

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

5914 HOUSE LABOR & COMMERCE

318

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

INDIANA	NO SECURITY DEPOSIT STATUTE
IOWA	Sec. 562A.12            2 months' rent (no classification provided)
KANSAS	Ch. 58, sec. 2550        1 month's rent (unfurnished) 1.5 month's rent (furnished); .5 month's rent additional if tenant allowed to keep or maintain pets (No classification provided)
KENTUCKY	Security deposit statute does not specify a maximum amount
LOUISIANA	Security deposit statute does not specify a maximum amount
MAINE	Tit. 14, sec. 6032        2 months' rent (means any advance or deposit, regardless of denomination, of money, the primary function of which is to secure the performance of the agreement)
MARYLAND	sec. 8-203            2 months' rent or \$50 whichever is greater (includes prepaid rent and any prepaid amount given to protect the landlord against non-payment of rent or damage to the leased premises)
MASSACHUSETTS	ch. 186, sec. 15B        1 month's rent (does not include prepaid last month's rent)
MICHIGAN	sec. 554.602            1.5 months' rent (any prepayment in excess of the first month rent)
MINNESOTA	Security deposit statute does not specify a maximum amount
MISSISSIPPI	NO SECURITY DEPOSIT STATUTE
MISSOURI	sec. 535.300            2 months' rent (No classification provided)
MONTANA	Security deposit statute does not specify a maximum amount
NEBRASKA	ch. 76, sec. 1416        1 month's rent (No classification provided)
NEVADA	sec. 118A.242            3 months' rent (includes last month's rent)
NEW HAMPSHIRE	sec. 540-A:5            1 month's rent or \$100, whichever is greater (funds in excess of the monthly rent which are transferred from the tenant to the

landlord for any purpose)

NEW JERSEY	tit. 48, sec. 8-21.2 1.5 months' rent (No classification provided)
NEW MEXICO	ch. 47, sec. 8-18 1 month's rent if rental agreement duration less than one year
NEW YORK	Security deposit statute does not specify a maximum amount
NORTH CAROLINA	Security deposit statute does not specify a maximum amount
NORTH DAKOTA	ch. 47, sec. 16-07.1 1 month's rent (No classification provided)
OHIO	Security deposit statute does not specify a maximum amount
OKLAHOMA	Security deposit statute does not specify a maximum amount
OREGON	Security deposit statute does not specify a maximum amount
PENNSYLVANIA	tit. 68, sec. 250.511a 2 months' rent (No classification provided)
RHODE ISLAND	sec. 34-18-19 1 month's rent (No classification provided)
SOUTH CAROLINA	Security deposit statute does not specify a maximum amount
SOUTH DAKOTA	tit. 43, sec. 32-6.1 1 month's rent (any deposit of money whose function is to secure the performance of the agreement; a larger deposit may be agreed upon where special conditions pose a danger to maintenance of the premises)
TENNESSEE	Security deposit statute does not specify a maximum amount
TEXAS	Security deposit statute does not specify a maximum amount
UTAH	Security deposit statute does not specify a maximum amount
VERMONT	Security deposit statute does not specify a maximum amount

VIRGINIA	tit. 55, sec. 248.11 2 months' rent (No classification provided)
WASHINGTON	Security deposit statute does not specify a maximum amount
WEST VIRGINIA	No security deposit statute
WISCONSIN	No security deposit statute
WYOMING	No security deposit statute

# STATES REQUIRING PAYMENT OF INTEREST ON SECURITY DEPOSITS

<u>State</u>	<u>Citation</u>	<u>Amount</u>
CONNECTICUT	47a-21(1)	5.25% per year
D.C.	311.1	not less than 5% per annum simple interest (n. 1)
FLORIDA	83.49(1)(b)	5% per year simple interest or 75% of the annualized average interest rate on the account or a non interest account at the option of the landlord
ILLINOIS	80-121	5% on deposits held more than 6 months (see n. 2)
KANSAS	68-2548	5% per year for tenants living in a municipal housing authority which is wholly or partially subsidized by the federal government
MARYLAND	Real Prop. 8-203(f)	4% simple interest on \$50 or more
MASSACHUSETTS	Ch. 186, Sec. 15B(7)(a) Sec. 15B(3)(b)	5% on last month's rent; 5% on security deposit if held at least one year
MINNESOTA	504.20, subd. 2	5.5% simple interest
NEW HAMPSHIRE	540-A:6	5% or the interest rate on regular savings accounts, whichever is larger (n. 3)
NEW JERSEY	46:8-19	1% less than amount earned on account (n. 4)
NEW MEXICO	47-8-18	interest equal to the passbook interest permitted in the state (n. 5)
NEW YORK	Gen. Oblig. Law 7-103(2)	1% less than amount earned on the account
NORTH DAKOTA	47-16-07.1	interest-bearing account with no percentage specified (n. 6)
OHIO	5321.16(A)	5% on deposits of more than one month's rent or \$50, if tenant in possession at least six months
PENNSYLVANIA	68-250.511b	1% less than amount earned on

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

VIRGINIA

65-245.11(b)

5% on deposits held at least 13 months

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

**RATES SETTING MAXIMUM TIMES FOR RETURN OF DEPOSITS**

ALABAMA	NO SECURITY DEPOSIT STATUTE	
ALASKA	34.03.070	30 days (n. 1)
ARIZONA	33-1321 (C)	14 days
ARKANSAS	60-527(a)	30 days
CALIFORNIA	1960. 6	2 weeks
COLORADO	38-12-103	1 month (n. 2)
CONNECTICUT	47a-21 (d)(2)	30 days
DELAWARE	26-5511(3)(a)	15 days
D.C.	309.1, 308.2	45 days (n. 3)
FLORIDA	83.49	45 days
GEORGIA	61-605	1 month
HAWAII	521-44(c)	14 days
IDAHO	6-321	21 days (n. 4)
ILLINOIS	80, P. 101	30 days (n. 5)
INDIANA	NO SECURITY DEPOSIT STATUTE	
IOWA	562A. 12(3)	30 days
KANSAS	58-2550(b)	14 days
KENTUCKY	NO TIME SET FORTH IN SECURITY DEPOSIT STATUTE	
LOUISIANA	9;3251 (A)	1 month
MAINE	14-6033	30 days (n. 6)
MARYLAND	Real Prop. 8-203(f)	45 days
MASSACHUSETTS	Ch. 186 Sec 15B(4)	30 days
MICHIGAN	554.609	30 days
MINNESOTA	504.20	3 weeks
MISSISSIPPI	NO SECURITY DEPOSIT STATUTE	
MISSOURI	535.300	30 days
MONTANA	70-25-202	30 days
NEBRASKA	76-1416	14 days
NEVADA	118A.242	30 days
NEW HAMPSHIRE	540-A; 7	30 days
NEW JERSEY	46:8-21.1	30 days
NEW MEXICO	47-8-37	30 days
NEW YORK	NO TIME SET FORTH IN SECURITY DEPOSIT STATUTE	
NORTH CAROLINA	Ch. 42-52	30 days
NORTH DAKOTA	47-16-07.1	30 days
OHIO	5321.16	30 days
OKLAHOMA	41-115	30 days
OREGON	10:91.760 (?)	30 days
PENNSYLVANIA	68-250.512	30 days
RHODE ISLAND	34-18-19	20 days
SOUTH CAROLINA	27-40-410	30 days
SOUTH DAKOTA	43-32-24	2 weeks
TENNESSEE	NO TIME SET FORTH IN SECURITY DEPOSIT STATUTE	
TEXAS	Property 92.103	30 days
UTAH	57-17-3	30 days
VERMONT	9-4461	14 days
VIRGINIA	55-248.11	30 days
WASHINGTON	59.18.280	14 days
WEST VIRGINIA	NO SECURITY DEPOSIT STATUTE	

WISCONSIN  
WYOMING

NO SECURITY DEPOSIT STATUTE  
NO SECURITY DEPOSIT STATUTE

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

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

**ALABAMA** NO SECURITY DEPOSIT STATUTE

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

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

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

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

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

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

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

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

**FLORIDA** no penalty provision provided in the statute

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

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

**IDAHO** sec. 6-320 (tenant may file an action for damages and specific performance)

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

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

INDIANA

NO SECURITY DEPOSIT STATUTE

IOWA

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

MASSACHUSETTS

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

KENTUCKY

No penalty provision provided in the statute

LOUISIANA

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

MAINE

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

MARYLAND

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

MASSACHUSETTS

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

MICHIGAN

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

MINNESOTA

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

MISSISSIPPI

NO SECURITY DEPOSIT STATUTE

MISSOURI

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

MONTANA

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

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

NEBRASKA

ch. 76, sec. 1417 (tenant may recover the property and money due him and reasonable attorney's fees)

NEVADA

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

NEW HAMPSHIRE

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

NEW JERSEY

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

NEW MEXICO

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

NEW YORK

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

NORTH CAROLINA

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

NORTH DAKOTA

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

OHIO

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

OKLAHOMA

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

OREGON

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

PENNSYLVANIA

tit. 68, sec. 260.512 (failure to send list of damages entitles tenant to full security deposit plus interest; failure to return security deposit entitles to an action for twice the wrongfully withheld amount)

RHODE ISLAND	sec. 34-18-18 (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)
SOUTH CAROLINA	tit. 27, sec. 40-410 (tenant may recover the property and money in an amount equal to three times the amount wrongfully withheld)
SOUTH DAKOTA	tit. 43, sec. 32-24 (security deposit in full; willful retention entitles tenant to punitive damages not to exceed two hundred dollars)
TENNESSEE	sec. 66-28-501 (damages, injunctive relief, and reasonable attorney's fees upon giving 14 days' written notice)
TEXAS	sec. 92-109 (bad faith retention of security deposit entitles tenant to \$100, three times the portion of the deposit wrongfully withheld; failure to provide a written description and itemized list entitles tenant to a full security deposit and reasonable attorney's fees)
UTAH	tit. 57, sec. 17-3 (failure to provide notice entitles tenant to a full deposit, a civil penalty of a hundred dollars, and court costs)
VERMONT	tit. 9, sec. 4461 (security deposit in full; willful retention entitles tenant to twice the amount wrongfully withheld, court costs, attorney's fees)
VIRGINIA	tit. 55, sec. 248.11 (the security deposit due, actual damages, and reasonable attorney's fees)
WASHINGTON	tit. 59, ch. 18, secs. 260 to 285 (security deposit in full; willful retention may, in the court's discretion, entitle the tenant to up to twice the amount of the deposit)
WEST VIRGINIA	NO SECURITY DEPOSIT STATUTE
WISCONSIN	NO SECURITY DEPOSIT STATUTE
WYOMING	NO SECURITY DEPOSIT STATUTE

3-9-87

## STATES WITH LAWS ON SECURITY DEPOSITS

- Alaska** Alas. Stat., tit. 34, sec. .03.070 (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 1988)
- 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. 1860.5 (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

Regular Session)

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

3-9-87

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

Nevada Nev. Rev. Stat. Ann., secs. 118A-240 to 118A-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. 8-19 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. 8-15 (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, 7-10F (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. 34-18-19 (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 1886) (Code includes statutes and  
amendments enacted during the 1886 Session)

uth Dakota      S.D. Codified Laws Ann., tit. 43, secs. 32-8.1,  
32-32-24 (1883 & Michie Supp. 1886) (Code includes  
statutes and amendments enacted during the 1886  
Session)

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

exas      Tex. Property Code Ann., secs. 92-101 to 92-109  
(1984) (Code includes statutes and amendments en-  
acted during the Third Session of 1986)

ah      Utah Code Ann., tit. 57, ch. 17, secs. 1-5  
(1986) (Code includes statutes and amendments en-  
acted during the 1986 General Session and the Se-  
cond and Third Special Session)

rmont      Vt. Stat. Ann., tit. 9, sec. 4481 (Equity Supp.  
1986) (Code includes statutes and amendments en-  
acted 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)

STATE OF ALASKA  
THE LEGISLATURE

FOLCH • STATE CAPITOL  
BUREAU ALASKA GOV'T  
117 JES 1833


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 23, 1989

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

TO: Representative Dave Donley

FROM: Richard A. Bradley   
Legislative Counsel

Michael Ward has requested a revision of the draft.

Several brief observations might be in order.

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

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

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

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

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

Representative Dave Donley  
Page 2  
March 23, 1989

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

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

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

If I may be of further assistance, please advise.

RAB:gc  
WKG8/061

## STATE OF ALASKA

DEPARTMENT OF LAW  
OFFICE OF ATTORNEY GENERAL  
CONSUMER PROTECTION SECTION

March 17, 1989

REPLY TO

XX

1031 W 4th SUITE 110  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-0428276-3550  
1st NATIONAL CENTER  
100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 456-8588S.S. FULLER BLDG  
4th & HARRIS, SUITE 214  
P. O. BOX K  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3892STATE COURTHOUSE, ROOM 26  
P.O. BOX 671  
VALDEZ, ALASKA 99686  
PHONE: (907) 835-2462

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

Re: Proposed amendments to landlord-tenant laws

Dear Representative Donley:

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

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

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

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

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

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

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

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

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

## 2. Abandoned Property

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

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

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

3. Late Charges

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

4. Security Deposits

Our office has received complaints from tenants that security deposits have disappeared when the landlord abandons the property or the property is foreclosed upon. Although AS 34.03 070(d) allows an aggrieved tenant to recover twice the amount of the security deposit in such cases of willful failure to return the deposit, this remedy is more academic than practical when a landlord either has no money left or is gone. The only practical protection I know would be a requirement that security deposits either be held in a bona fide escrow or placed in a bank account that requires the signature of both landlord and tenant to withdraw funds.

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

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

Honorable Dave Donley

March 17, 1989  
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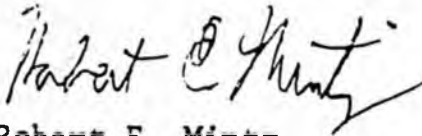
proposed bill. Section 4 of the proposed bill would amend AS 09.45.110 to reduce from 10 days to five days the period between service of a notice to quit and commencement of an action to recover possession. I gather from listening to the testimony at the work session that this change was intended to enable landlords to begin eviction procedures for nonpayment of rent in a shorter period of time than is currently allowed. However, AS 34.03.220(b) still requires a notice period of 10 days in such cases, as does AS 09.45.090(1).

I hope this information is helpful.

Sincerely,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:

  
Robert E. Mintz  
Assistant Attorney General

REM/ssr  
Encl.

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

June 20, 1989

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

TO: Representative Dave Donley

FROM: Richard A. Bradley  
Legislative Counsel 

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Representative Dave Donley

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June 20, 1989

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

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

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

If I may be of further assistance, please advise.

RAB:mi  
wkmi4/033

STATE OF ALASKA  
THE LEGISLATURE

POUCH V STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 19, 1989

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

TO: Representative Dave Donley

FROM: Richard A. Bradley *RB*  
Legislative Counsel

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

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

The provision provides:

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

The question arose whether a lessee was protected on the foreclosure of the deed of trust. In my view the answer was yes since I would have interpreted the phrase in AS 34.20.-090 that provides that the purchaser of the property at the foreclosure sale is "entitled to the possession of the premises described in the deed as against the party executing the deed of trust or any other person claiming by, through or under that party" [AS 34.20.090(b)] as protecting the lessee.

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

Representative Dave Donley  
Page 2  
April 19, 1989

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

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

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

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

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

If I may be of further assistance, please advise.

RB:kb  
wkk4/026

Enclosure

Alaska State Legislature  
House of Representatives



March 1, 1990

Labor and Commerce Committee

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

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

Re: Draft request and explanation of CS HB 309 (L&C)  
Current Draft: Work order 6-0846D, by Bradley, Dated 3/1/90  
Previous Draft: Work order 6-0846J, by Bradley, Dated 12/29/89

Following is a copy of the drafting request sent to Legislative Legal Services counsel Dick Bradley, outlining the changes incorporated into the attached CS for HB 309:

Section 1 and 2 - Leave Section 1 (giving landlord/tenant cases priority in court) and Section 2 (technical amendment) as is in previous draft CS.

Section 3 - (Period between service and notice of action brought) Leave the 10 day standard on page 2, line 2 as it is in current law. Change the three day standard in line five (of previous draft) to five days (in current draft).

Section 4 - (Time periods and surety deposits for summons and continuance) Delete everything after the first sentence.

Section 5 - (Technical amendment to current law to comply to changes that are no longer proposed under this draft). Delete entire section.

Section 6 - (Authorizing landlord/tenant cases to be heard in small claims court). Leave as is.

Section 7 - (Persons who do not pay full rent do not acquire rights under this chapter). Redraft this section to require that a person who does not pay the whole rent for the first full rental period acquires no rights to use the premises other than what they have actual paid for and may be subject to a 24 hour eviction notice.

Section 8 - (Allowing a landlord to charge three (TWO) times the monthly rent as a security deposit). Redraft section to remove the restriction on security deposits for rental units in excess of \$1,000 a month. (Restrictions limiting security deposits to no more than two times the monthly rent for rental units less than \$1,000/monthly remains as it is under current law).

Section 9 - (Requiring tenants to give a forwarding address to landlords for return of security deposits) Leave as is.

Section 10 - (Expanding the scope of landlord duties a tenant can agree to perform). Leave as is in current law but add a new section allowing tenants to agree to perform landlord's duties for (a) (3) (heating and plumbing systems) as well as duties allowed under current law for rental units in excess of \$1,000 a month. Leave prohibition against elevator maintenance.

Section 11 - (Removal of landlords property from rental premises) Clarify that landlord cannot remove property required by the Act (furnace, plumbing fixtures, etc.) or by a written rental agreement.

Section 12 - (Circumstances under which a landlord can enter rental unit). Delete section.

Section 13 - (Establishing that tenants debt to landlord is satisfied when they pay rent to the new owner when rental property changes ownership). Leave as is.

Section 14 - (Tenant cannot bring claim of deficiencies in rental unit during eviction proceedings unless they had notified landlord prior to proceedings) Rewrite section to clarify that if tenants withheld rent based on provisions under the Act, they must notify the landlord in writing specifying the acts and omissions constituting a breach under the Act in order to use it in court.

Section 15 - (Eviction for failure to pay utility bills) Rewrite section so that landlord may deliver a written notice that the tenancy will terminate in five days if a utility has discontinued service for failure of tenant to pay utility bill. If 1) tenant recontinues service within three days, 2) repays any amount paid by landlord, and 3) no damage occurred to the rental unit as a result of the tenants failure to pay utility bills the rental agreement will not terminate. If any of those conditions are not met, the landlord may terminate the tenancy five (THREE) days after delivery of the notice.

Section 16 - (Acceptance of partial rental payment) Leave as is.

Section 17 - (Time periods when landlord may reenter the rental unit and terminate the agreement when rent not been paid and tenant is absent). Leave as is.

Sections 18, 19, and 20 (Repeals and reenacts sections dealing with removal, storage, and disposition of tenants property). Delete sections from previous draft.

Section 21 - (Clarifying amendments to current law regarding liability for tenants property to make it easier to understand). Leave as is.

Section 22 - (Continuing the terms of a lease when executing a deed of trust) Leave as is.

Section 23 - (Rights of landlords to receive notice of discontinuance of utility service). Leave as is.

Section 24 - (Review of landlord/tenant pamphlet by Department of Law) Delete section from previous draft.

Section 25 - (Required continuance deposits) Delete section.

Section 26 - (Change civil rule 85 to give priority to landlord/tenant claims on court calendar) Leave as is.

Section 27 - (Change civil rule 8 to allow landlord/tenant claims to be heard in small claims court). Leave as is.

Section 28 - (Require LIO's to make copies of landlord/tenant pamphlet available to the public). Leave as is.

HB 309 is before the House Labor and Commerce on Thursday, March 1, at 3:00 p.m., assuming you can get a working draft to us by that time. Please call me or Ginger Baim at 4954 if you have any questions or need additional information.

dd/gbs90  
b/hb309-1

6-0846D/  
Bradley  
3/1/90

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE

BY THE LABOR & COMMERCE COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

11 Sec. 09.45.120. SUMMONS AND CONTINUANCE. Summons in actions for  
12 forcible entry and detainer shall be served not less than two [NOR  
13 MORE THAN FOUR] days before the date of trial. A [NO] continuance may  
14 not [SHALL] be granted for a longer period than two days unless the  
15 defendant applying for the continuance gives an undertaking to the  
16 adverse party, with sureties approved by the court conditioned to the  
17 payment of the rent that may accrue if judgment is rendered against  
18 the defendant.

19 \* Sec. 5. AS 22.15.040(a) is amended to read:

20 (a) When a claim for relief does not exceed \$5,000 exclusive of  
21 costs, interest, and attorney fees, and request is so made, the dis-  
22 trict judge or magistrate shall hear the action as a small claim  
23 unless important or unusual points of law are involved. When a claim  
24 for possession under AS 22.15.030(a)(6) does not exceed \$5,000 exclu-  
25 sive of costs, interest, and attorney fees, the district judge or  
26 magistrate shall hear the action as a small claim unless important or  
27 unusual points of law are involved. The supreme court shall prescribe  
28 the procedural rules and standard forms to assure simplicity and the  
29 expeditious handling of small claims.

1 \* Sec. 6. AS 34.03.010 is amended by adding a new subsection to read:

2 (c) Notwithstanding AS 09.45.110 and AS 34.03.220(b), a person  
3 who has not paid rent in full for the first rental period under a  
4 rental agreement acquires no right to the use of the premises beyond  
5 that portion of the period equitably earned by the amount of rent  
6 actually paid and the person is subject to eviction on 24 hour's  
7 notice. A person whose right to the use of premises depends upon  
8 rights acquired by another person does not acquire rights unless the  
9 other person has acquired rights under this chapter.

10 \* Sec. 7. AS 34.03.070(a) is amended to read:

11 (a) A landlord may not demand or receive prepaid rent or a  
12 security deposit, however denominated, in an amount or value in excess  
13 of TWO months' periodic rent. This section does not apply to  
14 rental units where the rent exceeds \$1,000 a month.

15 \* Sec. 8. AS 34.03.070(g) is amended to read:

16 (g) If the landlord or tenant gives notice that complies with  
17 AS 34.03.290, the landlord shall mail the written notice and refund  
18 required by (b) of this section within 14 days after the tenancy is  
19 terminated and possession is delivered by the tenant to the address  
20 supplied by the tenant. If the tenant does not give notice that  
21 complies with AS 34.03.290, the landlord shall mail the written notice  
22 and refund required by (b) of this section within 30 days after the  
23 tenancy is terminated, possession is delivered by the tenant, or the  
24 landlord becomes aware that the dwelling unit is abandoned. If the  
25 landlord does not know the mailing address of the tenant, but knows or  
26 has reason to know how to contact the tenant to give the notice re-  
27 quired by (b) of this section, the landlord shall make a reasonable  
28 effort to deliver the notice and refund to the tenant. If the tenant  
29 does not provide the landlord with an address within 90 days after the

1 tenancy is terminated and if the landlord is unable to contact the  
2 tenant, the landlord may retain the amount not applied under (b) of  
3 this section.

4 \* Sec. 9. AS 34.03.100(c) is amended to read:

5 (c) The landlord and tenant of a one- or two-family residence  
6 may agree in writing that the tenant perform the landlord's duties  
7 specified in (a)(4), (5), (6), and (7) of this section. A tenant may  
8 agree to perform the duties specified in (a)(3) of this section in  
9 rental units where the rent exceeds \$1,000 a month. The tenant may  
10 not agree to maintain elevators in good and safe working order. They  
11 may also agree in writing that the tenant perform specified repairs,  
12 maintenance tasks, alterations, and remodeling. Agreements are al-  
13 lowed under this subsection only if the transaction is entered into in  
14 good faith and not for the purpose of evading the obligations of the  
15 landlord.

16 \* Sec. 10. AS 34.03.140(a) is amended to read:

17 (a) The tenant may not unreasonably withhold consent to the  
18 landlord to enter into the dwelling unit in order to inspect the  
19 premises, make necessary or agreed repairs, decorations, alterations,  
20 or improvements, supply necessary or agreed services, remove personal  
21 property belonging to the landlord that is not covered by a written  
22 rental agreement, or exhibit the dwelling unit to prospective or  
23 actual purchasers, mortgagees, tenants, workers or contractors.

24 \* Sec. 11. AS 34.03 is amended by adding a new section to article 4 to  
25 read:

26 Sec. 34.03.155. ADDITIONAL TENANT OBLIGATIONS. If a landlord  
27 defaults on a financial obligation that secures property occupied by a  
28 tenant of the landlord, the holder of the financial obligation may  
29 advise the landlord and the tenant of the landlord to make payments

1 otherwise due to the landlord directly to the holder of the financial  
2 obligation for the benefit of the landlord and holder. A payment made  
3 under this section to the holder of the financial obligation dis-  
4 charges to that extent the debt of tenant to the landlord.

5 \* Sec. 12. AS 34.03.190 is amended to read:

6 Sec. 34.03.190. LANDLORD'S NONCOMPLIANCE AS DEFENSE TO ACTION  
7 FOR POSSESSION OR RENT. (a) In an action for possession based upon  
8 nonpayment of the rent or in an action for rent when the tenant is in  
9 possession, the tenant may counterclaim for any amount recoverable  
10 under the rental agreement or this chapter. A tenant may not counter-  
11 claim under this section unless, before the landlord filed an action  
12 for possession or rent, the tenant had provided the landlord with  
13 written notice under AS 34.03.160 specifying the acts and omissions  
14 described in AS 34.03.100 that constitute the breach. If a counter-  
15 claim is made, the court shall determine whether the defense is sup-  
16 ported by the evidence and, if so, may order that

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

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

22 (3) the tenant pay into court all or part of the rent that  
23 has accrued and that is continuing to accrue [THEREAFTER ACCRUING]; if  
24 the violations have not been cured within six months, the court shall  
25 enter judgment for the defendant and either refund to the defendant  
26 all money deposited or use the money for the purpose of making the  
27 dwelling fit for human habitation; if the violations have been cured,  
28 the court shall determine the amount due to each party; the party to  
29 whom a net amount is owed shall be paid first from the money paid into

1 the court, and the balance by the other party; if no rent remains due  
2 after application of this section, judgment shall be entered for the  
3 tenant in the action for possession;

4 (4) the tenant vacate the dwelling during the making of  
5 necessary repairs, when the repairs cannot be made without vacation of  
6 the premises, the tenant to be reinstated upon completion of the  
7 repairs.

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

11 \* Sec. 13. AS 34.03.220(a) is amended to read:

12 (a) Except as provided in this chapter, if there is a material  
13 noncompliance by the tenant with the rental agreement or noncompliance  
14 with AS 34.03.120 materially affecting health and safety, the landlord  
15 may deliver a written notice to the tenant specifying the acts and  
16 omissions constituting the breach and specifying that the rental  
17 agreement will terminate upon a date not less than 20 days after  
18 receipt of the notice. If the breach is not remedied in 10 days, the  
19 rental agreement terminates as provided in the notice subject to the  
20 provisions of this section. If a public utility providing electric-  
21 ity, natural gas, or water to the premises occupied by the tenant  
22 discontinues the service to the premises for the failure of the tenant  
23 to pay for the utility service, the landlord may deliver a written  
24 notice to the tenant advising that the tenancy will terminate five  
25 days after the delivery of the notice. If, within the three days from  
26 the receipt of the notice, the tenant reinstates the discontinued  
27 service, repays the landlord for any amounts paid by the landlord to  
28 reinstate service, and no damage occurred to the rental unit as a  
29 result of the discontinuance of service [IF THE BREACH IS REMEDIABLE

1 BY REPAIRS OR THE PAYMENT OF DAMAGES OR OTHERWISE AND THE TENANT  
2 ADEQUATELY REMEDIES THE BREACH BEFORE THE DATE SPECIFIED IN THE  
3 NOTICE], the rental agreement will not terminate. In the absence of  
4 due care by the tenant, if substantially the same act or omission that  
5 constituted a prior noncompliance of which notice was given recurs  
6 within six months, the landlord may terminate the rental agreement  
7 upon at least 10 days written notice specifying the breach and the  
8 date of termination of the rental agreement.

9 \* Sec. 14. AS 34.03.220(b) is amended to read:

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

21 \* Sec. 15. AS 34.03.230(b) is amended to read:

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

28 (1) in a week-to-week tenancy has been absent for three  
29 consecutive days;

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

3 \* Sec. 16. AS 34.03.260(d) is amended to read:

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

11 \* Sec. 17. AS 34.20.090 is amended by adding a new subsection to read:

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

15 \* Sec. 18. AS 42.30 is amended by adding a new section to read:

16           ARTICLE 6. RIGHTS OF LANDLORDS IN UTILITY SERVICE.

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

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

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

1 \* Sec. 20. Rule 8 of the Alaska District Court Rules of Civil Procedure  
2 is amended by adding a new paragraph to read:

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

8 \* Sec. 21. The Legislative Affairs Agency shall make copies of the  
9 pamphlet prepared by the Department of Law under AS 44.23.020(b)(8) avail-  
10 able to members of the public at Legislative Information Offices throughout  
11 the state.

Alaska State Legislature  
House of Representatives



February 26, 1990

Labor and Commerce Committee

M E M O R A N D U M

To: Dick Bradley, Counsel  
Legislative Legal Services

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

Re: Bill drafting request - CS HB 309 (L&C)

Please prepare a draft House Labor and Commerce CS for HB 309, working from the 1/29/89, WO 6-084J draft CS, incorporating the following changes:

Section 1 and 2 - Leave Section 1 (giving landlord/tenant cases priority in court) and Section 2 (technical amendment) as is.

Section 3 - (Period between service and notice of action brought) Leave the 10 day standard on page 2, line 2 as it is in current law. Change the three day standard in line five to five days.

Section 4 - (Time periods and surety deposits for summons and continuance) Delete everything after the first sentence.

Section 5 - (Technical amendment to current law to comply to changes that are no longer proposed under this draft). Delete entire section.

Section 6 - (Authorizing landlord/tenant cases to be heard in small claims court). Leave as is.

Section 7 - (Persons who do not pay full rent do not acquire rights under this chapter). Redraft this section to require that a person who does not pay the whole rent for the first full rental period is subject to eviction on 24 hours notice.

Section 8 - (Allowing a landlord to charge three (TWO) times the monthly rent as a security deposit). Redraft section to remove the restriction on security deposits for rental units in excess of \$1,000 a month.

Section 9 - (Requiring tenants to give a forwarding address to landlords for return of security deposits) Leave as is.

Section 10 - (Expanding the scope of landlord duties a tenant can agree to perform). Leave as is in current law but add a new section allowing tenants to agree to perform landlord's duties for (a) (3) (heating and plumbing systems) as

Section 27 - (Change civil rule 8 to allow landlord/tenant claims to be heard in small claims court). Leave as is.

Section 28 - (Require LIO's to make copies of landlord/tenant pamphlet available to the public). Leave as is.

HB 309 is before the House Labor and Commerce on Thursday, March 1, at 3:00 p.m., assuming you can get a working draft to us by that time. Please call me or Ginger Baim at 4954 if you have any questions or need additional information.

dd/gls90  
b/hb309-1

well as duties allowed under current law for rental units in excess of \$1,000 a month. Leave prohibition against elevator maintenance.

Section 11 - (Removal of landlords property from rental premises) Clarify that landlord cannot remove property required by the Act (furnace, plumbing fixtures, etc.) or by a written rental agreement.

Section 12 - (Circumstances under which a landlord can enter rental unit) Delete section.

Section 13 - (Establishing that tenants debt to landlord is satisfied when they pay rent to the new owner when rental property changes ownership). Leave as is.

Section 14 - (Tenant cannot bring claim of deficiencies in rental unit during eviction proceedings unless they had notified landlord prior to proceedings) Rewrite section to clarify that if tenants with held rent based on provisions under the Act, they must notify the landlord in writing specifying the acts and omissions constituting a breach under the Act in order to use it in court.

Section 15 - (Eviction for failure to pay utility bills) Rewrite section so that shorter notice time does not apply if 1) tenant recontinues service within three days, 2) repays any amount paid by landlord, and 3) no damage occurred to the rental unit as a result of the tenants failure to pay utility bills. If those any of those conditions are not met, the landlord may terminate the tenancy five (THREE) days after delivery of the notice.

Section 16 - (Acceptance of partial rental payment) Leave as is.

Section 17 - (Time periods when landlord may reenter the rental unit and terminate the agreement when rent has not been paid and tenant is absent). Leave as is.

Sections 18, 19, and 20 (Repeals and reenacts sections dealing with removal, storage, and disposition of tenants property). Delete sections.

Section 21 - (Technical amendments to section of current law dealing with liability for tenants property to make it easier to understand). Leave as is.

Section 22 - (Continuing the terms of a lease when executing a deed of trust) Leave as is.

Section 23 - (Rights of landlords to receive notice of discontinuance of utility service). Leave as is.

Section 24 - (Review of landlord/tenant pamphlet by Department of Law) Delete section.

Section 25 - (Required continuance deposits) Delete section.

Section 26 - (Change civil rule 85 to give priority to landlord/tenant claims on court calendar) Leave as is.



Institute of Real Estate Management  
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## Alaska Chapter No. 97

February 22, 1990

Representative Dave Donley  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

Representative Donley:

This letter is being written in reference to House Bill No. 309 and House Bill No. 354 both by the House Labor and Commerce Committee. We are desirous of seeing them both enacted.

House Bill 309 an Act relating to Landlord Tenant relationships.

The Landlord Tenant Act was enacted during pipeline days when housing was nearly impossible to obtain and what there was had some atrocious rents attached it to. The most blatant example printed in the papers was in Valdez.

Senator Ziegler of Ketchikan held hearings in the major cities and he stated more than once that the Bill was being pushed through on a surge of emotion and that it would have to be looked at a later date in a more reasonable atmosphere.

We believe that time is now and House Bill 309 will amend the Act to bring it into the realm of fairness. The relationship between the Owners and 90% of the renters is excellent. It is the other 10 percent that have learned how to use the Landlord Tenant Act to prolong their tenancy without payment of rent or payment for the damage that they cause to the premises.

We know that you believe in fairness and therefore request your whole-hearted support of House Bill 309 when it is before you.

House Bill No. 354

This Bill authored by the House Labor and Commerce Committee allows local governments to have options of forgiving taxes for up to a five year period in order to induce owners to remove old buildings or sheds. This is a tool which the local municipalities may rid themselves of blight in the lease painless and least expensive way. We urge your support of this Bill.

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# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



### REPRESENTATIVE FRAN ULMER

#### MEMORANDUM

February 23, 1990

TO: Rep. Dave Donley, Chair  
House Labor and Commerce Committee

FROM: Fran Ulmer

RE: HB 309, relating to the landlord/tenant relationship

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Attached you will find a copy of some very informative comments I received recently in regard to HB 309, relating to the landlord/tenant relationship. Since the bill is a fairly complex one, I thought the committee would appreciate these as I did. The author of the comments approved the distribution of his remarks.

attachment  
cc: L&C members

FU/dl

GREGORY FRANK COOK

ATTORNEY AT LAW

P.O. Box 618, Douglas, Alaska 99824

(907) 586-9719

*Admitted to Practice in Alaska and Oregon*

Representative Fran Ulmer  
P. O. Box "V"  
Juneau, Alaska 99811

February 12, 1990

Dear Representative Ulmer,

This office represents Mr. Myron Klein, of Juneau.

The purpose of this letter is to share with you Mr. Klein's opinions and suggestions regarding HB 309, "An Act relating to the landlord tenant relationship... ."

Mr. Klein SUPPORTS HB 309 and urges you to pass HB 309 in this Session. This Bill would improve the current state of landlord-tenant law, including eviction cases (known as "F.E.D.," or "Forcible Entry and Detainer") in several important ways.

I have performed a sectional analysis of HB 309 to demonstrate the benefits this Bill should have and to highlight areas where the Bill could be improved.

\*Section 1: This section directs the Superior Court and District Court to give F.E.D. actions priority on their calendars.

Comment: No such requirement yet exists. Adding this requirement may help tenants and landlords by speeding up the time in which the parties' rights are determined by the court. Unfortunately, there is no mechanism to enforce this requirement.

\*Section 2: This section specifies that a landlord must inform a tenant of the time available to the tenant when a tenant may move out of the premises without incurring the expenses of defending a court action. The time available under law must be stated in the landlord's "Notice to Quit" (usually known as an "eviction notice"), and is specified in section 3, below.

No Comment.

\*Section 3: This section, in most cases, shortens the time period for a tenant to move out from ten days to seven days when a "Notice to Quit" has been served. (Two other time periods are also specified in this section: a three day period for tenants who have been served with a Notice of Eviction during the previous twelve months, and a 90 day period for tenant farmers.)

Comment: Shortening this time period will, for non-agricultural cases, help expedite the judicial proceedings in F.E.D. actions. It is a good reform.

\*Section 4: This section eliminates the four day maximum period for service of a summons in an F.E.D. It also specifies that a tenant who is served with an eviction notice and who wants to delay trial of the F.E.D. for longer than two days must be able to show the court that he can pay the next month's rent by depositing that amount with the court for safe keeping during the pendency of the F.E.D.

Comment: This section ensures that a non-paying tenant who tries to delay the trial of an F.E.D. for longer than two days must deposit with the court one month's rent as security. This protects landlords against lengthy continuances obtained by penurious tenants who might otherwise succeed in living rent-free during the period of the continuance.

\*Section 5: This section applies only to F.E.D. actions against people who have paid rent in advance. It specifies that in those cases, the Notice to Quit must be served under the rules detailed in section 3, above.

No Comment.

\*Section 6: In 1986, the Alaska Legislature increased the jurisdictional limit for small claims actions from \$2,000.00 to \$5,000.00. This section spells out that District Courts may hear F.E.D. actions under the simplified small claims rules, procedures that often avoid the expense of a lawyer.

Comment: This clarifies what we believe to be the existing state of the law. It is a desirable result any time the public can be spared the expense of a lawyer.

\*Section 7: This section specifies that Alaska's Landlord Tenant Act (AS 34.03) does not give a person rights under that Act if the person has not paid a full month's rent under a (written?) rental agreement. It also specifies that a new tenant who wishes to "tack on" to a previous occupant's rights under the Landlord Tenant Act is not entitled to do so unless the prior occupant "has acquired rights under this chapter."

Comment: Section 7 could benefit from re-drafting the first sentence to read: "No tenant acquires rights under this chapter unless that person has paid rent in full for the first rental period specified in a written rental agreement."This additional change is desirable to avoid the problems that are involved when one party or another claims that an oral rental agreement was made.

\*Section 8: This section increases the security deposit which a landlord may require from an amount equal to two months' rent to an amount equal to three months' rent.

Comment: This section increases the freedom of the landlord and tenant to arrive at mutually acceptable terms in a lease. This section recognizes that in some circumstances, a more substantial security deposit may be desirable. If the parties so agree, they may contract to that effect.

\*Section 9: This section specifies the address for a landlord to use to return a tenant's security deposit. It also places the responsibility on the tenant to tell the landlord where to send his security deposit within 90 days of the termination of the tenancy, or forfeit to the landlord the amount of security deposit not applied to damage to the rental unit or to unpaid rent.

Comment: This section absolves the landlord of any duty to indefinitely play banker for a departed tenant who fails to give the landlord an address to which his security deposit may be sent. In some cases, only a few dollars remain out of a security deposit. Under current law, that money must be managed by the landlord in a trust account indefinitely.

\*Section 10: This section further increases the freedom to contract between a landlord and tenant (but only for duplexes or smaller units) by specifying that the parties may agree that the tenant will be responsible for keeping the plumbing, heating, and other facilities and appliances in good working order. This section forbids a landlord and tenant from agreeing that elevators shall be the responsibility of the tenant.

Comment: Many Alaskans are handier than they are wealthy. This gives a handyman-tenant the chance to bargain for reduced rent in exchange for limited maintenance duties. This provision stands to benefit everyone.

\*Section 11: This section specifies that a tenant may not unreasonably refuse to allow a landlord to enter a rental unit to remove property belonging to the landlord.

No comment.

\*Section 12: This section adds a "rule of reasonableness" to the requirement that a landlord must give a tenant at least 24 hours' advance notice of his intent to enter the premises for purposes permitted under existing law.

Comment: When a tenant is out of town it may be impossible to provide the 24 hour's notice now required. This change recognizes that sometimes notice is just not possible.

\*Section 13: This section adds a new provision of law. Rental units are often owned partly by a landlord and partly by a lender or a bank. This section provides that when a landlord/borrower defaults on his bank payments for the rented premises, the tenant can make rental payments directly to the bank/lender and the payment will be credited against the tenant's normal rent obligation.

Comment: This section would primarily benefit tenants and lending institutions, while at the same time simplifying what might otherwise be a very complicated situation. It is a good reform.

\*Section 14: This section modifies the procedure for evicting a tenant who has violated his lease. It permits a landlord to terminate a tenant's tenancy if the tenant has failed to pay a utility bill, resulting in a cut-off of heat or water to the premises.

Comment: In Alaska, a cut-off of heat can have potentially disastrous impacts on a home or apartment. Repair costs can be extraordinary. This section permits a landlord to terminate a tenant's tenancy when the tenant fails to keep the utilities bills paid, thereby endangering the unit. This is an important and good reform.

\*Section 15: This section specifies that a tenant must pay rent in full in order to remain in occupancy unless the landlord accepts a partial payment of the rent.

Comment: This section should be clarified to state that a landlord does not need to make an "all or nothing" choice if a tenant offers to make a partial payment of rent. The following language should be added to this section:

"A landlord may accept partial payment of rent from a tenant while specifically reserving his right to terminate the tenancy if within three days of the partial rental payment the landlord gives the tenant written notice that the partial rental payment does not constitute compliance with the rental agreement."

Comment: (Section 15, continued) In Juneau, the District Court has, in some cases, been unwilling to evict tenants who pay part of their rent, but not all of their rent. The Court appears to have adopted an unwritten rule that an unspecified amount of rent can be withheld by a tenant before the Court will grant an eviction for failure to pay rent.

To remedy this problem, the Legislature should further specify, perhaps in a Letter of Intent, that:

"The remedy of eviction is intended to be available as a matter of law, according to the procedures set out in AS 09.45 and AS 34.03, as against tenants who do not pay the full amount of rent due, regardless of the amount of the deficiency."

\*Section 16: This section specifies certain conditions under which the landlord may enter a tenant's rental unit and terminate the tenancy.

No comment.

\*Section 17: This section (and the following three sections) partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. It specifies that an automobile is included within the ambit of a tenant's personal property. It requires a tenant to make a written request of the landlord regarding property the tenant leaves behind if the tenant wants to prevent the landlord from selling the property at public auction. The tenant must be given 15 days' written notice before any sale or other disposition of property left behind. It specifies that a tenant's perishable commodities left behind must first be determined to be of minimal value before a landlord may dispose of them in a manner left to his discretion.

Comment: Tenants' property rights are given additional protection in this section whenever perishable commodities are involved.

\*Section 18: Like section 17, this section partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. This section limits the landlord's duties (the law of "bailment") when the landlord stores property left behind by a tenant. This section also limits the amount a landlord may charge for such storage.

No comment.

Section 19: Like sections 17 and 18, this section partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. This section revises the tenant's duties when he receives a written notice from the landlord of the landlord's intent to dispose of property the tenant has left behind after the tenancy has ended.

No comment.

\*Section 20. Like sections 17-19, this section partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. This section specifies that the landlord is not liable for damages to a tenant when the landlord stores the tenant's property after the end of the tenant's term of occupancy unless the landlord deliberately or negligently violates the law's requirements.

No comment.

\*Section 21: This section adds a new provision of law covering hold-over tenancies under a deed of trust executed by a landlord.

No comment.

\*Section 22: This section allows a landlord to ask a utility to notify the landlord in the event of a cut-off of service by the utility to a rental unit.

Comment: This section complements section 14, above.

\*Section 23: This section deletes the requirement that the State of Alaska's publication on landlord and tenant rights be approved by the Department of Law.

No comment.

\*Section 24: This section seeks to amend Civil Rule 85 (a) (3) regarding continuances.

p. 7  
Comments on HB 309

Comment: Procedural rules of court are under the exclusive authority of the judicial branch and are set by the Alaska Supreme Court.

\*Section 25: This section seeks to amend Civil Rule 85 regarding calendaring priority.

Comment: Procedural rules of court are under the exclusive authority of the judicial branch and are set by the Alaska Supreme Court.

\*Section 26: This section seeks to amend Civil Rule 8 for District Courts regarding Small Claims procedure

Comment: Procedural rules of court are under the exclusive authority of the judicial branch and are set by the Alaska Supreme Court.

Section 27: This section directs the Legislative Affairs Agency to make copies of the Landlord-Tenant Law pamphlet available to the public.

Comment: In the past, this informational pamphlet has appeared slanted towards the perspective of tenants. It is hoped that this pamphlet can be revised to more evenly reflect the interests of landlords and tenants.

#### CONCLUSION

HB 309 is a good bill. I urge you to vote in favor of this legislation. Please also consider the addition suggested in our comments to Section 15, set out on page 5 of this letter.

Thank you for considering these views. Please contact me if you have specific questions regarding changes to this Bill.

Sincerely,



Gregory F. Cook  
Attorney for  
Myron Klein



# Alaska State Legislature

## House

Official Business

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

### MEMORANDUM

January 23, 1990

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

FROM: Rep. David Finkelstein *DF*

RE: HB 309, Landlord/Tenant Law Amendments

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

#### Sec. 2. Amendment of AS 09.45.100

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

#### Sec. 8. Amendment of AS 34.03.070 (a)

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

#### Sec. 10. Amendment of AS 34.03.100

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

Sec. 12. Amendment to AS 34.03.140

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

Sec. 15. Amendment to AS 34.03.220

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

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

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

Thanks for your consideration.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 19, 1989

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

TO: Representative Dave Donley

FROM: Richard A. Bradley  
Legislative Counsel

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

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

The provision provides:

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

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

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

Representative Dave Donley  
Page 2  
April 19, 1989

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

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

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

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

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

If I may be of further assistance, please advise.

RB:kb  
wkk4/026

Enclosure

STATE OF ALASKA  
THE LEGISLATURE

FOUCH • STATE CAPITOL  
JUNEAU ALASKA 99801  
707 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 23, 1989

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

TO: Representative Dave Donley

FROM: Richard A. Bradley  
Legislative Counsel 

Michael Ward has requested a revision of the draft.

Several brief observations might be in order.

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

I have added "when possible" to the provisions of AS 34.03.-140(c). The amendment is probably unnecessary since the existing language of the section provides an escape "in case of emergency or if it is impractical" to provide the notice.

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

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

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

Representative Dave Donley  
Page 2  
March 23, 1989

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

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

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

If I may be of further assistance, please advise.

RAB:gc  
WKG8/061

# STATE OF ALASKA

**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

STEVE COWPER, GOVERNOR

REPLY TO

XX

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ANCHORAGE, ALASKA 99501  
PHONE: (907) 273-0428

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

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

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

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

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

## 2. Abandoned Property

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

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

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

### 3. Late Charges

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

### 4. Security Deposits

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

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

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

Honorable Dave Donley

March 17, 1989

Page 4

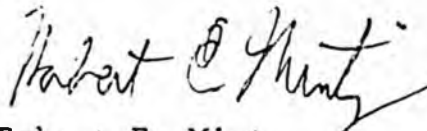
proposed bill. Section 4 of the proposed bill would amend AS 09.45.110 to reduce from 10 days to five days the period between service of a notice to quit and commencement of an action to recover possession. I gather from listening to the testimony at the work session that this change was intended to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

I hope this information is helpful.

Sincerely,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:

  
Robert E. Mintz  
Assistant Attorney General

REM/ssr  
Encl.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465-3800

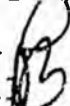
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

June 20, 1989

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

TO: Representative Dave Donley

FROM: Richard A. Bradley  
Legislative Counsel 

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Representative Dave Donley  
Page 5  
June 20, 1989

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

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

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

If I may be of further assistance, please advise.

RAB:mi  
wkmi4/033

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# ALASKA LANDLORD — TENANT LAW

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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.



## 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. Islav Investments, 106 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 of 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 "distrain 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. **Unaligned 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 (snow-mobiles, 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 in to the dwelling whenever he/she wants;
2. Agreeing to immediate eviction for nonpayment of rent;
3. Agreeing that the tenant will make all repairs;
4. Excusing the landlord from liability in case of accidents due to his/her neglect;
5. Giving up the tenant's right to the deposit.

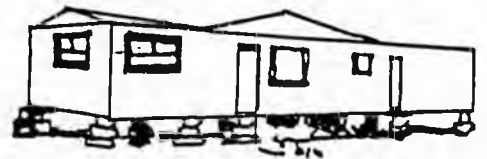
TO REMOVE ILLEGAL WORDING, put a line, in ink, through the words, clause or provision that is not legally binding. Begin the landlord and tenant should then initial the agreement next to each item removed.

## 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 in to 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 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 pro-rated 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 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  
875 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 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)

Deposit 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: \$800 first month's rent  
\$300 cleaning deposit  
\$400 security deposit  
\$500 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-PAYED 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-

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

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

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

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

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

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

## privacy

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

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

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

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

If a tenant has a nosy landlord who believes he/she can come and go as he/she pleases, it might be a good idea to get a copy of the law to show the landlord the section called "ACCESS" (AS 34.03.140). If the landlord comes in and will not leave, call the police.

When a landlord does abuse his/her right to enter by coming in without the tenant's permission or repeatedly without need, the tenant can ask a court to demand that the landlord stop (called an injunction). The tenant may also sue for actual damages or one month's rent, whichever is greater, plus court costs and attorney fees. If the tenant wishes to move because the landlord has abused the access privilege, a 10-day written notice from tenant to landlord is required (AS 34.03.300(b)).

If the tenant unreasonably refuses to allow the landlord in, the landlord can get an injunction. The landlord may also sue for actual damages or one month's rent, whichever is greater, or evict the tenant with a 10-day written notice (AS 34.03.300(a)).

## landlord duties

These are the things tenants can expect their landlords to do, as required by the law (AS 34.03.100):

1. Make all repairs to keep the dwelling in a 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 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))

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 34.03.180)

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 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 At-

torney 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 non-payment 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 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 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 deminishes 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,

—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(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.

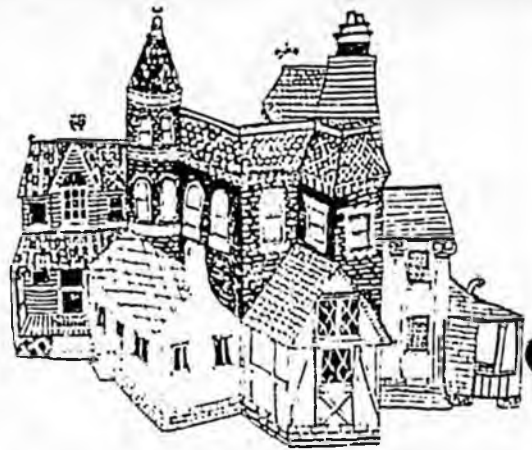
F.E.D. cases are usually handled by district court. For more information on evictions, read AS 09.45.060-.160, Forcible Entry and Detainer. Information on preparing an eviction suit may be found in the Alaska Rules of Court-Civil Rules (read rule 85) and in the Alaska Rules of Court-Civil Forms (review 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	843-5653
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)**

TO: \_\_\_\_\_  
(Date)  
\_\_\_\_\_  
(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 \_\_\_\_\_, 19\_\_\_\_ 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**

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# Writing on the wall tips police to drug gangs' presence

By Jean Lamming  
Times Writer

A.T. SUN  
4/17/88

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

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

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

The first clue in Portland was writing on the walls.

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

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

HB

3/10

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Representative Dave Donley  
P. O. Box V  
Juneau, Alaska 99811

February 12, 1990

Dear Representative Donley,

This office represents the Juneau Sanitation Corporation, an Alaska corporation with headquarters in Juneau, Alaska.

The purpose of this letter is to share with you, on behalf of the Juneau Sanitation Corporation, certain opinions and suggestions regarding HB 310, "An Act relating to waste collection and recycling... ."

The Juneau Sanitation Corporation opposes HB 310 and urges you to vote NO on HB 310.

In my opinion, this Bill does not represent a genuine effort to deal with the serious issues which recycling involves. Instead, the Bill is a thinly-disguised piece of protectionist legislation designed to limit entry into the field of waste collection and protect the position of the current holders of Certificates of Public Convenience and Necessity.

The policy of the State of Alaska should be precisely the opposite of what is embodied in HB 310. Alaska's policy should be to encourage new entrepreneurs to enter the field of recycling and waste collection, as well as encouraging existing, certificated, refuse utilities. The fact that recycling is not yet broadly successful in Alaska is reason enough to encourage new entrants into this sector of our economy.

My specific comments on HB 310 are set forth below.

Section 2 of HB 310 seeks to limit the ability of the Alaska Public Utilities Commission to issue new certificates of Public Convenience and Necessity. The effect of this provision is simply to perpetuate the dominant position of existing certificate holders.

In the specific case of Juneau, this section would perpetuate the monopoly position of Channel Sanitation. There is absolutely nothing to indicate that the positive public benefits that recycling offers will be promoted by closing off entry into this part of our local economy. Quite the opposite is true. Juneau needs new blood in the recycling field.

We can see no good reason to reward existing refuse utilities by limiting competition.