272-9431
Barrow	852-2311
Bethel	543-2237
Dillingham	843-5853
Fairbanks	452-5401 or 452-5181
Juneau	586-6425
Ketchikan	225-6420 or 225-6440
Kodiak	486-4178
Kotzebue	442-3398 or 442-3496
Nome	443-2951 or 443-2952
Unalaska	581-1025

5. If you need a lawyer but don't qualify for Alaska Legal Services, see the low-cost legal clinics in your town or call the statewide Lawyer Referral Services at 272-0352 in Anchorage. They may be able to refer you to a lawyer in your area.

6. For complaints against state government officials or agencies, contact the State Ombudsman Office:

Anchorage:
3201 "C", Room 606
Anchorage, AK 99503
563-3673

Fairbanks:
315 Barnette Street
P.O. Box 74358
Fairbanks, AK 99707
452-4001

Juneau:
525 Village Street
Pouch WO
Juneau, AK 99811
465-4970

7. For complaints against Municipality of Anchorage employees or departments, contact the Municipal Ombudsman Office at 264-4461.

8. To file a claim for damages of $2,000 or less, see the Clerk or magistrate at your local courthouse and ask for their publication, "Alaska Small Claims Handbook."

9. For complaints against federal housing projects, call HUD (Housing and Urban Development) at 271-4343.

10. For complaints against state housing projects, call your project manager or ASHA (Alaska State Housing Authority) Central Office at 562-2813.

11. For information on and filing discrimination complaints contact the Anchorage Equal Rights Commission, 620 E. 10th, Anchorage, AK 99501, phone: 264-4342 or the Equal Rights Commission in your town.

12. Some cities/towns in Alaska have tenants' unions, tenant advocacy organizations, landlord associations and similar groups that might help you. Check your local phone book for groups in your town.

forms and notices

The following notices were prepared as samples of what is necessary. These samples may not apply in all situations but could be helpful.

LANDLORD NOTICE TO TENANT OF TERMINATION OF TENANCY
(NOTICE TO QUIT)

(Date)

TO _____ (Tenant)

_____ (Address)

You are notified that your tenancy is terminated and that you must move from the address listed above on the rent due date which occurs at least 30 days from the date you receive this notice. Your rent is due on the _____ day of each month, so you must be gone by the _____ day of _____ 19__.

The reason you are being evicted is as follows:

If you are not gone by that date, a lawsuit will be filed to evict you.

Signed _____

(Landlord)

Receipt

I received this notice on the _____ day of _____ 19__ at _____ am/pm

_____ (Tenant)

KEEP A COPY OF THIS NOTICE

LANDLORD NOTICE TO TENANT OF EVICTION FOR VIOLATION OF AGREEMENT AND/OR THE LAW

(Date)

TO _____
(Tenant)

(Address)

You are notified that you have seriously violated your agreement with me and/or your duties under the law. The violation(s) is (are) set out specifically as follows

If you do not remedy the violation(s) listed above within **TEN DAYS** after the date you receive this notice, your tenancy will terminate in not less than **TWENTY DAYS** from the date you receive this notice, and you must move. Failure to remedy the violation(s) listed above will mean you must move out by the _____ day of _____ 19

If you have not remedied the problem(s) and have not moved by the date listed above, a lawsuit will be filed to evict you. If you remedy the problem(s) within **TEN DAYS** you may stay.

Signed.

(Landlord)

Receipt

I received this notice on the _____ day of _____ 19 _____ at _____ am/pm

(Tenant)

KEEP A COPY OF THIS NOTICE

TENANT NOTICE TO LANDLORD OF DEFECTS IN ESSENTIAL SERVICES

(Date)

TO _____
(Landlord)

(Address)

You are notified that you are failing to provide (water/hot water/heat/sewer service or other essential services) at the above address. The specific defect(s) is (are) as follows

If you do not fix this defect **WITHIN 24 HOURS**, I have a right to

1) have it fixed myself and deduct the cost from my rent

2) sue you for damages, or

3) move out, stop paying rent, and hold you responsible for my expenses of moving

Signed.

(Tenant)

Receipt

I received this notice on the _____ day of _____ 19 _____ at _____ am/pm

(Landlord)

KEEP A COPY OF THIS NOTICE

LANDLORD NOTICE TO TENANT OF EVICTION FOR NON-PAYMENT OF RENT

(Date)

TO

(Tenant)

(Address)

You are notified that you owe rent in the amount of $
If you do not pay this rent within **TEN DAYS** of the day you receive this notice, your tenancy is terminated and you must move. You MUST pay your rent in cash, money order or certified check.

If you have not paid the rent or moved within **TEN DAYS**, a lawsuit will be filed to evict you. If you deliver your rent to me on or before the TEN DAY period, you may stay.

Signed,

(Landlord)

Receipt

I received this notice on the _____ day of _____, 19____ at _____ am/pm

(Tenant)

KEEP A COPY OF THIS NOTICE

TENANT NOTICE TO LANDLORD OF TERMINATION OF TENANCY
(BY TENANT)

(Date)

TO

(Landlord)

(Address)

You are notified that I am terminating this tenancy effective on the rent due date which occurs at least 30 days from the date you receive this notice. My rent is due on the _____ of each month, so I will be gone by the _____ day of _____, 19____.

Please send my security deposit of $_____ or an explanation of how it was used to my new address.

(New address)

I understand that, by law, my deposit must be returned within 14 days of the date I move.

Signed

(Tenant)

Receipt

I received this notice on the _____ day of _____, 19____ at _____ am/pm

(Landlord's Signature)

KEEP A COPY OF THIS NOTICE

TABLE OF CONTENTS

For copies of this publication, see the Consumer Protection Section, Alaska Department of Law:

Anchorage:

1031 W. 4th, Suite 300
Anchorage, AK 99501
279-0428

Fairbanks:

1st National Center
100 Cushman, Suite 400
Fairbanks, AK 99701
456-8588

Juneau:

Pouch K, State Capital
(S.S. Fuller Bldg.,
Suite 214
4th & Harris)
465-3692

HB 309

ALASKA TRAILER COURT ASSOCIATION

Denali Towers North
2550 Denali Street Suite 1608
Anchorage, Alaska 99503
907 / 278-3615

March 6, 1990

TO ALL MEMBERS
Labor & Commerce Committee
Alaska State Legislature
Post Office Box V
Juneau, Alaska 99811

Re: HB 309

Dear Committee Member:

This is to express support for HB 309, for which a Committee Substitute may be reported out of Labor & Commerce Committee. Alaska Trailer Court Association has considered the original version and registered support.

ATCA is affiliated with Alaska Landlords and Property Managers Association, which also strongly supports this bill. Both groups have extensive experience with the working of the Landlord-Tenant Act, and HB 309 is designed to correct some awkward and difficult features of the Act. Keep in mind that HB 309 creates absolutely no hardship for a tenant that pays the rent.

Sincerely,

Ben Marsh

Bernard L. Marsh, Executive Secretary
Alaska Trailer Court Association

BLM:aem

cc: Alice Brewer, Executive Secretary
ALPMA

HB

315

HOUSE COMMITTEE REPORT

(7)
Date Referred: May 4, 1989 FURTHER REFERRALS:

Date of Committee Action: 2-26-90

The JUDICIARY Committee considered: HB 315

HOUSE BILL NO. 315 NEGLIGENT OPERATION OF TANKER, ETC.]
"An Act providing criminal penalties for negligent operation of a tank vessel, negligent oil discharges, failure to comply with an oil discharge contingency plan, and failure to adequately clean up an oil discharge."

RECOMMENDATIONS:
[X] be replaced with CS HB 315 (Jud) [ ] the same title [X] a new title
[ ] have attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the ________ Committee

ADOPTS: ________ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact ________
2 [X] zero fiscal note DEC / Courts
[X] zero with analysis Law

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) ________
[ ] zero fiscal note(s) ________
[ ] zero fn/analysis ________

SIGNING DO PASS:
Peter Goll
Mike Davis
[illegible] Elgis
[illegible] Grussendorf

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
Terry Martin		✓	

[illegible] Grussendorf / Peter Goll
Chairman's Signature