Iowa

Uniform Residential Landlord and Tenant Act

Iowa Real Estate Seminars
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Introduction

Until the passage of the Uniform Residential Landlord and Tenant Act, it was said that tenants had only one right: *the right to pay rent.*

The "Act" now gives significant new rights and obligations to the tenant and landlord.

Notice the word *uniform* in the above title. Years ago, a movement began among concerned individuals to standardize the laws regarding landlord-tenant relations. Multiple benefits could be realized from a more common and improved law between landlords and tenants.

One benefit: property management agents living in a multi-state market area could serve the public better as they practiced across jurisdictional lines. Having become familiar with the laws in their own state, they could function more professionally in other states.

More so, however, was the need to improve the condition of residential rental properties, making them habitable for American families. Some landlords were maintaining their properties as substandard living quarters. Nicknaming an owner a "slumlord" or " J. P. Ghetto" may reflect strong tenant sentiment regarding the blighted condition of their inferior dwelling. Seemingly, the landlord had the right to collect rent even if he did not make the repairs requested by the tenant. The result? Courts were allowing evictions when it was the landlord's failure to make repairs which caused tenant default in rental payments. ("Why pay the full rent when the condition of the property has caused a reduction in rental value?" a perplexed tenant might ask.) Mease vs. Fox is an action which enraged many and caused courts and law making bodies to take a hopeful new look at what was really happening in the landlording industry.

The Uniform Residential Landlord and Tenant Act is the result of legal officials balancing landlord and tenants' rights and obligations. Property management is much different today because of this law.

By understanding this landlord/tenant act, the real estate licensee can rise to a new level of professionalism. No longer is it necessary to speculate regarding certain issues; the "Act" provides a wealth of troubleshooting information solving numerous difficult areas of landlord-tenant relations. Now the licensee can better serve and protect the public by knowing the Law; now the licensee can better protect one's self against professional incompetency using the Law as a risk management resource tool.

In the pages to follow, you will read the Iowa Uniform Residential Landlord and Tenant Act. In the most simple analysis, the "Act" will direct the learner in the following areas:

1. The tenant's rights and obligations as a tenant,
2. The landlord's rights and obligations as a landlord, and
3. Remedies available to each party should the law or lease not be followed.

Watch for "Instructor's Comments." These comments will follow sections of the law which need further comment or emphasis.

This course should NOT be used as a substitute for competent legal advice.

The opinions of the author are not necessarily the opinions of the Iowa Real Estate Commission.

Iowa Code 562A.

(unofficial copy)

Uniform Residential Landlord and Tenant Act

(instructor's comments begin)

Overview

Article One has the scope and purpose of establishing general applications for the Act. Mitigation of damages, properties excluded from the Law, transactions excluded from the Law, important definitions, explanations of prohibited lease agreements and other important ground work is laid for a thorough comprehension of the Act.

Learning Objectives:As a result of studying Article I, the licensee should be able to:

- Explain penalties for including illegal clauses in residential leases.
- Demonstrate the meaning of "unconscionability."
- Recall examples of damage mitigation.
- State types of properties not covered by the Act.
- Explain what constitutes "notice."

(instructor's comments end)

Article I
General Provisions and Definitions
Part 1
Short Title, Construction, Application and Subject Matter of the Act

562A.1 Short Title

This chapter shall be known and may be cited as the "Uniform Residential Landlord and Tenant Act."

562A.2 Purposes—Rules of Construction.

1. This chapter shall be liberally construed and applied to promote its underlying purposes and policies.
2. Underlying purposes and policies of this chapter are:

A. To simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant; and

B. To encourage landlord and tenant to maintain and improve the quality of housing.

C. To insure that the right to the receipt of rent is inseparable from the duty to maintain the premises.

562A.3 Supplementary Principles of Law Applicable.

Unless displaced by the provisions of this chapter, the principles of law and equity in this state, 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, shall supplement its provisions.

562A.4 Administration of Remedies— Enforcement.

1. The remedies provided by this chapter shall be administered so that the aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.
2. A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

Instructor's Comments: As mentioned above, "the aggrieved party has a duty to mitigate damages." To mitigate damages means to reduce, minimize or lessen the damages. In one's duty to mitigate the damages, a persons must use due diligence, reasonable diligence and reasonable efforts. But what

does this mean in the context of landlord/tenant relations?

Suppose an apartment becomes vacant because of a tenant's untimely job transfer. Older case law studies allowed the landlord to sit idle and collect rent from the tenant who no longer was occupying the apartment.
("Besides," the landlord confesses, "it isn't my fault the tenant moved; I'll let him solve his own problems! I'll let him pay rent for the remainder of his lease even though his apartment sits vacant!")

Today this uniform law commands mitigation of the damages. Actions proving the landlord mitigated damages include:1) showing the vacated rental. 2) advertising the rental. 3) posting signs announcing the availability of the rental. 4) listing the rental with a real estate company for rent.

Studies have shown that the landlord has mitigated the damages even though she was unable to rent the apartment to certain prospective tenants. Maybe the prospective tenant had questionable credentials. Maybe this new tenant wanted to rent the property for a term which was shorter than that left on the old tenant's lease. Maybe someone in the same complex merely wanted to exchange apartments to obtain a better view. Possibly the new tenant wanted to pay less rent than what the landlord was asking.

Each of the above are valid reasons for refusing a new tenant who wants to sublease the remainder of the original tenant's lease.

On the other hand, the landlord could be breaching her duty to mitigate if she: 1) varies the terms of the original tenancy. 2) increases the rent. 3) refuses to show the vacated rental unit. 4) decides to sell rather than rent, reducing the desirability of the rental to those who know that they will just have to pack-up and move again if the property sells. These four actions would indicate a default under the law's requirement to "mitigate damages."

The tenant also has a duty to mitigate damages. Suppose a leaky roof develops during a torrential thunder storm. The leak is strategically located above valuable possessions of the tenant and threatens to ruin these items. The tenant may not sit by without using diligence to lessen the damages. The tenant must use diligence to protect his property (move them from the wet area; cover the items with protective coverings; call the landlord immediately, etc.) Otherwise, the tenant may be held responsible for his own loss of property.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

Part 2. Scope and Jurisdiction
562A.5 Exclusions From Application of Chapter.
Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

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 the purchaser's 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, motel or other similar lodgings.
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 co-operative.
7. Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.
8. Occupancy in housing owned by a nonprofit organization whose purpose is to provide transitional housing for persons released from drug or alcohol treatment facilities and in housing for homeless persons.

Instructor's comments: The eight items listed above are exceptions to the "Act". #4 above lists the exclusion under the law of transient occupancy in a hotel or motel. To be excluded, this subsection recites the type of property (hotel; motel) and recites the type of occupancy (transient).

Rooms in a hotel were rented on a daily, weekly or monthly basis and meals were provided at the option of the guests. Lyons and her daughter moved into the hotel on October 15, after her house was rendered uninhabitable by a fire. She intended to stay in the hotel until her house was repaired, which was estimated to take approximately 30 days. In addition to clothing and personal items, Lyons brought her electric organ, which was stored in the lobby of the hotel. Her house was repaired by November 15, of that same year, and she moved from the hotel to her home, taking her personal items but leaving the organ. Later that day she returned for the organ and was told by the hotel manager it was being held for the balance due on the hotel bill and it would not be released until the hotel charges were paid. Lyons was unable to obtain the money to pay the hotel bill until April of the following year. When she contacted the hotel and stated that she would pay the bill and pick up the organ, the manager of the hotel replied that the organ had been sold to satisfy the charges. Lyons brought charges claiming she was protected by the Uniform Residential Landlord Tenant Act in that state. Unfortunately for her, the facility was a hotel and Lyons was transient (a short-term guest whose stay is from one day to a few weeks but who did not reside permanently in the establishment).

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

562A.6 General Definitions.

Subject to additional definitions contained in subsequent articles of this chapter which apply to specific articles or its parts, and unless the context otherwise requires, in this chapter:

1. "Building and housing codes" include a law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of a premises or dwelling unit.
2. "Business" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.
3. "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place.
4. "Good faith" means honesty in fact in the conduct of the transaction concerned.
5. "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by section 562A.13.
6. "Owner" means one or more persons, jointly or severally, in whom is vested: a. All or part of the legal title to property; or b. All or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.
7. "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurte-

nances of it and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

7. A. "Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.
8. "Reasonable attorney's fees" means fees determined by the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the tenant or landlord.
9. "Rent" means a payment to be made to the landlord under the rental agreement.
10. "Rental agreement" means an agreement written or oral, and a valid rule, adopted under section 562A.18, embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.
11. "Rental deposit" means a deposit of money to secure performance of a residential rental agreement, other than a deposit which is exclusively in advance payment of rent.

11. A. "Resident" means an occupant of a dwelling unit who is at least eighteen years of age.

12. "Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. Major facility in the case of a bathroom means toilet, or either a bath or shower, and in the case of a kitchen means refrigerator, stove or sink.
13. "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.
14. "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of another.
15. "Transitional housing" means temporary or nonpermanent housing.

562A.7 Unconscionability.

1. If the court, as a matter of law, finds that:

A. A rental agreement or any provision of it was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of an unconscionable provision to avoid an unconscionable result.

B. A settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement was unconscionable at the time it was made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of an unconscionable provision to avoid any unconscionable result.

2. If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

Instructor's comments: "A bargain is said to be unconscionable at law if it is such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other."

Stated in another way, a contract is unconscionable if the terms of the contract are shocking to the conscience of a normal person.

Two lawyers negotiated a lease on farmland with an elderly, enfeebled owner. The yearly rental rate was far below fair market economic rent. After the owner's death, the heirs took court action to rescind the lease so that they might obtain the appropriate rental consideration for the farm. The court broke the contract in favor of the heirs stating the lawyers had taken advantage of the farmer; their action was unconscionable.

The Arthur Murray Dance Studio promised a 70 year old widow that she could become a professional dancer ("like the *Rocketts* out in New York!") if she would take their dance courses. She was matched up with a 29-year-old male instructor who sold her three life-time studio memberships including $34,000+ in course tuition fees. They warned her against consulting with friends, bankers or lawyers regarding her decision to participate. Witnesses said that, for all the money spent and all the lessons taken, her dance skill did not improve one iota. This is an example of an unconscionable transaction.

The Briggs truck driver was told not to drop off any televisions at Star Appliance Store until the owner paid for shipping ($700) and the T.V.'s (approx. $30,000). After unloading his truck, the driver erred and only picked up $700. When his boss returned to the store for payment, he discovered it was closed although during normal business hours. The store owner had displaced the unpaid-for cargo to a hidden location. The appliance store owner thought the T.V.'s were his due to an unearned windfall; besides, it wasn't his fault the driver forgot the shipment was supposed to be C.O.D.! The appliance store owner's actions were unconscionable.

The above statute allows for three remedies should the rental contract or any portion of it be unconscionable. The court may: 1. refuse to enforce the agreement. 2. enforce the remainder of the agreement without the unconscionable provision. 3. limit the application of any unconscionable provision to avoid an unconscionable result.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - -

562A.8 Notice

A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. In the case of the landlord, notice is received when it comes to the landlord's attention or when it is delivered in hand or mailed by certified mail or restricted certified mail, as defined in section 618.15, whether or not the landlord signs a receipt for the notice, to the place of business of the landlord through which the rental agreement was made or at a place held out by the landlord as the place for receipt of the communication or delivered to any individual who is designated as an agent of the landlord. In the case of the tenant, notice is received when it comes to the tenant's attention or when it is delivered in hand to the tenant or mailed by certified mail or restricted certified mail, as defined in section 618.15, whether or not the tenant signs a receipt for the notice, to such person at the place held out by such person as the place for receipt of the communication, or in the absence of such designation, to such person's last known place of residence.

Any notice required under this chapter, except a written notice of termination required by section 562A.27, subsection 1 or 2, a notice of termination and notice to quit under section 562A.27A, a notice to quit as required by section 648.3, or a petition for forcible entry and detainer pursuant to chapter 648, shall be deemed legally sufficient notice if made by posting at or delivering to the dwelling unit. The date of posting of the notice shall be written on the notice.

Instructor's Comments: This replaces a statute determined to be unconstitutional by the Iowa Supreme Court in War Eagle Apartments vs. Geneva Plummer (Nov. 30, 2009). In that case, it appeared that the eviction of the tenant for non-payment of $67 monthly rent (probably subsidized rent) denied the tenant of her constitutional right of due-process. The eviction took place faster than the notification method used by the landlord. (The landlord claimed that notices had been posted, hand delivered and sent by certified mail, all of which the tenant denied receiving. The postal employee

never testified at the trial.) As a result, the following notices should be given extra care when being delivered and should be delivered, in my opinion, by the sheriff: notice of court hearing preceding eviction, 7-7 day notices for material non-compliance with the lease, 3 day notices for clear and present danger tenants. A three day notice to pay or quit should probably be delivered by the sheriff or by *restricted* certified mail. Less formal notification methods (regular mail, certified mail, posting of notices on the property) may be used when changing occupancy rules, rent changes, etc. When in doubt, use the sheriff for proof of delivery. Chapter 648 governs the eviction process in Iowa, commonly called: Forcible Entry and Detainer.

- - -instructor's comments concluded; the "Act" continued- - - - - -

562A.8A Computation of Time.
The calculation of all time periods required under this chapter shall be made in accordance with section 4.1, subsection 34.

562A.9 Terms and Conditions of Rental Agreement.
1. The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.
2. In the absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.
3. Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent shall be uniformly apportionable from day-to-day.
3. A. For rental agreements in which the rent does not exceed seven hundred dollars per month, a rental agreement shall not provide for a late fee that exceeds twelve dollars per day or a total amount of sixty dollars per month. For rental agreements in which the rent is greater than seven hundred dollars per month, a rental agreement shall not provide for a late fee that exceeds twenty dollars per day or a total amount of one hundred dollars per month.
4. Unless the rental agreement fixes a definite term, the tenancy shall be week-to-week in case of a roomer who pays weekly rent, and in all other cases month-to-month.

562A.10 Effect of Unsigned or Undelivered Rental Agreement.
1. If a landlord does not sign and deliver a written rental agreement signed and delivered to the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.
2. If a tenant does not sign and deliver a written rental agreement signed and delivered to the tenant by the landlord, acceptance of possession without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.
3. If a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective only for one year.

562A.11 Prohibited Provisions in Rental Agreements.
1. A rental agreement shall not provide that the tenant or landlord:
A. Agrees to waive or to forego rights or remedies under this chapter provided that this restriction shall not apply to rental agreements covering single family residences on land assessed as agricultural land and located in an unincorporated area;
B. Authorizes a person to confess judgment on a claim arising out of the rental agreement;
C. Agrees to pay the other party's attorney fees; or

D. Agrees to the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the costs connected therewith.
2. A provision prohibited by subsection 1 included in a rental agreement is unenforceable. If a landlord willfully uses a rental agreement containing provisions known by the landlord to be prohibited, a tenant may recover actual damages sustained by the tenant and not more than three months' periodic rent and reasonable attorney's fees.

Instructor's Comment #1: The above statute does Not say it is wrong to have a tenant sign a "confession of judgment." It is wrong, however, for the lease to have as one of its provisions that the tenant will sign a confession of judgment. This is a non-judicial method of receiving a judgment against a person who is willing to pay a debt but just doesn't have the current funds to pay. These "confessions" are not favored by courts.

Instructor's Comment #2: The "Act" has banned the exculpatory clause from leases. The exculpatory clause prohibits the tenant from taking legal action against the landlord for damages caused to the tenant by the landlord. In times past, the courts enforced contracts under what was called the "Freedom of Contract" rule. (If two parties came to a meeting of the minds on certain issues and signed their names, the court would enforce this agreement between them.) Even the ancient courts despised exculpatory clauses and tried to render them unenforceable if the landlord and tenant were not on the same footings for negotiations (tenant: 'but this lease contains an exculpatory clause!" landlord: 'take it or leave it; it's the only rental available in this small town.") Every landlord hopes to have protections against liability. The use of exculpatory clauses in leases is strictly forbidden by the "Act." This section does not prohibit indemnity clauses which would reimburse the landlord for damages should a third party be hurt by actions of the tenant.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

Article II.
Landlord Obligations

Instructor's comments

Overview: This Article gives specific instructions to the landlord for maintaining the tenant's security deposit and the rental property.

Learning Objectives

After studying Article II, the real estate agent should be able to:

- Identify legal uses of the tenant's security deposit.
- State the maximum security deposit allowable under law.
- Explain ordinary wear and tear.
- List examples of ordinary wear and tear.
- List examples of what is not ordinary wear and tear.
- Analyze landlord/tenant dilemmas involving property damages.
- State the recipient of the interest earned on the security deposit.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

562A.12 Rental Deposits.

1. A landlord shall not demand or receive as a security deposit an amount or value in excess of two months' rent.
2. All rental deposits shall be held by the landlord for the tenant, who is a party to the agreement, in a bank or savings and loan association or credit union which is insured by an agency of the federal government. Rental deposits shall not be commingled with the personal funds of the landlord.

Notwithstanding the provisions of chapter 543B, all rental deposits may be held in a trust account, which may be a common trust account and which may be an interest bearing account. Any interest earned on a rental deposit during the first five years of a tenancy shall be the property of the landlord.

3. A landlord shall, within thirty days from the date of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding of the rental deposit or any portion thereof. If the rental deposit or any portion of the rental deposit is withheld for the restoration of the dwelling unit, the statement shall specify the nature of the damages. The landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons:

A. To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement.

B. To restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted.

C. To recover expenses incurred in acquiring possession of the premises from a tenant who does not act in good faith in failing to surrender and vacate the premises upon noncompliance with the rental agreement and notification of such noncompliance pursuant to this chapter. In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

4. A landlord who fails to provide a written statement within thirty days of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions shall forfeit all rights to withhold any portion of the rental deposit. If no mailing address or instructions are provided to the landlord within one year from the termination of the tenancy the rental deposit shall revert to the landlord and the tenant will be deemed to have forfeited all rights to the rental deposit.
5. Upon termination of a landlord's interest in the dwelling unit, the landlord or an agent of the landlord shall, within a reasonable time, transfer the rental deposit, or any remainder after any lawful deductions to the landlord's successor in interest and notify the tenant of the transfer and of the transferee's name and address or return the deposit, or any remainder after any lawful deductions to the tenant. Upon the termination of the landlord's interest in the dwelling unit and compliance with the provisions of this subsection, the landlord shall be relieved of any further liability with respect to the rental deposit.
6. Upon termination of the landlord's interest in the dwelling unit, the landlord's successor in interest shall have all the rights and obligations of the landlord with respect to the rental deposits, except that if the tenant does not object to the stated amount within twenty days after written notice to the tenant of the amount of rental deposit being transferred or assumed, the obligations of the landlord's successor to return the deposit shall be limited to the amount contained in the notice. The notice shall contain a stamped envelope addressed to the landlord's successor and may be given by mail or by personal service.
7. The bad faith retention of a deposit by a landlord, or any portion of the rental deposit, in violation of this section shall subject the landlord to punitive damages not to exceed twice the monthly rental payment in addition to actual damages.
8. The court may, in any action on a rental agreement, award reasonable attorney fees to the prevailing party.

Instructor's comments: Paragraph 3.b. above speaks of ordinary wear and tear.
Ordinary wear and tear has also been called: Depreciation by use; wear and tear; natural wear and tear; normal wear and tear; reasonable wear and tear; usual wear and tear.

What does this mean? What rules are used to determine whether a condition is wear and tear?
In the late 1940's a furnished mansion was leased for $500 per month. The mansion included expensive oil paintings and rare vases placed throughout. Before the tenants moved in, a furniture restorer reupholstered the furniture placing it in top shape. At the termination of the lease, the landlord took action against

the tenant for damages, including: missing oil paintings; broken vases; water marks on horizontal shellacked surfaces caused by beverage glasses; broken furniture. The landlord won a judgment against the tenant; the court said the tenant had abused the property. Damages caused by abusive use of a property is not ordinary wear and tear.

Another test of whether a certain condition is ordinary wear and tear examines the speed at which the changes or damages took place. Were the changes slow or were they sudden and catastrophic changes? As the sun rises and sets, day after day and year after year, a discoloration of the carpet and paint can take place. This is ordinary wear and tear. It was a slow change which took place; it would be hard, if not impossible, for the human eye to detect a change in the color of the carpet or paint—but when one removes the pictures from the wall the discoloration is easily noticed. The ordinary fashion that ordinary tenants cause a reduction in the height of the carpet pile in the traffic pattern when they use the property in an ordinary way is ordinary wear and tear. Tenants who cause the carpet to become thread bare because of excessive "partying" can be held responsible for damages. Spillage of red Kool-Aid on a carpet is a sudden and catastrophic event for which the tenant can be held accountable.

A commercial tenant had leased a large building which housed a car dealership, showroom and repair shop. Each Fall the tenant was responsible for firing-up the gas boiler. The boiler was 28 years old and had an expected economic life of 40 years. One Fall the tenant "dry-fired" the boiler and the boiler cracked. Because the tenant had failed to fill the boiler with water and the resulting uneven heating of the boiler caused it to crack, the tenant was held responsible for the remaining 12 years of the boiler economic life. The dry-firing of the boiler was a sudden and catastrophic event; a normal person would have checked the water level before activating the boiler.

The following lists may better help to understand whether a damage is ordinary wear and tear. Ordinary wear and tear would probably include the following: well worn keys; depressurized fire extinguisher with an unbroken seal; loose and/or inoperable faucet handles; rusty refrigerator shelves; loose grout around ceramic tile; carpet seam unraveling; threadbare carpet in hallway; rusty shower curtain rod; window cracked by settling or by high wind; sun-damaged drapes.

Ordinary wear and tear would probably Not include the following: missing keys; key broken off inside lock; depressurized fire extinguisher with broken seal but not used to put out fire; burn in plastic countertop; sink discolored by clothing dye; missing faucet handle; missing refrigerator shelf; carpet burns; gouge in wooden floor; tear in linoleum; broken toilet tank lid; hole in door; missing door; hole in ceiling; crayon marks on wall; missing light fixture globe; burned out or missing light bulb; window cracked by movers; torn shade; drapery rod with missing parts; missing/bent/torn window screen.

There are several methods of proving damages caused by the tenant. Maybe the best way to prove damages is to have the tenant list all damages to all rooms before moving in. The tenant and the landlord would sign this list. The tenant would again list any damages to the property upon vacating the premises. In comparing the "move-in" sheet with the "move-out" sheet, the landlord may be able to make a determination of damages. Include with this list a request of the tenant to inspect for: tears/holes in carpet; coloring on surfaces; holes in walls including nail/screw holes/ damaged doors; broken glass; damaged appliances/cleanliness of appliances; damaged lighting fixtures; carpet burns; broken windows and others. Any other condition, not specifically mentioned on the list existing at the termination of the tenancy will be the responsibility of the tenant, ordinary wear and tear excepted.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

562A.13 Disclosure.

1. The landlord or a person authorized to enter into a rental agreement on behalf of the landlord shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of: A. The person authorized to manage the premises. B. An owner of the premises or person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.
2. The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against a successor landlord, owner, or manager.
3. A person who fails to comply with subsection 1 becomes an agent of each person who is a landlord for the purpose of: A. Service of process and receiving and receipting for notices and demands. B. Performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises.
4. The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall fully explain utility rates, charges and services to the prospective tenant before the rental agreement is signed unless paid by the tenant directly to the utility company.
5. Each tenant shall be notified, in writing, of any rent increase at least thirty days before the effective date. Such effective date shall not be sooner than the expiration date of original rental agreement or any renewal or extension thereof.
6. The landlord or a person authorized to enter into a rental agreement on behalf of the landlord shall disclose to each tenant in writing before the commencement of the tenancy if the property is listed in the comprehensive environmental response compensation and liability information system maintained by the federal environmental protection agency.

562A.14 Landlord to Supply Possession of Dwelling Unit.

At the commencement of the term, the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and section 562A.15. The landlord may bring an action for possession against a person wrongfully in possession and may recover the damages provided in section 562A.34, subsection 4.

562A.15 Landlord To Maintain Fit Premises

1. The landlord shall:

A. Comply with the requirements of applicable building and housing codes materially affecting health and safety.

B. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.

C. Keep all common areas of the premises in a clean and safe condition. The landlord shall not be liable for any injury caused by any objects or materials which belong to or which have been placed by a tenant in the common areas of the premises used by the tenant.

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 the landlord.

E. Provide and maintain appropriate receptacles and conveniences, accessible to all tenants, for the central collection and removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal.

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 pur-

pose, 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.

If the duty imposed by paragraph "A" of this subsection is greater than a duty imposed by another paragraph of this subsection, the landlord's duty shall be determined by reference to paragraph "A" of this subsection.

2. The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in paragraphs "E" and "F" of subsection 1 and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.
3. The landlord and tenant of a dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only:

A. If the agreement of the parties is entered into in good faith and is set forth in a separate writing signed by the parties and supported by adequate consideration.
B. If the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

4. The landlord shall not treat performance of the separate agreement described in subsection 3 as a condition to an obligation or performance of a rental agreement.

562A.16 Limitation of Liability.

1. Unless otherwise agreed, a landlord, who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser, is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to written notice to the tenant of the conveyance.
2. A manager of premises that includes a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of the person's management.

Article III.
Tenant Obligations

Instructor's comments:

Overview: Article III explains the tenant's obligations to maintain the property, give opportunity to the landlord to view the dwelling unit, notify the landlord before extended absences and use the premises only as a dwelling unit.

Learning Objectives: As a result of studying Article III, the licensee should be able to:

- ⇨ List pertinent laws requiring the tenant to maintain the property.
- ⇨ List pertinent laws requiring the tenant to keep the property clean.
- ⇨ Explain laws prohibiting injury to the premises through either negligence or deliberate acts.
- ⇨ Identify the law prohibiting disruptive conduct.
- ⇨ State the law allowing access to the dwelling unit.
- ⇨ State what persons have access to the dwelling unit.
- ⇨ Identify illegal use of the tenant's dwelling unit.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

562A.17 Tenant to Maintain Dwelling Unit.

The tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety.
2. Keep that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises permit.
3. Dispose from the tenant's dwelling unit all ashes, rubbish, garbage, and other waste in a clean and safe manner.
4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits.
5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises.
6. Not deliberately or negligently destroy, deface, damage, impair or remove a part of the premises or knowingly permit a person to do so. If damage, defacement, alteration, or destruction of property by the tenant is intentional, the tenant may be criminally charged with criminal mischief pursuant to chapter 716.
7. Act in a manner that will not disturb a neighbor's peaceful enjoyment of the premises.

562A.18 Rules

A landlord, from time to time, may adopt rules, however described, concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if it is written and if:

1. Its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally.
2. It is reasonably related to the purpose for which it is adopted.
3. It applies to all tenants in the premises in a fair manner.
4. It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply.
5. It is not for the purpose of evading the obligations of the landlord.
6. The tenant has notice of it at the time the tenant enters into the rental agreement.

A rule adopted after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption is given to the tenant and it does not work a substantial modification of the rental agreement.

562A.19 Access.

1. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.
2. The landlord may enter the dwelling unit without consent of the tenant in case of emergency.
3. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least twenty-four hours' notice of the landlord's intent to enter and enter only at reasonable times.
4. The landlord does not have another right of access except by court order, and as permitted by sections 562A.28 and 562A.29, or if the tenant has abandoned or surrendered the premises.

562A.20 Tennnt to Use and Occupy.

Unless otherwise agreed, the tenant shall occupy the dwelling unit only as a dwelling unit and uses incidental thereto. The rental agreement may require that the tenant notify the landlord of an anticipated ex-

tended absence from the premises not later than the first day of the extended absence.

Instructor's comments: there are many reasons not to allow a tenant to operate a business from the rental unit. Some reasons include: 1. additional wear and tear from business patrons entering the premises; 2. noise; 3. hazards to other tenants.

The landlord/licensee should be wary of an additional reason: landlord liability. Should a patron of the tenant's business sustain an injury on the premises, the landlord may have liability for those injuries. Care should be taken to make frequent inspections to determine business operations in, on or around the rental property.

Here is a list of businesses operated by tenants. Each tenant was ordered to either stop the business or vacate the premises. Note: it is generally held that if the tenant violates well established landlord rules, the penalty is loss of possession of the rental. Here's the list: artist's studio; child care; clinical psychology; day care; dressmaking shop; club; intermittent contact with medical patients; nursery school; professional consultation; astrological consultation; prostitution.

A psychotherapist began counseling approximately 2 to 4 patients each day or 15-22 patients per week at the apartment. Her apartment was the sole site of her practice. She was ordered to stop any business in the rental unit. Tenants conducted garage sales to help pay the rent. This business significantly increased the landlord's liability. Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a dwelling unit.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

Article IV. Remedies

Instructor's comments:
Overview: How does the tenant motivate the landlord to make the property habitable, safe and in good repair? How does the landlord cause the tenant to comply with the terms of the lease or pay the rent in a timely fashion? These questions are answered in Article IV.

Learning objectives: as a result of studying this section, the licensee should be able to:
- ⇨ Explain the "You fix or I quit" statute.
- ⇨ Explain the "You fix or you quit" statute.
- ⇨ Compare the 7-7 day notice to normal 30 day notices to terminate leases.
- ⇨ List tenant alternatives when the landlord does not provide water, hot water or heat.
- ⇨ Explain tenant alternatives and lease terminations when fire or casualty damages the rental.
- ⇨ State illegal methods of eviction.
- ⇨ Identify the characteristics/activities of the clear and present danger tenant.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

562A.21 Noncompliance by the Landlord—In General.

1. Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with section 562A.15 materially affecting health and safety, the tenant may elect to commence an action under this section and shall deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days, and the rental agreement shall terminate and the tenant shall surren-

der as provided in the notice subject to the following:

A. If the breach is remediable by repairs or the payment of damages or otherwise, and if the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

B. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the tenant may terminate the rental agreement upon at least seven days' written notice specifying the breach and the date of termination of the rental agreement unless the landlord has exercised due diligence and effort to remedy the breach which gave rise to the noncompliance.

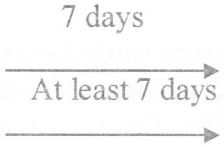
C. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

2. Except as provided in this chapter, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or section 562A.15 unless the landlord demonstrates affirmatively that the landlord has exercised due diligence and effort to remedy any noncompliance, and that any failure by the landlord to remedy any noncompliance was due to circumstances reasonably beyond the control of the landlord. If the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees.

3. The remedy provided in subsection 2 is in addition to any right of the tenant arising under subsection 1.

4. If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable by the tenant under section 562A.12.

Instructor's comments: This could be called the "You fix or I quit" statute. This section allows the tenant to deliver a "7-7 day" notice. It works as follows. The tenant serves the landlord with this notice which complains the handrail, as an example, on the steps is no longer safe due to ordinary wear and tear (but not because the tenant broke the handrail in bad faith). This would be a type of repair affecting health and safety. The landlord now has 7 days to make a repair. (probably longer than 7 days depending on how the notice was delivered. Observe the word "after" in this section; "after" means the day the notice was received does not count as one of the 7 days.) Should proper action not be taken by the landlord, the tenant may cancel the lease in "not less" than 7 days. Notice that the two 7 day time periods run contemporaneously, meaning that the first day of the 7-day notice to fix is also the first day of the 7-day notice to terminate.



Also notice that the law specifies: "not less" than 7 days. The wise tenant will look at the possession date of other properties; should they not be available until 45 days, the tenant would probably give the landlord a "7-45day" notice.

The tenant may serve this notice at any time. A month to month lease requires notice of termination of at least 30 days and before the effective date of the lease. However, the 7-7 day notice can be given at any time of the lease and starts approximately 7 days later.

The statute continues by allowing the tenant to give "at least 7 days" notice should the same ("if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the tenant may terminate the rental agreement upon at least seven days' written notice specifying the breach and the date of termination of the rental agreement.") act or omission occur within six months. Probably this statute provides for landlords who only make "did-dab" repairs or tenants who find themselves in possession a "lemon" rental which is impossible to fix or repair. After the passage of six months, the tenant would need to revert to the "7-7day" notice described earlier.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

562A.22 Failure to Deliver Possession.

1. If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in section 562A.14, rent abates until possession is delivered and the tenant shall:

A. Upon at least five days' written notice to the landlord, terminate the rental agreement and upon termination the landlord shall return all prepaid rent and security; or

B. Demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the damages sustained by the tenant.

2. If a landlord's failure to deliver possession is willful and not in good faith, a tenant may recover from the landlord the actual damages sustained by the tenant and reasonable attorney's fees.

Instructor's comments: this section provides the prospective tenant several remedies should she be unable to obtain timely possession of the premises. The tenant may: cancel the lease with the landlord; enforce the rental agreement against the landlord; enforce the rental agreement against the hold-over tenant; recover specified damages against a tenant holding over in bad faith.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

562A.23 Wrongful Failure to Supply Heat, Water, Hot Water or Essential Services.

1. If contrary to the rental agreement or section 562A.15 the landlord deliberately or negligently fails to supply running water, hot water, or heat, or essential services, the tenant may give written notice to the landlord specifying the breach and may:

A. Procure reasonable amounts of hot water, running water, heat and essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

B. Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

C. Recover any rent already paid for the period of the landlord's noncompliance which shall be reimbursed on a pro rata basis.

2. If the tenant proceeds under this section, the tenant may not proceed under section 562A.21 as to that breach.

3. The rights under this section do not arise until the tenant has given notice to the landlord or if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the consent of the tenant.

Instructor's comments:Please note the following:

A. In order to use this section, the tenant must have given the landlord notice and "may" have given the landlord written notice.

B. In order to use this section, the tenant may not use the 7-7 day notice studied earlier in this course.

C. The repair must be regarding water, hot water, heat or other essential services.

D. Use of this section by the tenant is because of either the landlord's negligent or fraudulent failure to supply these items or services.

E. The tenant has a number of recourses: 1. make the repair and deduct the cost from their future rent. 2. receive a reduction in future rent until the repair is made. 3. receive a refund of rent already paid because of the diminished value of the rental needing repair.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

562A.24 Landlord's Noncompliance as Defense to Action for Possession or Rent.

1. In an action for possession based upon nonpayment of the rent or in an action for rent where the tenant is in possession, the tenant may counterclaim for an amount which the tenant may recover under the rental agreement or this chapter. In that even the court from time to time may order the

tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and the balance by the other party. If rent does not remain due after application of this section, judgment shall be entered for the tenant in the action for possession if the defense or counterclaim by the tenant is without merit and is not raised in good faith the landlord may recover reasonable attorney's fees.

2. In an action for rent where the tenant is not in possession, the tenant may counterclaim as provided in subsection 1, but the tenant is not required to pay any rent into court.

562A.25 Fire or Casualty Damage.

1. If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

A. Immediately vacate the premises and notify the landlord in writing within fourteen days of the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

B. If continued occupancy is lawful, vacate a part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

2. If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable under section 562A.12. Accounting for rent in the event of termination or apportionment is to occur as of the date of the casualty.

562A.26 Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion, or Diminution of Service.
If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, the tenant may recover possession pursuant to section 648.1, subsection 1, or terminate the rental agreement and, in either case, recover the actual damages sustained by the tenant, punitive damages not to exceed twice the monthly rental payment, and reasonable attorney's fees. If the rental agreement is terminated, the landlord shall return all prepaid rent and security.

Instructor's comments: It has been wrongful for many years to evict a tenant without first going to court. Under ancient common law, the landlord was given the right to enter and use force, short of death or bodily harm, to dispossess a tenant holding over, and the latter had no cause of action for damages or possession where not more force than was necessary was used to eject him. In 1381, under Richard II, the law was changed making evictions without going to court a criminal offense. There was a trade-off however: the landlord was given priority (a "speeding-up") in his eviction proceeding.

That is still practiced today. The landlord must go to court to evict a tenant and no non-judicial evictions are allowed. The landlord's court action is accelerated in court. Some of my students are able to get their action into court in seven or eight days!

Illegal ousters may include: changing locks on doors and windows without notification to the tenant; removing doors and windows during inclement weather; demolishing the housing unit without legal permission; pad locking the door; physically removing the tenant from the property; burning the property.

Tenants have been able to recover numerous damages including emotional distress for wrongful landlord actions. Examples: a renter was illegally ejected from the house with her children and household goods, being placed in a position of ridicule in the presence of others; a renter returned from her work to find the doors and windows of the apartment locked and notes on the door stating that she had been evicted for

nonpayment of rent with no effort being made through proper legal proceedings; a renter was awarded damages for a miscarriage resulting from an unlawful eviction.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

526A.27 Noncompliance with Rental Agreement—Failure to Pay Rent—Violation of Federal Regulation.

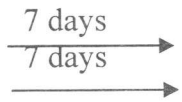
1. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with section 562A.17 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days, and the rental agreement shall terminate as provided in the notice subject to the provisions of this section. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least seven days' written notice specifying the breach and the date of termination of the rental agreement.
2. If rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.
3. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for noncompliance by the tenant with the rental agreement or section 562A.17 unless the tenant demonstrates affirmatively that the tenant has exercised due diligence and effort to remedy any noncompliance, and that the tenant's failure to remedy any noncompliance was due to circumstances beyond the tenant's control. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.
4. In any action by a landlord for possession based upon nonpayment of rent, proof by the tenant of the following shall be a defense to any action or claim for possession by the landlord, and the amounts expended by the claimant in correcting deficiencies shall be deducted from the amount claimed by the landlord as unpaid rent:

A. That the landlord failed to comply either with the rental agreement or with section 562A.14; and
B. That the tenant notified the landlord at least seven days prior to the due date of the tenant's rent payment of the tenant's intention to correct the condition constituting the breach referred to in paragraph "A" at the landlord's expense; and
C. That the reasonable cost of correcting the condition constituting the breach is equal to or less than one month's periodic rent; and
D. That the tenant in good faith caused the condition constituting the breach to be corrected prior to receipt of written notice of the landlord's intention to terminate the rental agreement for nonpayment of rent.

5. Notwithstanding any other provisions of this chapter, a municipal housing agency established pursuant to chapter 403A may issue a thirty-day notice of lease termination for a violation of a rental agreement by the tenant when the violation is a violation of a federal regulation governing the tenant's eligibility for or continued participation in a public housing program. The municipal housing agency shall not be required to provide the tenant with a right or opportunity to remedy the violation or to give any notice that the tenant has such a right or opportunity when the notice cites the federal regulation as authority.

Instructor's comments: the first part of this section could be called the "You fix or You move" statute. This section allows the landlord to deliver a "7-7day" notice. Here's how it works. The land-

lord serves the tenant with this notice which complains the tenant is breaking the rental agreement by harboring, for example, an exotic and/or dangerous pet (wild coyote, boa constrictor, pit bull terrier, etc.). The tenant now has 7 days to make a legal remedy (removal of pet) not counting the day the tenant receives the notice. Please observe the word "after" in this section; this generally means the day the notice is received does not count as one of the 7 days. Should proper action not be taken by the tenant, the landlord may cancel the lease in "not less" than 7 days. The two 7 day periods run contemporaneously, meaning the first day of the 7 day notice to "cure" is also the first day of the 7 day period counting down to lease termination.



If the landlord decides to give the tenant longer than 7 days to move, she may do so.
The 7-7 day notice may be given at any time of the month and starts "working" the day after the tenant has received the notice. If the same act or omission occurs within 6 months, the landlord need only give the 7 day notice to terminate. If the same act or omission occurs more than 6 months after the initial act or omission, a 7-7day notice would again need to be given the tenant by the landlord.

If the tenant does not pay the rent when due:

1. The landlord gives the tenant a 3 day notice to pay or quit. (one landlord in Iowa gave a 3 day notice to quit without giving the tenant the option "to pay" or quit. The eviction was said to be wrongful—the tenant must be given the opportunity to "to pay" or quit).
2. The 3 day notice to pay or quit starts acting the day after the tenant receives the notice. This creates a waiting period of probably five or seven days depending on how the notice was sent. One landlord obtained a court eviction hearing date before the waiting period had ended; the eviction was said to be wrongful. The tenant must be given the full 3 days to pay or quit before obtaining a court date for the eviction hearing. I like sending this notice by "restricted" certified mail.
3. Once the tenant has been given the proper period of time to pay the rent or quit the tenancy, the landlord is able to schedule a date for the eviction hearing. This is usually within 7 to 10 days of the request for the hearing. The tenant must be notified of this hearing; the best way to notify the tenant of the hearing is by having the sheriff deliver the notice.
4. Assuming you win in court, you will be given a writ of possession which authorizes the sheriff to keep the peace while the tenant is removed from the legal limits of the property and your moving company vacates the tenant's personal property. Ordinarily, the tenants' personal property is placed on the "parking" between the sidewalk and the street. Check local ordinances for other rules (e.g., covering the personal items with a tarp; removal to the landfill after a lapse of a certain number of days, etc.).
5. If you combine an eviction with an action for unpaid rent and damages, you will not get to court nearly as fast as seeking an eviction only. Idea: evict first and go for damages later and separately.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - -

562A.27A Termination for Creating a Clear and Present Danger to Others.

1. Notwithstanding section 562A.27 or 648.3, if a tenant has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord, the landlord's employee or agent, or other persons on or within one thousand feet of the landlord's property, the landlord, after the service of a single three days' written notice of termination and notice to quit stating the specific activity causing the clear and present danger, and setting forth the language of subsection 3 which includes certain exemption provisions available to the tenant, may file suit against the tenant for recovery of possession of the premises pursuant to chapter 648, except as otherwise provided in subsection 3. The petition shall state the incident or incidents giving rise to the notice of termination and notice to quit. The tenant shall be given the opportunity to contest the termination in the court proceedings by

notice thereof at least three days prior to the hearing.

2. A clear and present danger to the health or safety of other tenants, the landlord, the landlord's employees or agents, or other persons on or within one thousand feet of the landlord's property includes, but is not limited to, any of the following activities of the tenant or of any person on the premises with the consent of the tenant:

A. Physical assault or the threat of physical assault.

B. Illegal use of a firearm or other weapon, the threat to use a firearm or other weapon illegally, or possession of an illegal firearm.

C. Possession of a controlled substance unless the controlled substance was obtained directly from or pursuant to a valid prescription or order by a licensed medical practitioner while acting in the course of the practitioner's professional practice. This paragraph applies to any other person on the premises with the consent of the tenant, but only if the tenant knew of the possession by the other person of a controlled substance.

3. This section shall not apply to a tenant if the activities causing the clear and present danger, as defined in subsection 2, are conducted by a person on the premises other than the tenant and the tenant takes at least one of the following measures against the person conducting the activity:

A. The tenant seeks a protective order, restraining order, order to vacate the homestead, or other similar relief pursuant to chapter 236, 598, 664A, or 915, or any other applicable provision which would apply to the person conducting the activities causing the clear and present danger.

B. The tenant reports the activities causing the clear and present danger to a law enforcement agency or the county attorney in an effort to initiate a criminal action against the person conducting the activities.

C. The tenant writes a letter to the person conducting the activities causing the clear and present danger, telling the person not to return to the premises and that a return to the premises may result in a trespass or other action against the person, and the tenant sends a copy of the letter to a law enforcement agency whose jurisdiction includes the premises. If the tenant has previously written a letter to the person as provided in this paragraph, without taking an action specified in paragraph "A" or "B" or filing a trespass or other action, and the person to whom the letter was sent conducts further activities causing a clear and present danger, the tenant must take one of the actions specified in paragraph "A" or "B" to be exempt from proceedings pursuant to subsection 1.

However, in order to fall within the exemptions provided within this subsection, the tenant must provide written proof to the landlord, prior to the commencement of a suit against the tenant, that the tenant has taken one of measures specified in paragraphs "A" through "C".

562A.28 Failure to Maintain.

If there is noncompliance by the tenant with section 562A.17, materially affecting health and safety, that can be remedied by repair or replacement of a damaged item or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within seven days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a competent manner and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value of it as rent on the next date when periodic rent is due, or if the rental agreement has terminated, for immediate payment.

562A.29 Remedies for Absence, Nonuse and Abandonment.

1. If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence as provided in section 562A.20, and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.
2. During an absence of the tenant in excess of fourteen days, the landlord may enter the dwelling

unit at times reasonably necessary.

3. If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins. The rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment, if the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender. If the tenancy is from month-to-month, or week-to-week, the term of the rental agreement for this purpose shall be deemed to be a month or a week, as the case may be.

Instructor's comments: You may recall an earlier statute giving the landlord the option in the lease requiring the tenant to notify the landlord of any extended absences starting the first day of the absence. I include this notice of extended absence in all of my leases. I have only had one tenant who ever notified me under this rule. That being the case, remind your tenants of their duty to inform you of absences. Remind the tenant that if "the tenant willfully fails to do so, the landlord may recover actual damages from the tenant" as mentioned in paragraph 1. above.

Re-read paragraph 3. above. If the tenant abandons the property the landlord must try to re-rent the property. If he does not, the lease ends. "The rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment, if the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental . . ."

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

562A.29A Method of Notice and Service of Process.

A written notice of termination required under section 562A.27, subsection 1, 2, or 5, a notice of termination and notice to quit required under section 562A.27A, a landlord's written notice of termination to the tenant required under section 562A.34, subsection 1, 2, or 3, or a notice to quit required by section 648.3, shall be served upon the tenant by one or more of the following methods:

1. By personal service.
2. By sending notice by certified or restricted certified mail, as defined in section 618.15, whether or not the tenant signs a receipt for the notice.

562A.30 Waiver of Landlord's Right to Terminate.

1. Acceptance of performance by the tenant that varies from the terms of the rental agreement or rules subsequently adopted by the landlord constitutes a waiver of the landlord's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.
2. Nothing in this section shall prohibit a landlord from granting a waiver for a term of days, provided the landlord gives notice of the breach and temporary waiver to a tenant consistent with section 562A.8 prior to a tenant acting or failing to act in reliance on the grant of a temporary waiver.

Instructor's comments: If you allow extra days for the payment of rent, place the tenant on notice that your original rules for payment of rent goes back into effect after this grace period is ended.

In one actual case, the landlord on July 24 wrote the tenant that he must remove the pet dog by August 10, and, the tenant failing to do so, the landlord on August 20 notified the tenant in writing that he was terminating the lease as of August 30, but accepted rent for the month of August. It was held the landlord had the right to repossess the property.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

562A.31 Landlord Liens—Distress for rent.

1. A lien on behalf of the landlord on the tenant's household good is not enforceable unless perfected before January 1, 1979.
2. Distraint for rent is abolished.

562A.32 Remedy After Termination.

If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees as provided in section 562A.27.

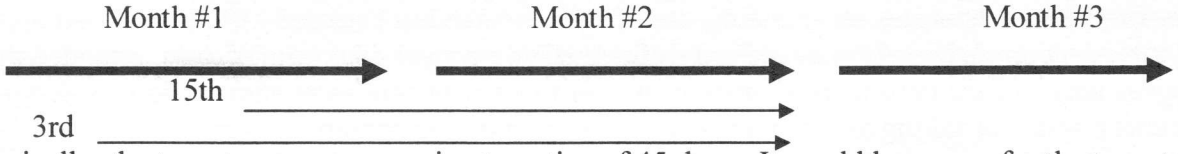
562A.33 Recovery of Possession Limited.

A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in this chapter.

562A.34 Periodic Tenancy—Holdover Remedies.

1. The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least ten days prior to the termination date specified in the notice.
2. The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice.
3. The landlord or the tenant may terminate a tenancy having a term longer than month-to-month by a written notice given to the other at least thirty days prior to the end of the first or subsequent term of the tenancy specified in the notice.
4. If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if the tenant's holdover is willful and not in good faith the landlord, in addition, may recover the actual damages sustained by the landlord and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, section 562A.9, subsection 4 applies.

Instructor's comments: Please notice the phrase "at least" (. . . At least thirty days prior . . .). Assume the tenant's lease runs from the first day of the month until the last day of the month. Also assume, for purposes here, that ALL months have 30 days. If the tenant gave notice to move on the 15th day of month #1, the tenant would be obligated to pay all rent through the last day of month #2. (see chart below)



Basically, the tenant gave an approximate notice of 45 days. It would be wrong for the tenant to think his rental obligations would end on the 15th day of month #2. If the tenant gave notice to move on the 3rd day of month #1, his obligations would still be through the last day of month #2.
These same principles apply to landlords who are giving notice of rule changes or rent increases.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

562A.35 Landlord and Tenant Remedies for Abuse of Access.

1. If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney's fee.

2. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In either case, the tenant may recover actual damages not less than an amount equal to one month's rent and reasonable attorney's fees.

Instructor's comments: Notice the stiff penalty for entering the rental unit illegally. Be sure to only make lawful entries into the tenant's apartment. A good rental agreement should negotiate the aspects of: time periods of the day access is permitted; the frequency of access; minimum notice before having access— at least 24 hours and during reasonable times was stated in an earlier statute—and other items as suggested by your attorney.

Some tenants are winning sexual harassment claims against landlords for: walking into the rental units unannounced; using a pass key to enter premises illegally, rummaging in private belongings of the tenant; leaving notes of a sexual nature hidden about the unit; making lewd and lascivious remarks; forcing unwelcome physical contact; bullying and intimidation of a sexual nature by an authority figure; requiring sexual favors as a condition of rental, lease or repairs; demanding sex in lieu of rent payment or eviction; threatening health/safety of children or tenant if sexual favors are withheld.

Notice above that walking into rental units unannounced and using a pass key to enter premises illegally can raise the charge of sexual harassment. Unlawful entry is sexual harassment. Sexual harassment is wrong in every business situation. Professionalism in the practice of real estate requires the agent to protect the rights of others. Be sure to only make lawful entries into the tenant's rental.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

Article V. Retaliatory Action

Instructor's comments

Overview: In the past, landlords removed unwanted tenants from their properties by, among other things, raising the rent. Maybe these tenants were unwanted because they were "whistle blowers" about some building code violation or were just plain habitual complainers. These kinds of tenants found themselves being forced out of the rental. This chapter contains laws designed to protect the landlord and the tenant from abusive practices.

Learning Objectives: As a result of studying Article V, the licensee should be able to:

- ⇨ Define retaliatory eviction.
- ⇨ State important time periods regarding retaliatory practices.
- ⇨ State landlord defenses to retaliatory allegations.

- - - - - - - -instructor's comments concluded; the "Act" continued- - - - - - - -

562A.36 Retaliatory Conduct Prohibited.

1. Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:

A. The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety;

B. The tenant has complained to the landlord of a violation under section 562A.15; or

C. The tenant has organized or become a member of a tenants' union or similar organization.

2. If the landlord acts in violation of subsection 1 of this section, the tenant may recover from the landlord the actual damages sustained by the tenant and reasonable attorney's fees, and has a defense in action

against the landlord for possession. In an action by or against the tenant, evidence of a good faith complaint within one year prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. Evidence by the landlord that legitimate costs and charges of owning, maintaining or operating a dwelling unit have increased shall be a defense against the presumption of retaliation when a rent increase is commensurate with the increase in costs and charges. "Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

3. Notwithstanding subsections 1 and 2 of this section, a landlord may bring an action for possession if:

A. The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the tenant's household or upon the premises with the tenant's consent;

B. The tenant is in default in rent; or

C. Compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit. The maintenance of the action does not release the landlord from liability under section 562A.21, subsection 2.

562A.37 Applicability.

This chapter shall apply to rental agreements entered into or extended or renewed after January 1, 1979.

Other Statutes pertaining to landlord and tenant relations

648.1 Grounds

A summary remedy for forcible entry and detainer is allowable:

1. Where the defendant has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property, and detains the same.
2. Where the lessee holds over after the termination of the lease.
3. Where the lessee holds contrary to the terms of the lease.
4. Where the defendant continues in possession after a sale by foreclosure of a mortgage, or on execution, unless the defendant claims by a title paramount to the lien by virtue of which the sale was made, or by title derived from the purchaser at the sale; in either of which cases such title shall be clearly and concisely set forth in the defendant's pleading.
5. For the nonpayment of rent, when due.
6. When the defendant or defendants remain in possession after the issuance of a valid tax deed.

648.3 Notice to quit.

1. Before action can be brought under any ground specified in section 648.1, except subsection 1, three days' notice to quit must be given to the defendant in writing. However, a landlord who has given a tenant three days' notice to pay rent and has terminated the tenancy as provided in section 562A.27, subsection 2, or section 562B.25, subsection 2, if the tenant is renting the manufactured or mobile home or the land from the landlord, may commence the action without giving a three-day notice to quit.
2. A notice to quit required under subsection 1 shall be served on the defendant according to one or more of the following methods:

A. Delivery evidenced by an acknowledgment of delivery that is signed and dated by a resident of

the premises who is at least eighteen years of age. Delivery under this paragraph shall be deemed to provide notice to the defendant.

B. Personal service pursuant to rule of civil procedure 1.305, Iowa court rules, for the personal service of original notice.

C. Posting on the primary entrance door of the premises and mailing by both regular mail and certified mail, as defined in section 618.15, to the address of the premises or to the defendant's last known address, if different from the address of the premises. A notice posted according to this paragraph shall be posted within the applicable time period for serving notice and shall include the date the notice was posted.

3. A notice to quit served by mail under this section is deemed completed four days after the notice is deposited in the mail and postmarked for delivery, whether or not the recipient signs a receipt for the notice.

648.4 Notice terminating tenancy.

When the tenancy is at will and the action is based on the ground of the nonpayment of rent when due, no notice of the termination of the tenancy other than the three-day notice need be given before beginning the action.

648.5 Venue—service of original notice—hearing.

1. An action for forcible entry and detainer shall be brought in a county where all or part of the premises is located. Such an action shall be tried as an equitable action. Upon receipt of the petition, the court shall set a date, time, and place for hearing. The court shall set the date of hearing not later than eight days from the filing date, except that the court shall set a later hearing date no later than fifteen days from the date of filing if the plaintiff requests or consents to the later date of hearing.
2. Original notice shall be served upon a defendant by one or more of the following methods:

A. Delivery evidenced by an acknowledgment of service that is signed and dated by a resident of the premises who is at least eighteen years of age. Delivery under this paragraph shall be deemed to provide notice to all tenants or residents of the premises. Service of original notice under this paragraph is invalid if the acknowledgment of service is signed and dated less than three days prior to the hearing.

B. Personal service pursuant to rule of civil procedure 1.305, Iowa court rules, for the personal service of original notice. Service of original notice under this paragraph shall not occur less than three days prior to the hearing.

C. If service cannot be made following two attempts using a method specified under paragraph "A" or "B", by posting on the primary entrance door of the premises and mailing by both regular mail and certified mail, as defined in section 618.15, to the address of the premises or to the defendant's last known address, if different from the address of the premises. An original notice posted according to this paragraph shall be posted not less than three days prior to the hearing and shall include the date the original notice was posted. Service of original notice by mailing shall occur not less than three days prior to the hearing.

3. Service of original notice by mail is deemed completed four days after the notice is deposited in the mail and postmarked for delivery, whether or not the recipient signs a receipt for the original notice.
4. If service of original notice is made by posting and mailing under subsection 2, paragraph "C", the plaintiff shall, at or before the time of the hearing, file one or more affidavits describing the time and manner in which the notice was posted and mailed. The plaintiff shall attach copies of the documents that were mailed and posted to the affidavits.
5. A default judgment shall not be entered against a defendant if original notice has not been served on the defendant as required in this section. If the original notice cannot be served within the time periods required in this section, the court may set a new hearing date and time.
6. At the hearing, except for actions commenced as a small claim action under chapter 631, the court shall

determine whether a genuine issue of material fact exists in the action. If the court determines that genuine issue of material fact exits, an evidentiary hearing on the petition shall be held and the court shall continue the hearing to a future date and issue all appropriate orders relating to discovery and trial preparation.

648.18 Possession — bar
Thirty days' peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to this proceeding.

648.20 Order for removal.
The order for removal can be executed only in the daytime.

648.22 Judgment — execution — costs.
If the defendant is found guilty, judgment shall be entered that the defendant be removed from the premises, and that the plaintiff be put in possession of the premises, and an execution for the defendant's removal within three days from the judgment shall issue accordingly, to which shall be added a clause commanding the officer to collect the costs as in ordinary cases.

648.23 Restitution.
The court, on the trial of an appeal, may issue an execution for removal or restitution, as the case may require.

618.1 Publications in English.
All notices, proceedings, and other matters whatsoever, required by law or ordinance to be published in a newspaper, shall be published only in the English language and in newspapers published primarily in the English language.

618.3 Requirements for newspaper for official publication.
For the purpose of establishing and giving assured circulation to all notices and reports of proceedings required by statute to be published within the state, if newspapers are required to be used, only a newspaper which meets all of the following requirements shall be designated for official publication purposes:

1. Is a newspaper of general circulation that has been published at least once a week for at least fifty weeks per year within the area and regularly mailed through the post office of entry for at least two years.
2. Has a list of subscribers who have paid, or promised to pay, at more than a nominal rate, for copies to be received during a stated period.
3. Devotes at least twenty-five percent of its total column space in more than one-half of its issues during any twelve-month period to information of a public character other than advertising.
4. Is paid for by at least fifty percent of the persons or subscribers to whom it is distributed.

618.5 Permissible selection.
Publications may be made in a newspaper published at least once a week.

618.6 Selection by plaintiff.
The plaintiff or executor or the plaintiff's or executor's attorney, in all publications concerning actions, execution, and estates, may designate the newspaper in which such publication shall be made.

618.8 Refusal to publish.

If publication be refused when copy therefore, with the cost or security for payment of the cost, is tendered, such publication may be made in some other newspaper of general circulation at or nearest to the county seat, with the same effect as if made in the newspaper so refusing.

618.9 Days of publication.
When the publication is in a newspaper which is published more than once a week, the succeeding publications of such notice shall be on the same day of the week as the first publication. This section shall not apply to any notice for the publication of which provision inconsistent herewith is specially made.

618.15 Service by certified mail.
Wherever used in this Code, the following words shall have the meanings respectively ascribed to them unless such meanings are repugnant to the context:

1. The words, "certified mail" mean any form of mail service, by whatever name, provided by the United States post office where the post office provides the mailer with a receipt to prove mailing.
2. The words, "restricted certified mail" mean any form of certified mail as defined in subsection 1 which carries on the face thereof, in a conspicuous place where it will not be obliterated, the endorsement, "Deliver to addressee only", and for which the post office provides the mailer with a return receipt showing the date of delivery, the place of delivery, and person to whom delivered.

618.17 Minimum type size.
A publication required by law shall be printed in type no smaller than six point.

618.18 Timely publication required.
When a publication required by law is not published within one month of submission to the newspaper, the maximum established by law shall be reduced by twenty-five percent.

Iowa Supreme Court (Unofficial copy with many deletions)
War Eagle Village Apartments vs. Geneva Plummer

Reading Iowa Code 562A.29A(2) in conjunction with section 562A.8, which provides that service is complete upon mailing, we conclude this statutory scheme authorizes a process that is not reasonably calculated to give tenants adequate notice of hearings at which their continued occupancy of the premises will be determined. This scheme gives the illusion, but not the reality, of due process.

There are two major factors that support our conclusion. First, the FED statutory scheme deems notice complete upon mailing. Under Iowa Code section 562A.8, service is deemed received when mailed. Dropping a letter in a mailbox is not notice, yet is deemed sufficient notice. It is mere lip service to meaningful notice.

Second, given the seven-day time frame between the order setting the hearing and the hearing as provided by Iowa Code section 648.5, the use of certified mail under Iowa Code section 562A.29A (2) makes it less likely that timely notice will be received. . . .(quoting Jones vs. Flowers) ("[T]he use of certified mail might make actual notice less likely in some cases—the letter cannot be left like regular mail to be examined at the end of the day, and it can only be retrieved from the post office for a specified period of time.") Certified mail is designed to provide feedback that a letter is actually delivered; however, in this case, that feedback is irrelevant for two reasons. Because Form 3849 may not be returned to the landlord until fifteen days after mailing, yet the hearing is set for seven days from the date of the order, feedback will not be received until after the hearing has occurred. Feedback is also irrelevant because under section 562A.8, service is complete upon mailing.

We think the statutory procedure for notice in FED actions as implemented in this case is not what someone who desired to actually inform the tenant would do. *Mullane*....("[W]hen notice is a person's due. . .[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it."). "The sufficiency of notice must be tested with reference to its ability to inform people of the pendency of proceedings that affect their interest. In arriving at the constitutional assessment, we look to the realities of the case before us. . ."

Here, the fact the notice is deemed received upon mailing compels a finding that there is no real desire to inform a tenant of a pending FED. In fact, the reality is that, even if a tenant receives the notice prior to the hearing, the tenant is unlikely to receive it in time to meaningfully participate in the hearing. . .

There is no set of facts under which the FED statutory notice scheme could be found to provide adequate notice. When receipt in time to meaningfully respond is unlikely, a statutory scheme that deems service complete upon mailing of the notice is by its very terms not reasonably calculated to give adequate notice to tenants that a hearing on their eviction has been scheduled. Given the statutory requirement that a hearing be held no later than seven days from the order scheduling the hearing, Iowa Code section 562A.29A(2) is unconstitutional on its face.

D. Equal Protection. Because we hold that the statutory scheme violates due process, we do not reach the issue of whether Iowa Code section 562A.29A(2) violates the equal protection clause of the Iowa Constitution,

E. Federal Constitutional Claims. Because we find that Iowa Code section 562A.29A(2) violates the Iowa Constitution, we need not address Plummer's claim that it also violates the United States Constitution.

IV. Disposition. Because section 562A.29A(2) does not require service which is reasonably calculated to reach the intended recipient at a meaningful time, we find certified mail, the means chosen to

provide notice in FED actions, violates the due process clause of the Iowa Constitution on its face. Therefore, we reverse the district Court's order issuing a writ of removal. REVERSED.

Time Line Analysis of:
War Eagle Village Apartments vs. Geneva Plummer,
Iowa Supreme Court November 30, 2009

July, 2006—Tenant unable to pay rent: $67.00

July 17— Landlord mailed 3 day notice to pay or quit.
Landlord hand delivered 3 day notice to pay or quit.
(tenant claims: never received notice; tenant does not pay rent)

July 24—Landlord commences action for FED; court action scheduled for July 31.
Landlord mails FED notice to tenant by certified mail only.

July 27: Post office **probably** made 1st attempt to deliver notice. Tenant says no post office carrier came to her door. Post office carrier never testified.

Post office:

—if home, form 3849 is signed.
—if not home, 3849 left in mail box.
—3849 can be picked up by tenant in 15 days.
After 15 days, returned to sender.

—Second form 3849 sent by post office designed to usually arrive
5 days after 1st form 3849.

July 31—Court action; tenant fails to appear in court.
Landlord wins default judgment to evict.

August 1— Tenant receives 2nd form 3849 notice.

August 2— Tenant picks up second 3849 notice at post office (as advised by Iowa Legal Aid)
Tenant picks up default judgment of writ of removal for August 3.

August 3— Tenant appeals default judgment.
Writ of removal delayed until decision of district court on similar case is known.

August 25— Stay of execution lifted; tenant is evicted.

Eviction appealed by tenant; eviction reversed by Iowa Supreme Court.

The following table contains the instructor's suggested method of giving notice of the proposed action of the landlord. Please consult your attorney regarding the sufficiency of the method of notice for each purpose.

Method of Notice → **Purpose of Notice ↓**	**-Telephone -E-mail -Fax -Regular Mail**	**Certified Mail**	**"Restricted" certified Mail**	**"Hand" Delivery by Landlord; tenant signs receipt of delivery**	**Notice posted on property and dated**	**Delivery by private Delivery Service**	**Sheriff Delivery**
24 Hour notice to inspect property 24 Hour notice to show property	X			X	X		
Notice to Change Rules	X	X					
Notice of reasons for not returning tenant's security deposit— 30 day letter		X					
Notice of change in security deposit when ownership of property changes.		X					
3 Day notice to Pay or Quit	X reg. mail	X		X	X		
3 Day notice: Clear and Present Danger Tenant							X
7/7 Day notice of material noncompliance with lease			X		X		
Tenant Notice: failure of Landlord to provide running water, hot water, heat and other essential services	Tenant must notify landlord if they are proceeding under 562A.3;	the tenant does not need to give a written	notice.				
Forcible Entry and Detainer Petition							X

Eviction Flow Chart

Note: not to be used as a substitute for competent legal advice.

Select Reason for Action

Non-payment of Rent

Serve 3 day notice to Pay or Quit (tenant must be given opportunity to "cure"/pay)

Wait 3 days (counting the day *after* receiving notice as "day 1". See 648.3 and 648.4)

Material non-compliance with lease or 562A (health or safety)

Serve 7-7 day notice

Inspect for compliance

1. If violation "cured", lease continues.
2. If violation not cured and …

Note: tenant "Due diligence" defense. 562A.27.(3)
Note: tenant "Omnibus" defense: 562A.27(4).
Note: "Abuse of access" defense:562A.35.
Note: "Retaliation" defense: 562A.36.

Material non-compliance with lease or 562A (health or safety) **Repeat Violation**

Serve 7 day notice

Note: tenant "Due diligence" defense: 562A.27(3).
Note: tenant "Omnibus" defense: 562A.27(4).
Note: "Abuse of access" defense:562A.35.
Note: "Retaliation" defense 562A.36.
Note: Tenant "Quickness" defense
Note: Tenant "Qualified Waiver" defense

Clear and Present Danger 562A.27A
On or within 1,000 feet of property (notify attorney/

Serve 3 day Notice to quit

Note: tenant "Innocent possessor" defense. 562A.27A (2C).

Non-renewal of Lease

Serve "at least" 30 day Notice of lease Termination 562A.34

Note: "Retaliation" defense 562A.36
Note: "Good Reason" defense

Tenant still in/on property

File Forcible Entry and Detainer petition at Clerk of Court. See 648.5— hearing no later than 8 days from filing or 15 days with LL consent

Deliver notice of F. E. + D. Hearing. See 648.5 (2)

Preferred Method: Sheriff.
Notice of hearing cannot be signed less than three days before the hearing.

After 2 unsuccessful attempts: Post notice (primary entrance) plus regular and certified mail. "Not less than 3 days before hearing. See 648.5 (2C). File affidavits: See 648.5 (4).

Hearing

Note: Tenant "30 days peaceable possession" statute (648.18).
Note: Tenant "Counterclaim" defense (562A.24.)
Note: Tenant "Due diligence" defense. 562A.27(3).
Note: Tenant "Omnibus" defense: 562A.27(4).
Note: Tenant "30 day peaceable possession" defense.

Removal: Writ of Removal (possession?): 3 days from judgment (648.22).
Daytime only; cannot be done at night (648.20).

Note: Tenant "Bailment" defense

Tenant contests action or uses 562A.27A (3)

Obtain Injunctive relief to prevent further tenant "dangerous" activities; wait for court hearing

Serve 3 day Notice to quit