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## FREQUENTLY ASKED QUESTIONS KANSAS EVICTION LAWSUITS

### **Q. What is an eviction?**

An “eviction” is the removal of tenant(s) from a rental property by a Landlord through a court action (lawsuit). In Kansas, an eviction lawsuit is called a forcible detainer. This expedited process requires service of a termination notice upon the tenant(s), the filing of a lawsuit and the entry of a Court judgment.

### **Q. What is a Forcible Detainer lawsuit?**

If your tenant(s) has (1) failed to pay rent on time, (2) violated their lease, (3) violated the law, (4) failed to move when their lease expired, or (5) permitted criminal activity to occur on or near the rental property, an attorney at Anderson & Associates will file “Forcible Detainer” lawsuit to evict.

### **Q. What information do you need before you will help evict a tenant?**

Please complete the Landlord Information Form. If you do not know the name of the people living in your property, please list them as John Doe or Jane Doe.

### **Q. Who is John Doe and Jane Doe?**

The names “John Doe” refers to men and “Jane Doe” to women; they are used as placeholder names for a party to a lawsuit whose true identity is unknown.

### **Q. How much does it cost to file an eviction suit?**

Prior to filing a lawsuit, Anderson & Associates will invoice you for the Court’s filing fee, a server fee (if applicable), \$250.00 attorney’s fee, and a sheriff’s fee for the lockout. Please refer to the Fee Schedule.

### **Q. Why do I need a lawyer to file an eviction suit?**

If your rental property is owned in the name of a business entity, you are required by law to be represented by a lawyer. If you own your rental property in your individual name, you may be able to file a lawsuit without a lawyer. In Kansas, an eviction lawsuit takes much less time than a regular civil case. But in exchange for expedited treatment, Landlords must follow highly detailed rules. In addition, because a person’s home is at stake, many Judges will set the bar very high when it comes to ruling in the Landlord’s favor. Landlords are fundamentally no different than any other type of business owner – they aim to make their businesses profitable while avoiding liability. Hiring Anderson & Associates to help you achieve these goals is a smart business move.

### **Q. Can I change the locks or turn off the utilities when the tenant stops paying?**

No. Kansas law forbids “self-help” evictions and imposes penalties for Landlords who break the law. Landlords may be prosecuted criminally and/or sued in civil court for the tenant’s damages (such as costs of temporary housing, the value of food that spoiled when the refrigerator stopped running, or an electric heater when the gas was shut off) in addition to hefty penalties. The fact that the tenant(s) did not pay rent, left the property a mess, verbally abused you or your staff, or otherwise acted outrageously will not be a valid defense if you do not follow the law.

**Q. What is an unlawful eviction?**

An “unlawful eviction” is any attempt by a Landlord to evict a tenant(s) without a court judgment. Only a Judge can order a tenant(s) to move. “Self-help” evictions include changing a tenant’s locks, threatening or engaging in physical violence to strong-arm a tenant(s) into vacating, turning off utilities, or removing a tenant’s personal property from the rental unit.

**Q. Can I turn off the utilities if the tenant refuses to place them in her name?**

It is illegal to call the electric, water, gas or oil companies and cancel service to the property regardless of what your lease provides. Even if the utilities are in your name, it is still illegal to shut off “essential” utility service to the property while a tenant(s) is living there. The bottom line is that if you force your tenant(s) to vacate without due process (a lawsuit), you can be fined more than it would have cost you to go through the proper process. The Landlord never wins!

**Q. How long does the eviction process take?**

A court date will be scheduled approximately three (3) weeks after the lawsuit is filed. A Deputy Sheriff will give a copy of your petition and the court summons to the tenant(s) at least three (3) days before the court date.

- If the tenant(s) does not appear in Court, the Judge will enter a default judgment. A default judgment becomes final after fourteen (14) days.
- If the tenant(s) appears in Court and consents to the allegations in your petition, the Judge will enter a consent judgment. A consent judgment becomes final after fourteen (14) days unless the parties agree to a sooner date.
- If the tenant(s) appears in Court and disputes the allegations in your petition, the Judge will set the case for trial seven (7) to fourteen (14) days later.
- After a judgment becomes final, the sheriff has up to thirty (30) days to physically remove your tenant(s).

YOU SHOULD BE AWARE THAT YOUR TENANT(S) MAY BE ON THE PROPERTY UP TO SIXTY (60) DAYS AFTER A CASE IS REFERRED TO OUR LAW OFFICE.

**Q. What is a petition for eviction?**

A “petition” is a formal certified document filed with the Court requesting an order requiring your tenant(s) pay rent and fees and move out of your property.

**Q. What is a summons?**

A “summons” is the paperwork that tells your tenant(s) that they are being sued and asserts the power of the Court to hear and determine the case. It will also command the tenant(s) to appear before the Court on a specific day and to answer the petition.

**Q. Where will you file my eviction suit?**

The eviction must be filed in the county where the property is located.

**Q. What notice is required prior to filing my eviction suit?**

Kansas law requires that the Landlord (owner) serve a tenant(s) with a written termination notice prior to filing an eviction lawsuit. There are two types of termination notices: a Three Day Notice to Pay or Quit and a Fourteen/Thirty Day (14-Day/30-Day) Termination Notice.

**Q. What is a Three Day Notice to Pay or Quit?**

In Kansas, a Landlord is required to send a “Three Day Notice to Pay or Quit” to the tenant(s) prior to filing an eviction lawsuit for unpaid rent and possession. The notice must be posted on the tenant’s door and:

1. Be in writing;
2. List the full name(s) of **ALL** the tenant(s) and John/Jane Doe if a name is unknown;
3. List the address of the rental property;
4. List exactly how much rent the tenant(s) owes;
5. List the months the overdue rent is for;
6. State that any past-due rent must be paid in full within three (3) days of receiving the notice or the tenant(s) must move out;
7. List the name, address and phone number of the person the rent should be paid to;
8. Include the days and times the tenant(s) can pay the rent they owe, and the address where they can pay it; and
9. Provide the address to which the tenant(s) should send the money.

\* The notice **MUST** include other money the tenant(s) owes (i.e. late fees, interest, utilities, or damages) if you want these amounts included in your lawsuit.

**Q. What is a 14-day / 30-day notice?**

In Kansas, a Landlord is required to send a “14-Day/30-Day Notice” to the tenant(s) prior to filing an eviction lawsuit for a lease violation. The notice must be posted on the tenant’s door and:

1. Be in writing;
2. List the full name(s) of **ALL** the tenant(s) and John/Jane Doe if a name is unknown;
3. List the address of the rental property;
4. List each lease violation(s) and/or violation(s) of the law;
5. Include a brief description of how and when the violation(s) occurred;
6. State that the tenant’s right to possession will automatically terminate thirty (30) days from the date of the notice unless the tenant(s) fixes the violation(s) within fourteen (14) days of the date of the notice.

**Q. What notice is required to terminate a month-to-month tenancy?**

If you do not have an executed lease agreement and your tenant has been paying you periodic rent, you have a month-to-month tenant. A month-to-month tenancy renews every 30 days. This means that if you do not do anything, your tenant(s) can theoretically stay forever. To terminate a month-to-month tenancy, you must provide the tenant(s) with one month’s notice, calculated from a rent paying date. For example, if rent is due on the 1st day of each month, the Landlord must give notice on July 1st to terminate on July

31st. Anderson & Associates will file your eviction on August 1st. If the Landlord gives notice on July 5th, he cannot terminate until August 31st.

**Q. What is the process for an eviction?**

1<sup>st</sup> Step – Anderson & Associates will send a written demand letter to your tenant(s) requiring them to pay past due rent and fees (if applicable) and vacate the property. The letter will also prompt the tenant(s) to contact you if they want to resolve the lawsuit amicably.

2<sup>nd</sup> Step – Anderson & Associates will file a forcible detainer petition at the courthouse on your behalf.

3<sup>rd</sup> Step – The court clerk will schedule the case for a hearing and issue a summons requiring the tenant(s) to appear in Court.

4<sup>th</sup> Step – A Deputy Sheriff will serve a copy of the petition and summons on the tenant(s).

5<sup>th</sup> Step – Anderson & Associates will appear in Court on your behalf and obtain a judgment.

6<sup>th</sup> Step – Anderson & Associates will contact you with the Court's results and ask you if you want to schedule the Deputy Sheriff to perform a lockout procedure.

7<sup>th</sup> Step – Upon request, Anderson & Associates will file a Writ of Restitution with the Court and request a Deputy Sheriff schedule the lockout.

8<sup>th</sup> Step – Upon request, Anderson & Associates will set up a payment plan with your former tenant(s) to pay the past due rental balance or issue a garnishment to collect the funds due to you.

**Q. After you file my eviction suit, I was told you have to serve the other party. What does that mean?**

Anderson & Associates must notify the tenant(s) that they are being evicted by providing them with a copy of the petition and summons. There are several options for service including: (1) personal service, (2) service upon someone over the age of 12 present at the property, (3) service upon a member of the tenant's family, or (4) service by posting and mail. Service must be made at least three (3) days before the court date listed on the summons.

**Q. Why can't I serve the paperwork on the tenant?**

A party to a lawsuit cannot serve papers in their own case. Most counties require either a Deputy Sheriff or a registered private process server to serve papers. In order to save money, Anderson & Associates will use the Sheriff's office. If the Deputy is unable to obtain service, Anderson & Associates will use a private process server at Sentinel Private Investigations. The fee for their service is \$45.00 per address.

**Q. Do I need to appear at the court date?**

You do not need to appear at the first court date. An attorney at Anderson & Associates will appear on your behalf and request the Judge enter a judgment in your favor and against your tenant(s).

**Q. What is a judgment?**

In law, a "judgment" is a decision of a Judge regarding the rights and liabilities of the parties in a lawsuit. A judgment also generally provides the Court's explanation of why it has chosen to make a particular decision.

**Q. What is a default judgment?**

A “default judgment” is a binding judgment, issued by a Judge, based on your tenant(s)’ failure to appear in Court on the date listed on the summons after they have been served.

**Q. What is a consent judgment?**

A “consent judgment” is a binding judgment, issued by a judge, based on an agreement between you and your tenant(s) which settles the case.

**Q. What is a stay of execution?**

A “stay of execution” is a court order to temporarily suspend the execution of a judgment. A stay can be granted in two ways (1) automatically by the operation of law or (2) conventionally, when you and your tenant(s) agree that no execution shall occur for a certain period of time.

**Q. What happens if the tenant appears in Court and disputes the petition?**

If your tenant(s) appears at the first court date and disputes the claims made in the petition, the Judge will schedule the case for a trial.

**Q. What do you need from me if my case is scheduled for a trial?**

After the first court date, the docket clerk at Anderson & Associates will inform you of the trial date and location. She will also request you provide her with the following information at least two (2) days prior to the trial date:

- (1) The name and phone number of the witness who will appear on the Landlord’s behalf;
- (2) A copy of the Lease or a statement that one does not exist
- (3) An updated payment ledger that matches the amounts you are requesting;
- (4) A copy of your welcome letter (only applicable if you recently purchased the property);
- (5) A copy of the termination notice sent to your tenant(s);
- (6) Copies of the reservation of rights letter (if applicable); and
- (7) The tenant(s) rental file.

\* You MUST provide copies of these documents to an attorney at Anderson & Associates no later than two (2) days prior to your trial. It is very important that we are prepared for the trial.

**Q. Do I have to appear at the trial?**

You or someone appointed by your business on your behalf will need to appear at the trial.

**Q. What happens in a trial?**

In an eviction trial, a Judge will examine the evidence to decide whether it is more likely than not that the allegations in the petition are true and the tenant(s) should be evicted. An attorney at Anderson & Associates will have the opportunity to argue your case first and then the tenant(s) will be able to ask you questions, refute your evidence, and offer their own evidence.

**Q. Why did an attorney at Anderson & Associates give my tenant a “stay of execution” without talking to me first?**

Any judgment, other than a default judgment, becomes final after fourteen (14) days. If an attorney at Anderson & Associates can negotiate for your tenant(s) to voluntarily move out on a date sooner than fourteen (14) days from the court date, we will do so without your permission. We are always looking for ways to expedite the eviction process! Under no circumstances will an attorney provide a tenant(s) with a stay of execution for more than fourteen (14) days after the court date without your approval.

**Q. Can I get a judgment for attorney fees?**

No. The Kansas Residential Landlord Tenant Act prohibit any residential Landlord from requesting or receiving a judgment for attorney fees from the tenant. Please remove this charge from your payment ledger.

**Q. Should I accept money from a tenant during the three (3) day notice period?**

Yes. You *must* accept payment of all monies for three (3) days after you have posted the Three Day Notice to Pay or Quit. If the tenant(s) fails to make payment in full, you must send a Reservation of Rights Letter which preserves your right to file an eviction after the three (3) day period has expired.

**Q. Should I accept money from the tenant while my case is pending?**

Yes. If your tenant(s) attempts to make a payment after the three (3) day period has expired, you may accept rent and you must send a Reservation of Rights Letter to preserve your right to continue with the eviction. Even if the tenant(s) pays in full, you may continue the eviction process so long as you send a Reservation of Rights Letter.

**Q. What is a Reservation of Rights Letter?**

A “Reservation of Rights Letter” is a notice that preserves your right to evict a tenant(s) if they have not paid in full within the three (3) day notice to pay or quit period or if they make a payment after the three (3) day notice to pay or quit period.

**Q. Should I accept money from the tenant after the trial?**

Yes. Once again, a Reservation of Rights Letter will be required.

**Q. The tenant was ordered to leave by the Judge, but they are still there. What can I do?**

If the tenant(s) do not leave after a judgment is entered against them, Anderson & Associates will file a writ of restitution with the Court on your behalf.

**Q. What is a Writ of Restitution?**

A “writ of restitution” is a court order issued by a Judge requiring the Sheriff to physically remove a tenant(s) from the property.

**Q. How will I know when the eviction is scheduled?**

Your case will be assigned to a Sheriff's Deputy. Your designated Deputy will post a notice on your tenant's door three (3) days prior to the scheduled eviction and call to inform you of the date and time of the eviction at the telephone number Anderson & Associates has on file for you.

**Q. Do I need to be present at the eviction?**

Yes. On the day of the eviction, the Landlord must be available to "greet" the Sheriff's Deputy. The Deputy will usually pull up to the location of the eviction in a marked patrol car. Typically, the Deputy will not leave the car. It is up to you to go to the car and identify yourself as the Landlord or Landlord's representative. You will then need to identify the entry door to the property and will sign a document authorizing the Deputy to use force to enter if necessary. Generally, you either need to have a key to the property so the Deputy can get in or need to have a locksmith available to provide access to the property.

**Q. What happens if the tenant refuses to move?**

The Sheriff's Deputy will physically remove the tenant(s) from the property. Before leaving, the Deputy may take an inventory of the personal property that remains and will authorize you to change the locks to the rental property so the tenant(s) cannot return. You may not remove the personal property that remains. See below.

**Q. What should I do if the tenant moves out but leaves their personal belongings behind?**

In Kansas, a Landlord may not sell, give away, or throw away a tenant's belonging until at least thirty (30) days from the date you reclaim possession of the rental property. Prior to disposition of the tenant's belongings a Landlord must:

- (1) Publish a notice in a local newspaper of general circulation at least fifteen (15) days before disposition; and
- (2) Mail a copy of the published notice to the tenant's last known address at least seven (7) days prior to disposition.
  - (a) The notice should contain the following:
    - (i) Be in writing;
    - (ii) List the full name(s) of **ALL** of the tenant(s);
    - (iii) List the address of the rental property;
    - (iv) Briefly describe the the abandoned belongings; and
    - (v) List the approximate date of the sale, destruction or other disposition of the abandoned belongings.

KSA 58-2565 contains the procedure required by Kansas law. You must follow this statutory procedure EXACTLY in order to be protected. Please contact Anderson & Associates for assistance.

**Q. How do I collect on my judgment?**

If Anderson & Associates has obtained a money judgment on your behalf, the docket clerk will email or call you and ask if you want for us to collect the money on your behalf. You will be directed to talk with the collection department at 816-931-2207 or email us at [collect@mokslaw.com](mailto:collect@mokslaw.com).