

# Nebraska Residential Landlord Tenant Law Basics

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Paragraph references at the bottom of the slides refer to the sections in the outline which follows the presentation handouts.

## What's new since 2008?

- ☀ Minor's ability to contract
- ☀ Ninety day notices
- ☀ Lead Paint Rules for Reconstruction

2

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## Laws Governing Landlords and Tenants

- Uniform Residential Landlord and Tenant Act
- Disposition of Personal Property Landlord and Tenant Act
- Common Law (contract, torts, etc.)
- Various others including:
  - Fair housing laws federal, state and local
  - Lead paint hazards
  - Building, Health, Fire, and Zoning codes

*(See generally Paragraph I.)*

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## Use of Premises

- Dwelling
- No illegal purposes
- No operation of business
- Not in an institution or educational facility
- Not under contract for sale or a condominium
- Not employees when occupancy is conditional
- No agricultural

*(Paragraph I. D.)*

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## Term of Lease

- Month to Month or week to week
- Other periods? “Initial term”
- Termination: 30 days “prior to the periodic rental date” (or 7 days, in case of week to week)
- Reminder: Five year leases not governed by NURLTA
- Is it legal to terminate in the middle of the period? If so when?

(Paragraph I, E. )

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## Rental Agreement

- Basic contract principals
  - Oral Leases v. Written agreements
- Essential elements of lease (CLOaC):
  - Competent party = 18 years
  - Lawful objective
  - Offer and acceptance
  - Consideration = Rent “fair rental value for the use”
  - Convey right of possession and create a reversion in landlord.



(Paragraph II)

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## While We're on the Topic of Rent

UNLESS the parties agree otherwise, rent:

- Includes “all payments to be made to the landlord under the rental agreement”
- Is payable at the dwelling without demand
- Is due on the first of the rental period

(Paragraph II, B. 2.)

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## Access to the Premises

- Landlord cannot access to harass
- One Day notice to inspect, make repairs...
- Reasons for access: fulfill duty to maintain premises, to make repairs...
- Tenant must give access to landlord
- No notice needed in case of emergency
- Tenant may be ordered to allow access

(Paragraph II. C.)

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## Possession of Premises at Commencement of Occupancy

- Habitable condition
- Comply with local housing codes
- Checklist regarding condition of property signed by the tenant

(Paragraph II. D.)

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## Security Deposit

- Amount
  - One Month's rent
  - Pet deposit = 1/4<sup>th</sup> month rent
  - Distinguished from prepaid rent
- Refund
  - Use to restore premises or unpaid rent
    - Condition of premises at commencement of occupancy
    - Except ordinary wear and tear
  - Problems: extensive and/or excess of deposit
  - Within 14 days
    - Demand and forwarding address
    - Return of keys (termination)
    - Non-compliance



(Paragraph III. A.)

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### Maintaining and Improving the Quality of Housing Landlord's Obligations

- Minimum housing code
- Maintain in fit and habitable condition
- Common areas clean and safe
- Maintain supplied or required facilities
- Garbage removal
- Running water and reasonable amounts
  - Hot water
  - Heat
- Exceptions: (Tenant in control of facilities, single family and tenant employed to maintain)

(Paragraph III. B. 1.)

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### Maintaining and Improving the Quality of Housing Tenant's Obligations

- Minimum housing code
- Maintain occupied space in clean and safe condition
- Dispose of rubbish and garbage
- Maintain plumbing fixtures according to their condition
- Use in reasonable manner all electrical, plumbing and sanitary fixtures
- Not damage the property
- Not disturb neighbors' peaceful enjoyment of premises

(Paragraph III. B. 2.)

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### Notice

- Receipt and delivery of notice
  - Tenant: delivered in hand or mailed
  - Landlord: delivered
- Unless the rental agreement specifies another method, notices should be mailed regular first class mail.



(Paragraph IV. A.)

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## Notices (cont.)

- Valid Notices
  - Curable
    - Three day
    - 14/30 day
    - 14 day after destruction of premises
  - Non-curable
    - One day notice for Access
    - Thirty Day Termination
    - Five Day (failure to deliver possession)
    - Fourteen Day Repeat Violation
    - Ninety Day Notice
  - Waiver of Notice



(Paragraph IV, B., C. & D.)

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## Evictions and Enforcement of Rights

- Notice
- Holdover
- Action for Possession
  - Filing of Case
  - Answer Date
  - Trial
  - Writ of Restitution
  - Trial on other causes of action



(Paragraph V.)

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## Abandoned Property (Disposition of Personal Property Landlord and Tenant Act)

- What is abandonment?
  - Common Law
  - NURLTA
    - Abandonment
    - Termination
    - Eviction
- Procedure
  - Inventory property
  - Move to storage
  - Notify Owner(s)



(Paragraph VI.)

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## Disposal of Personal Property Landlord and Tenant Act

- Valued under \$250.00 – Convert
- Valued over \$250.00:
  - Advertise Auction
  - Auction
- Proceeds apply as follows:
  - Cost of Auction
  - Cost of advertising
  - Cost of storage and handling
  - Balance returned to tenant or State Treasurer

(Paragraph VI. B. 3.)

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## Damages and Attorney Fees

- Actual Damages
  - 76-1415. Deliberate use of a prohibited provision in lease
  - 76-1427 Failure to supply heat, water, hot water, or essential services.
  - 76-1432 Absence and abandonment
  - 76-1435 Breach of lease
  - 76-1438 Landlord's abuse of access. No less than 1 month rent

(Paragraph VII. A. 1.)

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## Damages and Attorney Fees

- Actual Damages
- Treble Damages
  - 76-1418 Failure to supply possession of premises at commencement of term.
  - 76-1426 Failure to supply possession of premises at commencement of term.
  - 76-1430 Constructive or actual (wrongful) eviction
  - 76-1437 Willful holdover without landlord's consent

(Paragraph VII. A. 2.)

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## Damages and Attorney Fees

- Actual Damages

- Treble Damages

- Attorney Fees

- 76-1415 Deliberate use of a prohibited provision
- 76-1416 Failure to return deposit
- 76-1425 Willful noncompliance by landlord affecting habitability
- 76-1426 Failure to supply possession of premises at commencement of term.
- 76-1427 Failure to supply heat, water, hot water, or essential services.
- 76-1428 Meritless defense or counterclaim lacking good faith
- 76-1430 Constructive or actual (wrongful) eviction
- 76-1431 Willful failure to pay rent or non-compliance by tenant
- 76-1435 Breach of rental agreement
- 76-1437 Willful holdover without landlord's consent
- 76-1438 Abuse of access

(Paragraph VII, A. 3.)

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## Lincoln Municipal Code

- Disclosure and Tenant Brochure

- Outline's landlord duties under LMC
- Requests tenant to work with landlord before complaining

- Party Houses



(Paragraphs VII, B. and VII, C.)

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## Lead Based Paint and Other Latent Defects

- Latent Defects
- Lead Based Paint: Affects housing built prior to 1978
  - New rules relating to Renovations & Repairs
- Other hidden defects
  - Mold
  - Asbestos
- Duty to Warn

(Paragraph VIII)

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Questions About Residential  
Landlord and Tenant?

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Nebraska Residential  
Landlord Tenant Law  
The Basics and then Some  
Updated 2010

By: Jan E. Beran, Attorney at Law

Disclaimer: The information contained on this page relates to Nebraska Residential Landlord and Tenant Law only. It is provided for informational purposes and is not intended as specific legal advice. The reader is encouraged to consult competent legal counsel and only after complete and candid discussion will legal advice be rendered.

- I. Introduction: What is the difference between residential landlord tenant law and commercial landlord tenant law?
  - A. In Nebraska residential landlord tenant law is governed by statute. That law, known as the “Uniform Residential Landlord and Tenant Act” is found at Neb. R.R.S. §76-1401 through §76-1449. The law is not necessarily the final word on residential landlord and tenant law. In fact, the law itself states: “the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.” Neb. R.R.S. §76-1403.
  - B. Commercial and agricultural landlord tenant law, as well as certain residential landlord tenant situations, are governed by Nebraska common law, that is case-made law.
  - C. The purpose of the law as identified by the act is to: “simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant” and to “encourage landlord and tenant to maintain and improve the quality of housing.” Neb. R.R.S. §76-1402.
  - D. What property is covered by URLTA and what is excluded?
    1. A structure or the part of a structure that is used as a home, residence, or sleeping place. Neb. R.R.S. §76-1410(3).
    2. Except: (1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service. (2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest. (3) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization. (4) Transient occupancy in a hotel or motel. (5) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises. (6) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative. (7) Occupancy under a rental agreement

covering premises used by the occupant primarily for agricultural purposes.  
(8) A lease of improved or unimproved residential land for a term of five years or more. Neb. R.R.S. §76-1408

3. Residential dwellings are not to be used for illegal purposes nor are they to be used for commercial purposes or for the operation of a business.

E. Form of the tenancy:

1. In Nebraska (as with most states which have adopted the model Uniform Residential Landlord and Tenant Act) residential tenancies are considered periodic tenancies. That is, unlike a tenancy for years (also known as a fixed term tenancy) a periodic tenancy automatically renews at the end of the tenancy for a similar period. In Nebraska this period is either one month or one week. In order to terminate the tenancy, a notice of one period is required.
  - a. Termination: In order to terminate a month-to-month tenancy the landlord or the tenant must give the other a “written notice given to the other at least thirty days prior to the periodic rental date specified in the notice” (normally the first of the month unless the rental agreement states otherwise). See Neb. R.R.S. §76-1437.
  - b. To terminate a week to week tenancy would require a seven day notice.
2. In order to create a pseudo fixed term tenancy (one that does not automatically renew at the expiration of the term) in a residential property, a landlord or tenant would have to give notice to terminate the tenancy at the commencement of the rental agreement. The parties could conceivably do this by unambiguously fixing a definite term and deleting all references to any holdover tenancy, except as may be defining such unlawful occupancy. Note that Neb. R.R.S. §76-1414(4) which allows a definite term to be set, and Neb. R.R.S. §76-1437(3) defining a holdover tenant as one who remains in possession after the expiration of the term, seem to be at odds with the numerous references to the tenancy as being periodic in nature (which automatically renew month to month or week to week as the case may be).

II. Rental Agreement Formalities (or informalities as the case may be).

- A. Nebraska residential landlord and tenant agreement may be either written or oral.
  1. If one of the provisions of the rental agreement is for an initial term of 12 months (twelve 30 day periods) the rental agreement must be in writing as required by the statute of frauds. Neb. R.R.S. §36-105.
  2. An oral rental agreement is valid, but must be clear, satisfactory, and unequivocal.
- B. Every rental agreement must contain the essential elements of a contract, namely competent parties, lawful objective, mutual agreement, and consideration. In addition, a valid lease should create a reversion in the landlord and an estate in the tenant (possession of the premises).
  1. Competent parties must:

- a. Be at least 18 years of age in Nebraska. (The Nebraska Legislature, with the passage of LB 226 amending Neb. R.R.S. §43-2101, gave minors who have reached the age of 18 years of age the ability to enter into leases and contracts and be legally bound to the obligations of the contract or lease. The law was signed into law on March 3, 2010 and carried the emergency clause, so it becomes effective immediately. The law didn't actually change the age of majority, so some provisions in the law related to minors will remain unaffected.)
  - b. To have contractual ability, the parties must
    - (1) not have a weak or unbalanced mind, and
    - (2) understand and comprehend the effect of what they are doing.
  - c. A lease may be voided by the incompetent party (or a guardian on their behalf) during their minority or incompetency or within a reasonable amount of time thereafter. If a minor repudiates the rental agreement during their minority, and the premises were not a “necessary of life”, the landlord may be forced to return all rents paid by the minor. See WEBSTER STREET PARTNERSHIP v. SHERIDAN (1985), 220 Neb. 9.
2. Rent: Rent is the consideration for the use and possession of the property. URLTA actually defines rent to include “all payments to be made to the landlord under the rental agreement” Neb. R.R.S. §76-1410(10). Thus rent includes not only “rent”, but late charges, energy surcharges, water usage allocations, and other charges payable to the landlord as additional rent under the agreement. A default in the payment of any of these charges is actually a default in the payment of rent. However, other charges, such as electricity or utility bill that is supposed to be paid by the tenant but through error or intent is not put in the tenant’s name, a security deposit check that doesn’t clear the bank or other tenant obligation that the landlord has to pay are not normally considered rent.
- a. In absence of an agreement as to the amount of rent, or when the rental amount is otherwise in dispute, rent shall be set at the “fair rental value for the use and occupancy of the dwelling unit” Neb. R.R.S. §76-1414.
  - b. Rent, unless otherwise agreed in writing, is due and payable on the first of the month (unless the period of the rental is other than from first to end of the month).
  - c. In addition, rent shall be payable without necessity of demand at the premises. Therefore, it is important that the agreement, whether oral or written, state where the rent shall be paid. If landlords do not plan to collect the rent, then a clause needs to be put in the lease.
- C. A lease conveys possession of the property to the tenant. The landlord leasing the

premises to a tenant actually turns over part of the landlord's bundle of rights to the property, namely, the right of possession (referred to as the right of use and occupancy in URLTA).

1. Landlord's right of access. Although the possession and use of the premises has been conveyed to the tenant, the landlord retains a right of access to the premises in order to perform certain obligations. However the right of access must not be abused by the landlord to harass the tenant.
  - a. The law states that the tenant "shall not unreasonably withhold consent" to enter the premises to "inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors." Neb. R.R.S. §76-1423(1)
  - b. Landlords must give one day notice to the tenant of the landlord's intent to enter the premises. Most lawyers agree, that the notice required is actually one day to the next rather than a notice of a full 24 hours. Entry into the premises may only be done at reasonable times.
  - c. Landlords are also allowed to enter the premises without a one day's notice in cases of emergency. Unfortunately, the law does not define what constitutes an emergency, so the parties are left to themselves to decide when a landlord may enter without notice. Certainly, smelling a gas leak, or seeing water pouring from the premises would be emergencies, wellness checks for certain tenants may also be considered emergencies, but a landlord should not enter without good reason to do so.
  - d. If a tenant denies access, but the landlord needs to enter the premises, a landlord may petition the court to obtain a court order to enter. See Neb. R.R.S. §76-1423.
2. The tenant is required by URLTA to give the landlord access to the premises and upon failing to do so, the rental agreement could be terminated by means of a 14/30 day notice (discussed later).

D. Condition of the premises at the commencement of the occupancy. Landlords are required by law to deliver possession of the premises to the tenant in compliance with the rental agreement and in a fit and habitable condition. To comply with this standard, a landlord needs to abide by the requirements of Neb. R.R.S. §76-1419 which among other things requires that a landlord maintain the property according to the local housing codes. (See also the section title "Maintaining and Improving the Quality of Housing" discussed later). A good practice used by successful landlords is to provide a checklist of the property for the tenant to indicate any deficiencies that may exist in the property. Landlords should review the list to see if any of the deficiencies need to be repaired or re-inspected to verify that the tenant did not cause the damage during the move-in.

### III. Other Necessary and Useful Terms and Conditions of the Rental Agreement.

- A. Security Deposit and Pre-paid Rent. See Neb. R.R.S. §76-1416.
1. The law requires that a tenant cannot be required to pay a security deposit “however denominated” of more than one month’s rent.
  2. There is no limit on the amount of pre-paid rent that may be demanded from a tenant. In certain cases, landlords have required that tenants (especially those with particularly poor rental histories) prepay all or a portion of the rent for future months. However, a landlord’s holding of prepaid rent, such as “last month’s rent”, creates a complication. The tenant will argue if they fail to pay rent for any particular month, that the period that they haven’t paid is the “last month” so effectively they should be able to leave without giving notice. I recommend that landlords holding pre-paid rent have provisions in the lease that specify how the pre-paid rent may be applied. For example, “Last month rent may only be applied to rent owing by giving a proper 30 day notice prior to the first of the month of the termination of the rental agreement and application of the pre-paid rent.”
  3. If the tenant has a pet (as distinguished from service animals or companion animals) the landlord may require an additional amount of security deposit not exceeding one-fourth of one-month’s rent. The law does not address the issue of multiple pets. The statute says that a landlord may demand “a pet deposit not in excess of one-fourth of one periodic month’s rent”. This appears to limit the deposit to one and only one deposit, regardless of the number of pets. See Neb. R.R.S. §76-1416 (1) emphasis mine.
  4. After termination of the rental agreement, a landlord may apply the deposit towards any cleaning of or damages to the premises and for the payment of any rent outstanding. Note that a tenant is only responsible for cleaning and damages which exceed ordinary wear and tear.
  5. To be entitled to a refund of the deposit, the tenant must have complied with the rental agreement and Neb. R.R.S. §76-1421 which specifies the tenant’s obligation to maintain the dwelling unit. After the occupancy has been terminated, either by court order or by surrendering possession of the premises, in order for the tenant to receive a refund of the security deposit, the tenant must demand that the deposit be refunded and give an address where the deposit should be mailed.
    - a. Demand may be given orally or may come about unexpectedly such as by the filing of a counterclaim in an eviction case, the filing of a small claims court case, or by a letter from the tenant’s attorney.
    - b. Within fourteen (14) days after the demand for the refund a landlord must either refund the deposit and/or send a written itemization of the damages to the tenant. Failing to do so may result in the landlord having to refund all of the deposit, without regard to any damages or rent owing and if applicable, pay the tenant’s attorney fees.
    - c. My usual practice is to send the itemization letter regardless of a

tenant's demand or furnishing of a forwarding address.

B. **Maintaining and Improving the Quality of Housing.** One of the purposes of the Nebraska Residential Landlord and Tenant act, is that both the landlord and the tenant cooperate with each other in maintaining and improving the quality of housing. While most of the responsibility lies on the landlord to maintain the premises, the tenant does have certain obligations and duties. Landlords may also contract with the tenant to perform some of the duties. Although these obligations are statutory and need not be provided for in the rental agreement, landlords and tenants may want to include the following provisions to remind the other party what is expected by the law.

1. The Landlord's obligations (the following sub-paragraphs are actual quotes from Nebraska R.R.S. 76-1419):

- a. (1)(a) Substantially comply, after written or actual notice, with the requirements of the applicable minimum housing codes materially affecting health and safety;
- b. (1)(b) Make all repairs and do whatever is necessary, after written or actual notice, to put and keep the premises in a fit and habitable condition;
- c. (1)(c) Keep all common areas of the premises in a clean and safe condition;
- d. (1)(d) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;
- e. (1)(e) Provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal from the appropriate receptacle; and
- f. (1)(f) Supply running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.
- g. A landlord is not required to restore the premises to a new condition, only to maintain the property according to any minimum housing code applicable to the premises. If there is no housing code for the jurisdiction within which the premises is found, the standard would be a "fit and habitable condition". The law also takes into account the age and overall condition of the premises.

2. The Tenant's obligations: (the following sub-paragraphs are actual quotes from Nebraska R.R.S. 76-1421).

- a. (1) Comply with all obligations primarily imposed upon tenants by applicable minimum standards of building and housing codes

- b. materially affecting health or safety;
  - b. (2) Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit, and upon termination of the tenancy place the dwelling unit in as clean condition, excepting ordinary wear and tear, as when the tenancy commenced;
  - c. (3) Dispose from his dwelling unit all ashes, rubbish, garbage, and other waste in a clean and safe manner;
  - d. (4) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
  - e. (5) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances including elevators in the premises;
  - f. (6) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so;
  - g. (7) Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises; and
  - h. (8) Abide by all bylaws, covenants, rules or regulations of any applicable condominium regime, cooperative housing agreement, or neighborhood association not inconsistent with landlord's rights or duties.
3. Agreements between landlord and tenant to sweat for rent. A landlord and tenant of a single-family residence may agree that the tenant provide for their own garbage service and for water and a landlord may hire a tenant to perform certain repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is in writing. Such agreements must be for good consideration, entered into in good faith and not for the purpose of evading the obligations of the landlord. The landlord should consider following the usual procedures they use when hiring other contractors to perform work on their premises, namely: identify the repairs and maintenance to be made; specify the consideration per job (not simply \$ per hour); and specify a completion date.
- C. Other useful provisions. In addition to deposits and lawful use of the premises the parties may want to address several of the issues that affect the tenancy.
- 1. Late Charges: Most rental agreements provide some penalty for the late payment of rent. There is no maximum charge for late charges specified in the law, however, an onerous or unconscionable amount would be unenforceable, and therefore landlords are encouraged to set the charge with respect to the actual damage that they may suffer as a result of the late payment.
  - 2. Occupancy limits: The parties may agree to certain occupancy limits as defined in the Lincoln Municipal Code. Such limits can only be enforced

- if there is no discriminatory purpose.
3. Utilities: Landlords and tenants should specify which utilities the tenant is expected to have to pay. A well drafted rental agreement will inform the tenant of the obligation under Lincoln Ordinance to maintain certain utilities and provide that the tenant is in default of the rental agreement for failure to put utilities in the tenant's name within a prescribed time.
  4. Termination and Default: Most leases contain paragraphs that deal with the termination of leases and define what a default is, and spell out the procedures that will be followed if a tenant is in default. As the law addresses many of these provisions, it would not be necessary to set them out in a lease. However, landlords are well advised to retain some of the language, just as a reminder to themselves (and a convenient place to look for answers) and to educate the tenant on what their rights are in those situations.
  5. Location to send Notices and Pay of Rent: The location of the parties for purposes of payment of rent and where notices are to be received should be specified in the agreement.
- IV. Breach of the Rental Agreement, Defaults and Terminations: Both the landlord and the tenant have obligations under the rental agreement and the law. If either fails to perform the obligations, the other party may give them notice of such default and terminate the rental agreement according to the manner set out in the law.
- A. Notices Generally.
    1. URLTA indicates that notices given to the landlord are received when it is delivered to the place of the landlord's business. In the case of the tenant the notice is delivered when it is mailed. Notices may also be delivered to the other party, "in hand" to the tenant or to the place of business of the landlord. See Neb. R.R.S. §76-1413.
    2. All notices under URLTA may be delivered postage prepaid, regular first class mail. However, many form leases specify certified mail as the method of delivery, it is common for parties to refuse such mail which may make the notice a nullity. Landlords and tenants should follow the statute when delivering notices to the other party so as to not risk the effectiveness of the notice. Furthermore, notices attempting to terminate a rental agreement must be in writing.
  - B. Curable default and terminations:
    1. Failure to pay rent. If a tenant fails to pay rent as required by the rental agreement, a landlord may terminate the rental agreement upon three days notice to the tenant of such failure to pay. The law requires that the tenant be allowed to cure the default by paying the rent within the three days. Therefore, a tenant must be informed of the amount owing in order to cure. Upon failure to pay the arrearage, no further notice need be given to the tenant before commencing an Action for Possession.
      - a. Be sure to review your lease. There are several forms circulating on the Internet, in books and stores that require a longer notice

period then the statute. I have seen several forms that require a 30 day notice for failure to pay rent.

- b. A landlord must accept full payment of the rent owing, but is not obligated to accept partial payments, nor is the landlord obligated to accept any amount after the three days has expired.
  2. Breach of Agreement. If the landlord or the tenant has materially breached the agreement, violated the law, or has failed to pay repairs or damages, the landlord or the tenant may send the other a notice to correct such defect within fourteen days and that the agreement shall terminate on a date not less than thirty days after service of the notice. In order to avoid a waiver of notice problem, many landlords set the termination date to coincide with the end of the rental period after the 30 days.
  3. Destruction of Premises. Fourteen Day. After a rental unit has been destroyed by fire or other casualty, the tenant has the option to terminate the rental agreement upon 14 days notice to the landlord. URLTA does not provide for the landlord's electing to terminate the rental agreement.
- C. Non-curable defaults and terminations:
1. Access: One day notice for access. A landlord must give a one day's notice to the tenant to gain access to the premises. URLTA does not appear to give the tenant any right to deny access after notice. It is not necessary to give a written notice of the landlord's intent to enter, however, it is often prudent to do so, especially if a tenant is resisting a landlord's attempts to access the premises. A twenty-four hour notice is not required, a notice on one day for access during the next day is all that is needed.
  2. Termination of Periodic Tenancy: Thirty day and Seven day terminations. Either a landlord or a tenant may terminate a month to month tenancy by giving the other a 30 day notice (or 7 day notice in the case of week to week tenancy) prior to the first of the periodic rental date (normally the first of the month). Note that the notice must be given "prior to" the first, not within the grace period within which a tenant must pay rent without a late charge.
  3. Failure to Deliver Possession: Five day termination. If a holdover tenant remains in possession of the premises or the landlord has not given possession of the premises to the tenant in compliance with the rental agreement and the landlord's obligations to maintain (see above), the tenant could give a notice to terminate the rental agreement after 5 days notice.
  4. Repeat Violation: Fourteen day. If substantially the same breach of agreement or of other obligation has occurred within six months of a previous notice, either party may give the other a notice that the rental agreement will be terminated at least fourteen days from the date of service of the notice. The parties may want to adjust the termination date to correspond to the end of the rental period rather than terminating in the middle of a month and having to refund or prorate rent.
  5. Tenants of Foreclosed Properties: The law prior to the "Protecting Tenants

at Foreclosure Act of 2009" merely required that the new landlord gave the tenant or other occupant, a 3 day notice to quit. If the tenant failed to vacate, an eviction action could be commenced. Because the lease was subordinate to the mortgage in most cases, the courts deemed the leases as estates at will, thus the tenant even if they were not in default, could be required to vacate the premises on 3 days notice.

- a. Subsequent to the act, the tenant may be entitled to a ninety (90) day notice.
- b. Requirement that the tenant be a "bona fide tenant".
  - (1) The tenant may not be the borrower, the child, spouse or parent of the borrower,
  - (2) The lease or tenancy was the result of an arms-length transaction, and
  - (3) The lease require receipt of fair market value rent (unless it is a subsidized rental).
- c. Rent must be paid to the new landlord. If the tenant is not paying rent, they may be evicted without having to wait for the 90 days.
- d. If the rental will be occupied by the new owner, a lease with a term longer than 90 days terminates 90 days after the notice is given.
- e. A tenant who has a lease entered into before the foreclosure may remain in the premises until the end of the term as long as they are a bona fide tenant, and they pay their rent. It appears that the landlord may have to still give the tenant a 90 day notice even if the remaining term is longer.
- f. The new law terminates December 31, 2012 unless it is extended or made permanent.

D. Waiver. Landlords (and tenants) may find that they accidentally waive their notices by accepting performance or payment which contradicts the notice.

1. For example, a landlord gives a 14/30 day notice (14 days to cure the breach or terminate in 30) for breach of a no pet rule, on the 10<sup>th</sup> of month one. On the 25<sup>th</sup>, the landlord gives a notice of intent to access the premises and enters on the 26<sup>th</sup> finding the pet is still happily living in the premises. On the 30<sup>th</sup> of the month, the tenant brings over a rent check for month two which landlord graciously accepts and promptly takes to the bank. Hoping to evict the tenant for the breach of the rental agreement, the landlord calls an attorney on the 11<sup>th</sup> of month two to be told that by accepting the rent for the entire month the notice was waived. Had the landlord required that the tenant pay prorated rent through the 10<sup>th</sup> of month two, the eviction could have proceeded.
2. Similarly, accepting a partial payment of rent during the three days following service of a notice of failure to pay rent would waive the notice, unless the tenant agrees in writing that acceptance of the partial payment does not operate as a waiver of the notice.

V. Eviction Process. If the tenant remains in possession after having been served with a valid

notice or remains in the premises after having served a notice, the landlord may commence an Action for Possession with the County Court. (In theory one could bring the suit in District Court also, but most often cases are handled more expeditiously in County Court.)

- A. File Complaint. The case begins by the landlord filing a complaint with the clerk of the court. The clerk of the court will prepare a summons and attach a copy of the complaint to the summons for service upon the tenant. The landlord must decide how to serve the tenant and may choose between:
  1. Personal and residential service, if the landlord eventually wants to get a money judgment as a part of this case from the tenant then the tenant should be served either by personal or residential service; or
  2. Mail and Posting Service if the landlord is not as concerned about receiving a money judgment, but is more concerned about getting the eviction done and avoiding any delay getting possession restored. If the landlord does not specify what type of service, the clerk will prepare summons for personal service.
- B. The process server (either the sheriff, a constable of the court, or a person specially appointed to serve papers) has three days from the issuance of the summons to get the tenant served. Normally that means that they will make a couple of attempts at various times of the day to get the tenant served. If the tenant is served the papers, the case will proceed to trial.
  1. If the landlord chose personal/residential service and the tenant avoided service, the case will not proceed to trial. The landlord should check to see if the tenant has perhaps vacated the premises, and if so the case could be dismissed.
  2. If the tenant has not moved the Landlord will have to request the court to order service by Substitute Service. A number of documents must be filed with the court, and in the process the landlord will lose a week to two weeks waiting for a new trial date.
- C. Continuance. Often times a tenant needs additional time for one reason or another. To get more time, the correct procedure is to file a Motion with the court, but occasionally a tenant will appear at the trial and orally request the continuance. Unfortunately, some judges do not follow the strict requirements of the law that states: "No continuance shall be granted unless extraordinary cause be shown to the court, and then not unless the defendant applying therefor shall deposit with the clerk of the court payment of any rents that have accrued, or give an undertaking with sufficient surety therefor, and, in addition, deposit with the clerk such rental payments as accrue during the pendency of the suit."
  1. In I.P. Homeowners v. Morrow, 12 Neb. App. 119 (2003), the court states "The statutory proceedings for a forcible entry and detainer action were designed to provide a speedy and summary method for obtaining possession of premises for those rightfully entitled thereto after notice. Watson v. Arcadian Foods, Inc., 233 Neb. 622, 447 N.W.2d 477 (1989); Blachford v. Frenzer, 44 Neb. 829, 62 N.W. 1101 (1895). "Generally given the fact that a summary proceeding to recover possession of real property is a

- creature of statute, there must be strict adherence to the statutory requirements . . . ." 35A Am. Jur. 2d Forcible Entry and Detainer § 3 at 1038 (2001)."
2. The requirement of the "extraordinary cause" is not defined in the statutes nor have any Nebraska courts considered the matter. It most likely would mean that it is something beyond the ordinary cause. Thus a request supported by "the tenant cannot get off of work" is probably not "extraordinary cause".
  3. Furthermore, the statutes require that the tenant post the rent as a condition for getting the continuance. Both conditions must be satisfied before the continuance can be granted.
  4. Unfortunately it is not uncommon for a judge to ignore these requirements and grant continuances over the Landlord's objection. Most of the time, however, the trial will be held only a few days after the original trial date.
- D. Trial will be scheduled 10 to 14 days after filing of complaint. This is a trial, and the parties need to be prepared to go forward with their evidence and witnesses. If the tenant fails to appear, a judgment may be entered against them by default. If a landlord fails to appear, the case may be dismissed. Most of the time, the judge will render a decision after the parties have rested and will announce the decision from the bench. Occasionally the judge will "take the matter under advisement" and will make a decision at a later time. The Judge's decision will usually be mailed to the parties and often is a simple statement such as "Judgment for Restitution of premises" though sometimes, the judge could recite their findings and reason for the decision.
- E. Writ of Restitution, Appeal and Stay of Writ. If the judge rules in the landlord's favor, the landlord may request that the clerk issue a writ of restitution which instructs the sheriff or constable to restore possession of the premises to the landlord. The statute states that the court shall, "at the request of the plaintiff or his or her attorney, issue a writ of restitution, directing the constable or sheriff to restore possession of the premises to the plaintiff on a specified date not more than ten days after issuance of the writ of restitution." See Neb. R.R.S. §76-1446 emphasis mine. The statute gives the landlord the right to specify the date when the process server will restore possession of the premises to the landlord. The landlord may do this at anytime after the judgment, and usually requests that the Writ be executed immediately. As a practical matter though the process server normally has a number of other papers to deliver and usually will get the job done in two or three days.
1. If the tenant feels that a judgment should not have been entered against them, they can file an appeal. Similarly, if the landlord is unhappy with the court's ruling, they could appeal. There are a number of costs that must be paid. In addition, the tenant will be required to post a bond to cover the rent that has accrued and will be accruing during the appeal.
  2. Stay of Execution of Writ. Perfecting of the appeal (filing the appropriate documents, paying the required fees and posting the bond or paying the

rent), has the effect of a Stay on the Execution of the Writ, meaning that the Tenant will be allowed to remain in the premises during the appeal. If the tenant fails to pay the rent during the interim, the Landlord may move the court to quash the Stay and if granted, the Landlord can once again execute the Writ of Restitution.

- F. Trial on Rent and Damages Issues. If your petition requested a judgment for rent and damages, the court will most often set a future hearing date to determine the amount of monetary judgment the landlord should have against the tenant. The court should set the date at least 30 days following the date of service of the summons but you need to double check this date. If it is scheduled too early, your judgment could ultimately be set aside.
1. Like the "hearing" for restitution of the premises, the trial on the issues of rent and damages is actually a trial. The Landlord should be prepared to prove their case for damages.
  2. Proof required:
    - a. Rent: The landlord should be prepared to offer rent rolls, deposit slips, receipt books, journals or ledgers to prove the amount of rent owed. Witnesses may include bookkeepers or other record keepers.
    - b. Damages: All records and photographs concerning the condition of the premises at the time the tenants took possession of the property including any witnesses that saw the condition it was in before the tenant moved in. All records and photographs of the condition that the property was in after the tenant moved from the premises.
    - c. Evidentiary issues. The rules of evidence at trial mean that we may have to bring every workman, every supplier of materials and any other witness that could lay foundation or give testimony about the repairs and cleaning done to the property.
    - d. Photographs. Photographs can be very powerful and persuasive form of evidence. Care must be taken however to comply with the rules of evidence. Essentially the person testifying must be able to testify that they took the pictures, that they know the day the pictures were taken, that the pictures fairly and accurately portray the scene as it appeared on the day. The photos will be taken by the Court, so you should have duplicates for your file. If you took the pictures with your phone, be prepared to give the judge your phone and not get it back until the time for appeal has expired. When taking pictures of stains on carpets or marks on the walls, you should use some kind of "CSI" placement marker to identify where the spot is that you are hoping to be able to recognize at a later date. Often times, when the photos are printed, the colors are not necessarily true to the colors we see with our eyes. What appeared to be a glaring bold stain, looks like a shadow in the picture. A simple 4" x 6" card folded into a tent with an arrow pointing to the stain or other mark can help you notice those spots which may, in

the photograph be not so obvious. Post it notes will stick to walls and have the same effect. It is good practice to include a photograph of a ruler to give the viewer some perspective of how big of a stain is being depicted.

- VI. Disposition of Personal Property. Nebraska adopted the Disposition of Personal Property Landlord and Tenant Act in 1991. The statute is quite specific in the procedure and notice provisions and care should be taken to follow the law to the letter.
- A. When does the law apply? The law applies to any termination of a residential landlord tenant relationship, including abandonment and eviction.
- B. In order to shield the landlord from liability for conversion of the tenant's property the landlord is now required to:
1. Inventory the property. The property may then be moved into storage.
  2. Deliver a notice to any person who the landlord reasonably believes to have an interest in the property. The notice must give the owner of the property at least 7 days to reclaim the property if the notice is delivered in person and at least 14 days to reclaim if the notice is mailed. The statutes includes a statutory form that should be used but any form could be used as long as the notice includes the following:
    - a. That reasonable costs of storage may be charged before the property is returned.
    - b. The location where the property may be claimed.
    - c. The date on or before which such property must be claimed.
    - d. The required statement (found in the statutes at Neb.R.R.S. §69-2304) as to the disposition of the property if the value thereof is less than or greater than \$250.00 if the tenant or other owner of the property fails to claim.
      - (1) If under \$250, the required statement is: "Because this property is believed to be worth less than two hundred fifty dollars, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated in this notice."
      - (2) If the value of the property exceeds \$250, the required statement is: "If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the costs of storage, advertising, and sale are deducted, the remaining money will be turned over to the State Treasurer pursuant to the Uniform Disposition of Unclaimed Property Act. You may claim the remaining money from the office of the State Treasurer as provided in such act." See Neb.R.R.S. §69-2304.
  3. Dispose the property. In the case where the property exceeds \$250 in value, the landlord must not retain the property to apply to the rent that the

tenant may owe the landlord.

- a. If the property is worth less than \$250.00 the property may be disposed of as the landlord see fit.
- b. If the property has a value greater than \$250.00 the property will have to be advertised and put up for public sale by competitive bidding. The proceeds after deduction for the costs of storage, handling, and the sale shall be delivered to the tenant if the whereabouts are known or to the State Treasurer in the tenant's name.

VII. Other significant issues:

- A. Damages, attorney fees and punitive like awards. URLTA was enacted in an attempt to encourage the parties to resolve their differences without court intervention, and to abide by the law. The law did remove common law self help remedies replacing them with other remedies that are more specific. At the same time, the law awards attorney fees, actual damages, specific damages and even some punitive like damages. (The following section numbers refer to Neb.R.R.S. §76-1401 et. seq. The Nebraska Uniform Residential Landlord and Tenant Act)
  1. Actual Damages:
    - a. 76-1415. Deliberate use of a prohibited provision in lease
    - b. 76-1427 Failure to supply heat, water, hot water, or essential services.
    - c. 76-1432 Absence and abandonment
    - d. 76-1435 Breach of lease
    - e. 76-1438 Landlord's abuse of access. No less than 1 month rent
  2. Treble Damages: (punitive like)
    - a. 76-1418 Failure to supply possession of premises at commencement of term.
    - b. 76-1426 Failure to supply possession of premises at commencement of term.
    - c. 76-1430 Constructive or actual (wrongful) eviction
    - d. 76-1437 Willful holdover without landlord's consent
  3. Attorney fees:
    - a. 76-1415 Deliberate use of a prohibited provision
    - b. 76-1416 Failure to return deposit
    - c. 76-1425 Willful noncompliance by landlord affecting habitability
    - d. 76-1426 Failure to supply possession of premises at commencement of term.
    - e. 76-1427 Failure to supply heat, water, hot water, or essential services.
    - f. 76-1428 Meritless defense or counterclaim lacking good faith
    - g. 76-1430 Constructive or actual (wrongful) eviction
    - h. 76-1431 Willful failure to pay rent or non-compliance by tenant
    - i. 76-1435 Breach of rental agreement
    - j. 76-1437 Willful holdover without landlord's consent



conditions which may eventually become legal issues. Landlords should make sure that they are not just covering up a problem, but are repairing and remedying the problem. In particular any condition which is normally hidden from view or not easily detected, but known by the landlord to exist poses a significant threat of liability. Landlord should survey their property for the following:

- A. Lead Paint Hazards. To protect families (primarily the young) from exposure to lead from paint, dust, and soil, Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992. Landlords are now required to disclose known information on lead based paint before the sale or lease of most housing built prior to 1978. The landlord is required to:
    1. Disclose known lead based paint and lead based paint hazards and provide any available reports to buyers or renters.
    2. Give renters the Protect Your Family From Lead in Your Home pamphlet developed by EPA, HUD and the Consumer Product Safety Commission.
    3. Issue a written notification of the possibility of lead based paint hazards in the premises. This may be done by an addendum to the lease, a separate disclosure or a provision may be included in the lease. If you are using an addendum, it should be signed prior to the tenant's signing of the lease.
      - a. Note: Compliance with the law does not necessarily shield a landlord from liability for lead based paint injuries. Nor does failure to comply with the disclosure law in itself create liability for lead poisoning injuries.
      - b. Failure to comply with the law subjects the landlord to civil penalties of up to \$10,000 for each violation and criminal penalties of up to \$25,000 for each day of violation and/or to imprisonment for up to one year. For more information see 61 Fed. Reg. 45 page 9064 (1996) or 24 CFR Part 35, or 40 CFR Part 745.
    4. Renovations: There are new rules which apply to remodeling and renovation of affected properties. The landlord, and their contractors need to be aware that notices may need to be served on the tenant, and in multiple dwelling units perhaps even the other tenants in the building. In addition there are work related issues as well as cleanup strategies to be used to minimize the spread of lead paint dust.
      - a. Landlords must document compliance with the law and regulations by serving a "Pre-renovation Disclosure" on the occupant.
      - b. Abide by EPA's recommended lead-safe work practices.
      - c. See [www.epa.gov.lead/pubs/renovation.htm](http://www.epa.gov.lead/pubs/renovation.htm)
  - B. Asbestos, mold, and other air borne material.
  - C. Any tripping or slipping hazard including holes in common areas, dangerous stairs, and sloping walkways.
  - D. If you know about a defect, you have a duty to disclose. While in most cases you are not under an affirmative duty to investigate or test, performing tests may reduce or eliminate your exposure to liability.
- IX. Final Comments:

Owning and operating a residential rental business can be a rewarding and profitable business. Many landlords have used a rental business as a retirement plan with great success. However, you must remember that like any business there are pitfalls and potential disasters that could destroy your business. One mistake usually won't result in complete financial failure, but could take an emotional drain on you, not to mention the distraction it imposes on your continued efforts to go forward.

“Be prepared” is the best advice that I can give you. Prepare by learning as much as you can about the law, about your property, about the industry as a whole and about your local market.