

RESEARCH MEMORANDUM

To: Members of the URLTA Drafting Committee

From: Co-Reporters Sheldon Kurtz and Alice Noble-Allgire¹

Date: September 21, 2012

Re: Tenant's Abandoned Personal Property

This memorandum responds to the URLTA Study Committee's request for an examination of the landlord's obligations with respect to personal property that a tenant abandons on the leased premises. URLTA currently has no provision addressing the issue. Many states, however, have enacted statutes that provide varying levels of procedural requirements for landlords to follow in handling abandoned property. As discussed in further detail below, the major drafting issues that the Committee will need to consider are (1) whether the landlord may take action independently or must seek a court order to have the personal property removed; (2) whether the landlord must provide notice to the tenant before disposing of the personal property; (3) the procedural requirements for sending notice; (4) the landlord's obligations for storing the personal property; (5) how the landlord may dispose of the personal property; and (6) special rules that apply when the tenant has died.

1. Independent vs. court-authorized action

Most statutes on this topic permit a landlord to dispose of abandoned property by following statutorily prescribed procedures independent of the court system. At least three states, however, appear to require the landlord to initiate eviction proceedings to deal with both abandoned dwelling units and abandoned personal property. South Carolina's statute provides that "the landlord may have the property removed only pursuant to the provisions of [the state's ejectment statute]." ² Delaware's statute directs a landlord to seek a court order to dispossess an abandoning tenant, but provides that after a judgment granting summary possession, "the landlord may immediately remove and store, at the tenant's expense, any and all items left on the premises by the tenant" and seven days after the appeal period has expired, "the property shall be deemed abandoned and may be disposed of by the landlord without further notice or liability." ³ In New Jersey, the only instance when a landlord can dispose of the property independent of the court system is if "[t]he tenant has given written notice that he or she is voluntarily relinquishing possession of the premises." ⁴ Otherwise, the landlord must obtain a warrant for removal of the possessions. ⁵

2. Notice to tenant

At least seventeen states require the landlord to send a notice to the tenant describing what will happen to the tenant's personal property if the tenant does not retrieve the property. Six states require the landlord to provide notice to the tenant before the landlord can remove, store, or dispose of the abandoned

¹ This memorandum was prepared in large part by Mallori Allen and Dean Davis, research assistants to Professor Noble-Allgire.

² S.C. CODE ANN. § 27-40-730 (West 2011).

³ DEL. CODE ANN. tit. 25, § 5507 (West 2011).

⁴ N.J. STAT. ANN. § 2A:18-72 (West 2012)

⁵ *Id.*

personalty.⁶ Ten other states allow the landlord to send the notice after removing and storing the property.⁷ Nebraska requires the landlord to give the notice to the tenant “within six months of the date of expiration of the lease of the property or the date of discovery of the abandonment, whichever is later.”⁸

A handful of states do not require the landlord to send notice to the tenant. In Alabama, Missouri, and New Hampshire, the landlord must simply wait a certain period of time after termination of the lease to dispose of the personalty as they wish.⁹ In Arkansas, the landlord need not wait and can dispose of the abandoned property as they see fit upon termination.¹⁰ New Mexico’s statute does not require notice if the tenant leaves personal property in the premises after voluntary termination of the lease, but must send notice and follow other procedures if the dwelling unit was abandoned.¹¹

A few states dispense with the notice requirement when the personal property is either valueless or worth less than a specified dollar amount. In Oklahoma, for example, if “in the judgment of the landlord, the personal property has no ascertainable or apparent value, the landlord may dispose of the property without any duty of accounting or any liability to any party.”¹² In South Dakota, personal property the landlord reasonably determines to be valued under \$500 can be disposed of ten days after the tenant surrenders the premises.¹³ In North Dakota, the landlord can dispose of the property 30 days after the tenant vacates the dwelling unit if the total value of the property is estimated to be less than \$1,500.¹⁴ In Arizona, if permitted under the lease, the landlord can dispose of personal property when the value is not likely to exceed the costs of removal and storage.¹⁵

⁶ ALASKA STAT. ANN. § 34.03.260 (West 2012); CONN. GEN. STAT. ANN. § 47a-11b (West 2012); OKLA. STAT. ANN. tit. 41, § 130 (West 2012); OR. REV. STAT. ANN. § 90.675 (West 2012); TENN. CODE ANN. § 66-28-405 (West 2012)(Tennessee and Connecticut have almost identical four-pronged requirements for content of the notice); VT. STAT. ANN. tit. 9, § 4462 (West 2012).

⁷ ARIZ. REV. STAT. ANN. § 33-1370 (West 2012); HAW. REV. STAT. § 521-56 (West 2012); ME. REV. STAT. tit. 14, § 6013 (West 2011)(by numbering the steps the landlord must take, the statute indicates the landlord should place the property in storage first, then send notice to tenant after the tenant has vacated the unit); MINN. STAT. ANN. § 504B.271 (West 2012) (landlord must make “reasonable effort” to notify the tenant before selling, but can enter the premises and store the property before sending notice if the tenant has abandoned the premises); MONT. CODE ANN. § 70-24-430 (West 2011)(landlord must wait five days from the “occurrence of events upon which the landlord formed that belief” that the premises is abandoned, then may remove, inventory, and store before sending notice); NEV. REV. STAT. ANN. § 118A.460 (West 2011); N.M. STAT. ANN. § 47-8-34.1 (West 2012); WASH. REV. CODE ANN. § 59.18.310 (West 2012); W. VA. CODE ANN. § 37-6-6 (West 2012); WYO. STAT. ANN. § 1-21-1210 (West 2012)(“Any valuable property may be removed from the residential unit and shall thereafter be disposed of as follows: (i) the owner shall provide written notice to the renter in accordance with this paragraph.”).

⁸ NEB. REV. STAT. ANN. § 69-2303 (West 2012).

⁹ ALA. CODE § 35-9A-423 (West 2012)(14 days after the rental agreement is considered terminated; expressly have no duty to protect or store); MO. ANN. STAT. § 441.065 (West 2012)(to determine that the premises are abandoned, the landlord must send notice warning that the premises will be determined abandoned within 10 days); N.H. REV. STAT. ANN. § 540-A:3 (West 2011)(“After the 7-day limit has expired, such personal property may be disposed of by the landlord without notice to the tenant.”).

¹⁰ ARK. CODE ANN. § 18-16-108 (West 2012)(“after any termination, voluntary involuntary, property left in premises is considered abandoned and may be disposed of”); S.D. CODIFIED LAWS § 43-32-25 (West 2012).

¹¹ N.M. STAT. ANN. § 47-8-34.1 (West 2012).

¹² OKLA. STAT. ANN. tit. 41, § 130 (West 2012); *see also* WYO. STAT. ANN. § 1-21-1210 (West 2012) (landlord can immediately dispose of “any trash or property the owner reasonably believes to be hazardous, perishable or valueless and abandoned”).

¹³ S.D. CODIFIED LAWS § 43-32-25 (West 2012).

¹⁴ N.D. CENT. CODE ANN. § 47-16-30.1 (West 2011)(after the expiration of the lease).

¹⁵ ARIZ. REV. STAT. ANN. § 33-1370 (West 2012) (“If provided by a written rental agreement, the landlord may destroy or otherwise dispose of some or all of the property if the landlord reasonably determines that the value of the property is so low that the cost of moving, storage and conducting a public sale exceeds the amount that would be realized from the sale.”).

3. Procedural requirements for sending notice

Among states that require notice to the tenant there is considerable variation in the procedural requirements for providing such notice. These differences lie mainly in the areas of timing, content, and the method of delivery.

a. *Timing of the notice*

Statutes requiring notice to the tenant regarding abandoned personal property differ on the amount of time the landlord must give the tenant to respond to the notice before disposing of the property. These periods range from seven to 60 days, with additional variation on when that time period starts to run, as follows:

- 60 days after date of notice.¹⁶
- 45 days from date notice is mailed or personally delivered.¹⁷
- 40 days after mailing of notice.¹⁸
- 33 days after notice is mailed, 30 after delivery of notice, whichever comes first.¹⁹
- 30 days after mailing of notice, 60 days after mailing of notice if the tenant notified the landlord that he or she is on active duty in the armed forces.²⁰
- 30 days within receipt of notice.²¹
- 30 days after taking possession, 15 days after published notice.²²
- 30 days after abandonment, 14 days after notice is mailed.²³
- 30 days after the date of notice²⁴
- 30 days after abandonment/landlord's possession.²⁵
- 15 days after delivery, 18 days after notice mailed²⁶
- 15 days after delivery or mailing of notice.²⁷
- 15 days after notice is mailed.²⁸
- 14 days after posting²⁹

¹⁶ VT. STAT. ANN. tit. 9, § 4462 (West 2012).

¹⁷ WASH. REV. CODE ANN. § 59.18.310 (West 2012).

¹⁸ TENN. CODE ANN. § 66-28-405 (West 2012)(tenant can dispose of the property 30 days after taking possession of the premises and the personal property, which is 10 days after mailing or posting of the notice).

¹⁹ N.J. STAT. ANN. § 2A:18-74 (West 2012)(“(i) for all property other than manufactured or mobile homes not less than 30 days after delivery of the notice, or not less than 33 days after the date of mailing, whichever comes first, or (ii) for property which consists solely of manufactured or mobile homes, not less than 75 days after the delivery of the notice, or not less than 78 days after the date of mailing, whichever comes first”).

²⁰ W. VA. CODE ANN. § 37-6-6 (West 2012).

²¹ CONN. GEN. STAT. ANN. § 47a-11b (West 2012).

²² KAN. STAT. ANN. § 58-2565 (West 2012).

²³ NEV. REV. STAT. ANN. § 118A.460 (West 2011).

²⁴ N.M. STAT. ANN. § 47-8-34.1 (West 2012)(no notice required if the property was left after voluntary termination, landlord must only wait 14 days).

²⁵ OKLA. STAT. ANN. tit. 41, § 130 (West 2012).

²⁶ CAL. CIV. CODE § 1983 (West 2012).

²⁷ ALASKA STAT. ANN. § 34.03.260 (West 2012).

²⁸ HAW. REV. STAT. § 521-56 (West 2012)(provided that such sale or donation shall not take place until fifteen days after notice is mailed, after which the tenant is deemed to have received notice); MONT. CODE ANN. § 70-24-430 (West 2011).

²⁹ MINN. STAT. ANN. § 504B.271 (West 2012)(“(d) Prior to a sale, the landlord shall make reasonable efforts to notify the tenant of the sale at least 14 days prior to the sale...”; (b) The landlord may sell or otherwise dispose of the property 28 days

- 14 days after notice is mailed, 7 days after the notice is personally delivered.³⁰
- 10 days after landlord's declaration of abandonment.³¹
- 10 days after the notice is personally delivered or, if mailed, 15 days after the notice is mailed.³²
- 8 days after mailing of notice, or 5 days after personal delivery.³³
- 7 day after service of notice.³⁴
- 7 days after notice is sent.³⁵
- Virginia has varying time periods, which depend on how the tenancy was terminated and the notice that the landlord provided to the tenant.³⁶

A few states will give the tenant additional time if the tenant responds to the notice in a timely manner. In Arizona, for example, if the tenant notifies the landlord on or before the day of the sale or disposition of the personal property, the tenant has five days to reclaim the property.³⁷ In West Virginia, if the tenant notifies the landlord of their intent to remove the personal property, the landlord shall store the property for an additional thirty day period, provided that the tenant pays for the costs and the property is worth over \$300.³⁸ In Alaska, if the tenant responds to the landlord's notice, the tenant has 15 days from the date of delivery of the tenant's response to the landlord to remove the property.³⁹ In Wyoming, the tenant has an additional 15 day period if they respond in writing to the landlord within 7 days after service of the notice.⁴⁰

after the landlord receives actual notice of the abandonment, or 28 days after it reasonably appears to the landlord that the tenant has abandoned the premises, whichever occurs last.”).

³⁰ NEB. REV. STAT. ANN. § 69-2303 (West 2012).

³¹ ARIZ. REV. STAT. ANN. § 33-1370 (West 2012).

³² FLA. STAT. ANN. § 715.104 (West 2011).

³³ OR. REV. STAT. ANN. § 90.425 (West 2012).

³⁴ WYO. STAT. ANN. § 1-21-1210 (West 2012)(if landlord receives no written response from tenant, “[t]he notice provided by the owner under this paragraph shall be deemed served: (A) On the date the notice is mailed by certified mail to the renter at an address furnished to the owner by the renter in writing specifically for this purpose; (B) On the date notice is served on the renter in accordance with Rule 4 of the Wyoming Rules of Civil Procedure provided a copy of the written notice is delivered to the individual renter personally; or (C) On the date the notice is published in a newspaper published in the county or widely circulated in the county where the residential rental unit is located.”).

³⁵ ME. REV. STAT. tit. 14, § 6013 (West 2011).

³⁶ VA. CODE ANN. § 55-248.38:1 (West 2012). The statute allows the landlord to dispose of the property after the landlord has:

- (i) given a termination notice to the tenant in accordance with this chapter, which includes a statement that any items of personal property left in the premises would be disposed of within the twenty-four hour period after termination, (ii) given written notice to the tenant in accordance with § 55-248.33, which includes a statement that any items of personal property left in the premises would be disposed of within the twenty-four hour period after expiration of the seven-day notice period, or (iii) given a separate written notice to the tenant, which includes a statement that any items of personal property left in the premises would be disposed of within twenty-four hours after expiration of a ten-day period from the date such notice was given to the tenant. Any written notice to the tenant shall be given in accordance with § 55-248.6.

Id. The tenant has the right to remove the property “at reasonable times during the twenty-four hour period after termination or at such other reasonable times until the landlord has disposed of the remaining personal property of the tenant.” *Id.*

³⁷ ARIZ. REV. STAT. ANN. § 33-1370 (West 2012).

³⁸ W. VA. CODE ANN. § 37-6-6 (West 2012).

³⁹ ALASKA STAT. ANN. § 34.03.260 (West 2012); *see also* N.J. STAT. ANN. § 2A:18-76 (West 2012)(“If a tenant responds in writing or orally to the landlord, on or before the day specified in the required notice, that the tenant intends to remove the property from the premises, or from the place of safekeeping if the landlord has stored the property as provided in section 4 of P.L.1999, c. 340 (C.2A:18-75), and does not do so within the time specified in the notice or within 15 days after the written response, whichever is later, the tenant's property shall be conclusively presumed to be abandoned.”)

⁴⁰ WYO. STAT. ANN. § 1-21-1210 (West 2012)(“If the renter responds in writing to the owner on or before seven (7) days after service of notice the property shall be held for an additional period of seven (7) days after the written response is

In Maine, if the tenant responds to the landlord's notice, the landlord must store the property for an additional 7 days.⁴¹ Similarly, in Montana, the landlord can dispose of the property after 7 days after delivery of the tenant's response to the notice.⁴²

b. *Content of notice*

While some statutes are far more detailed than others, most of the statutes that provide for notice to the tenant regarding the abandoned personalty share similar provisions. Fourteen states require the notice to warn the tenant of the time period they have to respond to the notice before the landlord will remove, dispose of, or handle the personal property in some way.⁴³ Nine states require the notice to state specifically what will be done with the personal property.⁴⁴ Others just say the personal property will be disposed of generally if the tenant does not respond appropriately.⁴⁵ Other specific requirements several states have adopted include:

- Six states include the contact information for the landlord.⁴⁶
- Seven states require the notice to feature where the abandoned personal property is located and being held.⁴⁷
- Seven states provide for a description or some sort of identification of the property to be claimed,⁴⁸

received. If the renter fails to take possession of the property within the additional fifteen (15) day period, the property shall be conclusively deemed abandoned and the owner may retain or dispose of the property.”).

⁴¹ ME. REV. STAT. tit. 14, § 6013 (West 2011)(“the landlord shall continue to store the property for at least 14 days after the landlord sent the notice”).

⁴² MONT. CODE ANN. § 70-24-430 (West 2011).

⁴³ ALASKA STAT. ANN. § 34.03.260 (West 2012); CAL. CIV. CODE § 1983 (West 2012); FLA. STAT. ANN. § 715.104 (West 2011); ME. REV. STAT. tit. 14, § 6013 (West 2011); MONT. CODE ANN. § 70-24-430 (West 2011); NEB. REV. STAT. ANN. § 69-2303 (West 2012); N.J. STAT. ANN. § 2A:18-74 (West 2012); N.M. STAT. ANN. § 47-8-34.1 (West 2012); OKLA. STAT. ANN. tit. 41, § 130 (West 2012); OR. REV. STAT. ANN. § 90.675 (West 2012); TENN. CODE ANN. § 66-28-405 (West 2012); VT. STAT. ANN. tit. 9, § 4462 (West 2012); W. VA. CODE ANN. § 37-6-6 (West 2012); WYO. STAT. ANN. § 1-21-1210 (West 2012).

⁴⁴ ALASKA STAT. ANN. § 34.03.260 (West 2012)(stating that if not removed it may be sold); FLA. STAT. ANN. § 715.104 (West 2011)(“The notice shall advise the person to be notified that reasonable costs of storage may be charged before the property is returned.”); HAW. REV. STAT. § 521-56 (West 2012) (“and the landlord's intent to sell or donate such personalty”); KAN. STAT. ANN. § 58-2565 (West 2012)(copy of the published notice [of sale or disposal of property from newspaper], “approximate date on which the landlord intends to sell or otherwise dispose of such property”); ME. REV. STAT. tit. 14, § 6013 (West 2011) (“concerning the landlord's intent to dispose of the property stored pursuant to subsection 1”); NEB. REV. STAT. ANN. § 69-2303 (West 2012)(“shall state that reasonable costs of storage may be charged before the property is returned”); N.J. STAT. ANN. § 2A:18-74 (West 2012); OR. REV. STAT. ANN. § 90.675 (West 2012); WASH. REV. CODE ANN. § 59.18.310 (West 2012) (“informing the tenant that a sale or disposition of the property shall take place pursuant to this section, and the date of the sale or disposal, and further informing the tenant of the right under RCW 59.18.230 to have the property returned prior to its sale or disposal”).

⁴⁵ CONN. GEN. STAT. ANN. § 47a-11b (West 2012); NEV. REV. STAT. ANN. § 118A.460 (West 2011); N.M. STAT. ANN. § 47-8-34.1 (West 2012); TENN. CODE ANN. § 66-28-405 (West 2012)(intends to remove possessions, reclaim possession, rent, and dispose of the possessions after the statutorily required time and in the manner prescribed by statute); VT. STAT. ANN. tit. 9, § 4462 (West 2012)(it implies, however, that the landlord will store the property because the landlord's notice to the tenant must state the tenant must pay reasonable storage and other fees incurred by the landlord to prevent disposal of the property).

⁴⁶ CONN. GEN. STAT. ANN. § 47a-11b (West 2012); FLA. STAT. ANN. § 715.104 (West 2011)(contained in sample notice); N.M. STAT. ANN. § 47-8-34.1 (West 2012); OR. REV. STAT. ANN. § 90.675 (West 2012); TENN. CODE ANN. § 66-28-405 (West 2012); WASH. REV. CODE ANN. § 59.18.310 (West 2012).

⁴⁷ ARIZ. REV. STAT. ANN. § 33-1370 (West 2012); CAL. CIV. CODE § 1983 (West 2012); FLA. STAT. ANN. § 715.104 (West 2011); HAW. REV. STAT. § 521-56 (West 2012); NEB. REV. STAT. ANN. § 69-2303 (West 2012); OR. REV. STAT. ANN. § 90.675 (West 2012) (personal property is stored on the rented space); WASH. REV. CODE ANN. § 59.18.310 (West 2012).

⁴⁸ CAL. CIV. CODE § 1983 (West 2012); FLA. STAT. ANN. § 715.104 (West 2011); HAW. REV. STAT. § 521-56 (West 2012);

and three provide that the landlord is not entitled to the statutory limitations on liability for items that are not described in the notice.⁴⁹

- In Alaska, if the property is deemed valueless, the notice must indicate “the election to sell certain items of the tenant's personal property at public sale and to destroy or otherwise dispose of the remainder.”⁵⁰
- California, Florida, and Nebraska provide sample notices, including a sample notice in Florida for landlords to use when they believe the abandoned property belongs to a third party.⁵¹
- In New Jersey, the notice must state “if the tenant claims the property within the time provided in the notice, the landlord must make the property available for removal by the tenant without payment by the tenant of any unpaid rent.”⁵²

c. *Method of giving notice*

States also differ in how the notice must be delivered to the tenant. Variations on the method of sending notice include:

- Wyoming simply requires that the notice be in writing.⁵³
- Connecticut requires the landlord to send notice both by regular mail with postage prepaid, and by certified mail with return receipt requested.⁵⁴
- Tennessee requires the landlord to post a notice on the premises and send notice to the tenant by regular mail with postage prepaid.⁵⁵
- Florida, Nebraska, New Mexico, and Oregon provide the landlord with the option to mail or personally deliver.⁵⁶
- New Jersey requires the landlord to send the notice by certified mail, return receipt requested or by receipted first class mail.⁵⁷
- Minnesota requires the landlord to personally serve written notice or send notice by first class and certified mail, and must also post on the premises.⁵⁸
- California provides the landlord with the option to mail with postage prepaid or personally deliver, but if the landlord chooses to mail, the landlord must also send one to the vacated premises.
- Hawaii, Nevada, and Washington simply state the landlord must mail the notice.⁵⁹

KAN. STAT. ANN. § 58-2565 (West 2012); ME. REV. STAT. tit. 14, § 6013 (West 2011) (“The notice must include an itemized list of the items and containers of items of the property.”); NEB. REV. STAT. § 69-2303 (West 2012); WYO. STAT. ANN. § 1-21-1210 (West 2012).

⁴⁹ CAL. CIV. CODE § 1983 (West 2012); FLA. STAT. ANN. § 715.109 (West 2011); NEB. REV. STAT. ANN. § 69-2303 (West 2012) (“except that a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents”).

⁵⁰ ALASKA STAT. ANN. § 34.03.260 (West 2012) (if the abandoned personal property has been “reasonably determined” by the landlord to be “valueless,” such that storing and selling would cost more than the landlord would obtain from the sale of the items).

⁵¹ CAL. CIV. CODE § 1984 (West 2012); FLA. STAT. ANN. § 715.106 (West 2011).

⁵² N.J. STAT. ANN. § 2A:18-74 (West 2012).

⁵³ WYO. STAT. ANN. § 1-21-1210 (West 2012).

⁵⁴ CONN. GEN. STAT. ANN. § 47a-11b (West 2012).

⁵⁵ TENN. CODE ANN. § 66-28-405 (West 2012).

⁵⁶ FLA. STAT. ANN. § 715.104 (West 2011); NEB. REV. STAT. ANN. § 69-2303 (West 2012); N.M. STAT. ANN. § 47-8-34.1 (West 2012) (postage prepaid); OR. REV. STAT. ANN. § 90.675 (West 2012).

⁵⁷ N.J. STAT. ANN. § 2A:18-73 (West 2012).

⁵⁸ MINN. STAT. ANN. § 504B.271 (West 2012).

⁵⁹ HAW. REV. STAT. § 521-56 (West 2012); NEV. REV. STAT. ANN. § 118A.460 (West 2011); WASH. REV. CODE ANN. §

- Montana requires the landlord to use certified mail specifically.⁶⁰
- In Arizona and West Virginia, the landlord must send by certified mail and post on premises.⁶¹

States also differ in where to send the notice by mail. Sixteen states require the notice to be mailed to the tenant's last-known address.⁶² Oregon, Tennessee, and West Virginia use the dwelling unit as the location for notification.⁶³ Four states require the notice to be sent to the tenant's forwarding address.⁶⁴ California, Hawaii, and Washington's statutes permit the landlord to use any address the landlord knows of where the tenant may receive notification in writing.⁶⁵

5. Storage/safekeeping of the abandoned property

Twenty-one states require the landlord to store the tenant's personal property, either within the leased premises or in another storage facility, for a certain period of time after finding it.⁶⁶ Most of these

59.18.310 (West 2012)(postage prepaid).

⁶⁰ MONT. CODE ANN. § 70-24-430 (West 2011).

⁶¹ ARIZ. REV. STAT. ANN. § 33-1370 (West 2012); W. VA. CODE ANN. § 37-6-6 (West 2012)(“[s]ent by first-class mail with a certificate of mailing, which provides a receipt of the date of mailing, in an envelope endorsed “Please Forward”)

⁶² *Id.* § 33-1370 (and any alternate address known to the landlord); CAL. CIV. CODE § 1983 (West 2012); CONN. GEN. STAT. ANN. § 47a-11b (West 2012); FLA. STAT. ANN. § 715.104 (West 2011) (But “if there is reason to believe that the notice sent to that address will not be received by that person, also delivered or sent to such other address, if any, known to the landlord where such person may reasonably be expected to receive the notice”); HAW. REV. STAT. § 521-56 (West 2012)(one backup option); KAN. STAT. ANN. § 58-2565 (West 2012); ME. REV. STAT. tit. 14, § 6013 (West 2011) (“to the last known address of the tenant”); MONT. CODE ANN. § 70-24-430 (West 2011); NEB. REV. STAT. ANN. § 69-2303 (West 2012)(But, “if there is reason to believe that the notice sent to that address will not be received by him or her, also delivered or sent to such other addresses, if any, known to the landlord at which such person may reasonably be expected to receive the notice.”); N.J. STAT. ANN. § 2A:18-73 (West 2012); N.M. STAT. ANN. § 47-8-34.1 (West 2012); NEV. REV. STAT. ANN. § 118A.460 (West 2011)(one backup option); OKLA. STAT. ANN. tit. 41, § 130 (West 2012); VT. STAT. ANN. tit. 9, § 4462 (West 2012); WASH. REV. CODE ANN. § 59.18.310 (West 2012).

⁶³ OR. REV. STAT. ANN. § 90.675 (West 2012)(one option to any post-office box held by the tenant or actually known to the landlord; and the most recent forwarding address if provided by the tenant or actually known to the landlord); TENN. CODE ANN. § 66-28-405 (West 2012); W. VA. CODE ANN. § 37-6-6 (West 2012)(one option).

⁶⁴ HAW. REV. STAT. § 521-56 (West 2012); NEV. REV. STAT. ANN. § 118A.460 (West 2011)(“tenant’s present address and if unknown, then at the tenant’s last known address”); OR. REV. STAT. ANN. § 90.675 (West 2012)(one option, also requires landlord to send to “any post-office box held by the tenant or actually known to the landlord” and to the “most recent forwarding address”); W. VA. CODE ANN. § 37-6-6 (West 2012) (one option, also requires notice be sent to “Any post office box held by the tenant and known to the landlord”).

⁶⁵ CAL. CIV. CODE § 1983 (West 2012)(“if there is reason to believe that the notice sent to that address will not be received by that person, also to any other address known to the landlord where the person may reasonably be expected to receive the notice.”); HAW. REV. STAT. § 521-56 (West 2012); N.J. STAT. ANN. § 2A:18-73 (West 2012)(“at the tenant’s last known address (which may be the address of the premises) and at any alternate address or addresses known to the landlord, in an envelope endorsed “Please Forward.”); WASH. REV. CODE ANN. § 59.18.310 (West 2012).

⁶⁶ ALASKA STAT. ANN. § 34.03.260 (West 2012); ARIZ. REV. STAT. ANN. § 33-1370 (West 2012); CAL. CIV. CODE § 1986 (West 2012); FLA. STAT. ANN. § 715.107 (West 2011)(place of safekeeping); HAW. REV. STAT. § 521-56 (West 2012); KAN. STAT. ANN. § 58-2565 (West 2012); ME. REV. STAT. tit. 14, § 6013 (West 2011)(place property in a safe, dry, secured location); MINN. STAT. ANN. § 504B.271 (West 2012)(store and care for the property); MONT. CODE ANN. § 70-24-430 (West 2011)(place of safekeeping); NEB. REV. STAT. ANN. § 69-2306 (West 2012)(“A landlord may leave personal property on the vacated premises or may remove and store the property in a place of safekeeping ...”); NEV. REV. STAT. ANN. § 118A.460 (West 2011)(“reasonably provide for safe storage of property”); N.H. REV. STAT. ANN. § 540-A:3 (West 2011); N.J. STAT. ANN. § 2A:18-75 (West 2012)(“shall store all goods, chattels, manufactured or mobile homes and other personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property, except that the landlord may promptly dispose of perishable food and shall allow an animal control agency or humane society to remove any abandoned pets or livestock”); N.M. STAT. ANN. § 47-8-34.1 (West 2012); OKLA. STAT. ANN. tit. 41, § 130 (West 2012)(place of safekeeping); OR. REV. STAT. ANN. § 90.425 (West 2012)(place of safekeeping); OR. REV. STAT. ANN. § 90.675 (West 2012);

states allow the landlord to recover storage costs.⁶⁷ However, in Maine, if the tenant responds to the landlord's notice within a specified time, the landlord cannot condition the tenant's ability to retrieve the property on paying storage costs and arrearage.⁶⁸

Several states expressly state the landlord must exercise reasonable care in taking possession and

S.D. CODIFIED LAWS § 43-32-26 (West 2012) (“The property of a lessee, of a total reasonable value exceeding five hundred dollars, left on leased residential premises by the lessee after the lessee has quit the premises, shall be stored by the lessor.”); TENN. CODE ANN. § 66-28-405 (West 2012); VT. STAT. ANN. tit. 9, § 4462 (West 2012) (“place property in a safe, dry, secured location, but may dispose of any trash, garbage or refuse left by the tenant”); WASH. REV. CODE ANN. § 59.18.310 (West 2012); WYO. STAT. ANN. § 1-21-1210 (West 2012).

⁶⁷ ALASKA STAT. ANN. § 34.03.260 (West 2012); CAL. CIV. CODE § 1987 (West 2012); MINN. STAT. ANN. § 504B.271 (West 2012) (“The landlord has a claim against the tenant for reasonable costs and expenses incurred in removing the tenant's property and in storing and caring for the property.”); MONT. CODE ANN. § 70-24-430 (West 2011) (“If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed a landlord who stores the property, and actual storage costs are allowed a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.”); NEB. REV. STAT. ANN. § 69-2302 (West 2012) (“Reasonable costs of storage shall include: (a) Reasonable costs actually incurred, the reasonable value of labor actually provided, or both in removing personal property from its original location on the vacated premises to the place of storage, including disassembly and transportation; and (b) Reasonable storage costs actually incurred which shall not exceed the fair rental value of the space reasonably required for the storage of the personal property...”); NEB. REV. STAT. ANN. §§ 69-2307, 69-2311 (West 2012) (“The landlord's demand for payment of reasonable costs associated with the removal and storage of personal property shall be in writing and shall either be mailed to the tenant at the address provided pursuant to subdivision (1) of this section or shall be personally presented to the tenant or to the tenant's authorized representative within five days after the actual receipt of the tenant's request for surrender of the personal property, unless the property is returned first. The demand shall itemize all charges, specifying the nature and amount of each item of cost; and (4) The tenant agrees to claim and remove the personal property at a reasonable time mutually agreed upon by the landlord and tenant but not later than seventy-two hours after the tender provided for under subdivision (3) of this section.”); NEV. REV. STAT. ANN. § 118A.460 (West 2011) (“may charge and collect the reasonable and actual costs of inventory, moving and storage before releasing the property to the tenant or his or her authorized representative rightfully claiming the property within that period”); N.J. STAT. ANN. § 2A:18-75 (West 2012); N.J. STAT. ANN. § 2A:18-77 (West 2012); N.M. STAT. ANN. § 47-8-34.1 (West 2012) (“An owner may charge the resident reasonable storage fees for any time that the owner provided storage for the resident's personal property and the prevailing rate of moving fees. The owner may require payment of storage and moving costs prior to the release of the property.”); OKLA. STAT. ANN. tit. 41, § 130 (West 2012) (“If the tenant removes the personal property within the time limitations provided in this section, the landlord is entitled to the cost of storage for the period during which the property remained in the landlord's safekeeping plus all other costs that accrued under the rental agreement.”); OR. REV. STAT. ANN. § 90.675 (West 2012) (“the landlord may require payment of storage charges, as provided by subsection (7)(b) of this section, prior to releasing the personal property to the tenant or any lienholder”); S.D. CODIFIED LAWS § 43-32-26 (West 2012) (for property of a total value less than five hundred dollars, “the lessor shall have a lien on the property to the extent of the costs of handling and storing the property. After storing the property for thirty days or more the lessor may treat the property as abandoned and dispose of it”); VT. STAT. ANN. tit. 9, § 4462 (West 2012) (“Payment of the fair and reasonable cost of storage and any related reasonable expenses incurred by the landlord.”); WASH. REV. CODE ANN. § 59.18.310 (West 2012) (“The landlord shall return the property to the tenant after the tenant has paid the actual or reasonable drayage and storage costs whichever is less if the tenant makes a written request for the return of the property before the landlord has sold or disposed of the property.”); WYO. STAT. ANN. § 1-21-1210 (West 2012) (“Payment of storage costs shall be made before the renter removes the property.”).

⁶⁸ ME. REV. STAT. tit. 14, § 6013 (West 2011) (“**A.** If the tenant makes an oral or written claim for the property within 7 days after the date the notice described in subsection 2 is sent, the landlord may not condition the release of the property to the tenant upon the tenant's payment of any rental arrearages, damages and costs of storage as long as the tenant makes arrangements to retrieve the property by the 14th day after the notice described in subsection 2 is sent. **B.** If the tenant makes the claim as set forth in paragraph A but fails to retrieve the property by the 14th day, the landlord may employ one or more of the remedies described in paragraph D. **C.** If the tenant does not make an oral or written claim for the property within 7 days after the notice described in subsection 2 is sent, the landlord may employ one or more of the remedies described in paragraph D.”).

storing the tenant's personal property.⁶⁹ Others reach the same result by providing that a landlord is not liable to the tenant for loss or damage to the personal property in the absence of negligence.⁷⁰ A few states, however, expressly immunize the landlord from liability for disposing of tenant's personal property pursuant to the procedures in their statutes.⁷¹

Wisconsin has several unique provisions. Under its statute, the landlord generally does not have a duty to hold the abandoned property,⁷² but if the landlord does not intend to store abandoned property, he must place notice of this intent in the lease. In addition, the landlord must hold any prescriptions and prescribed medical equipment for seven days.

4. Methods of Disposal

The states vary with respect to how a landlord may dispose of tenant's abandoned personal property. Some permit or require the landlord to sell the property and use the proceeds to pay for the costs of storage or apply them to the landlord's other damages for tenant's abandonment of the leased premises. A few, however, provide for other alternatives, including the landlord's retention of the property for the landlord's own use.

⁶⁹ ALASKA STAT. ANN. § 34.03.260 (West 2012); CAL. CIV. CODE § 1986 (West 2012); ARIZ. REV. STAT. ANN. § 33-1370 (West 2012); FLA. STAT. ANN. § 715.107 (West 2011) ("The landlord shall exercise reasonable care in storing the property, but she or he is not liable to the tenant or any other owner for any loss unless caused by the landlord's deliberate or negligent act."); MONT. CODE ANN. § 70-24-430 (West 2011); NEB. REV. STAT. ANN. § 69-2306 (West 2012); N.H. REV. STAT. ANN. § 540-A:3 (West 2011); N.J. STAT. ANN. § 2A:18-75 (West 2012); OKLA. STAT. ANN. tit. 41, § 130 (West 2012); OR. REV. STAT. ANN. § 90.675 (West 2012).

⁷⁰ **ERROR! MAIN DOCUMENT ONLY.** FLA. STAT. ANN. § 715.107 (West 2011) ("The landlord shall exercise reasonable care in storing the property, but she or he is not liable to the tenant or any other owner for any loss unless caused by the landlord's deliberate or negligent act."); MINN. STAT. ANN. § 504B.365 (West 2012) (landlord is "liable for damages for loss of or injury to it caused by the . . . failure to exercise the same care that a reasonably careful person would exercise under similar circumstances"); MONT. CODE ANN. § 70-24-430 (West 2011) ("The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act."); NEB. REV. STAT. ANN. § 69-2306 (West 2012) ("The landlord shall exercise reasonable care in storing the property but shall not be liable to the tenant or any other owner for any loss unless such loss is caused by the landlord's intentional or negligent act."); NEV. REV. STAT. ANN. § 118A.460 (West 2011) (The landlord is liable to the tenant only for the landlord's negligent or wrongful acts in storing the property.); OKLA. STAT. ANN. tit. 41, § 130 (West 2012) ("The landlord shall not be responsible to the tenant for any loss not caused by the landlord's deliberate or negligent act."); OR. REV. STAT. ANN. § 90.675 (West 2012) ("The landlord is not responsible for any loss to the tenant or lienholder resulting from storage of personal property in compliance with this section unless the loss was caused by the landlord's deliberate or negligent act. "); S.C. CODE ANN. § 27-40-730 (West 2011) ("Where property is disposed of by the landlord pursuant to subsection (d) and the property was in excess of five hundred dollars, the landlord is not liable unless the landlord was grossly negligent.").

⁷¹ **ERROR! MAIN DOCUMENT ONLY.** ALASKA STAT. ANN. § 34.03.260 (West 2012) ("The landlord is not liable in damages in an action by a tenant claiming loss by reason of the landlord's storage, destruction, or disposition of property under this section."); IND. CODE ANN. § 32-31-4-2 (West 2012) ("landlord has no liability for loss or damage to a tenant's personal property if the tenant's personal property has been abandoned by the tenant."); ME. REV. STAT. tit. 14, § 6013 (West 2011) ("A lease or tenancy at will agreement may permit a landlord to dispose of property abandoned by a tenant without liability as long as the landlord complies with the notice provisions of this section."); MO. ANN. STAT. § 441.065 (West 2012) ("Any property of a tenant remaining in or at the premises, after the tenant abandons the premises, may be removed or disposed of by the landlord without liability to the tenant for such removal or disposition."); VA. CODE ANN. § 55-248.38:1 (West 2012) ("During the twenty-four hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord shall not have any liability for the risk of loss for such personal property."); VT. STAT. ANN. tit. 9, § 4462 (West 2012) (personal property "may be disposed of by the landlord without notice or liability to the tenant or owner of the personal property"); WYO. STAT. ANN. § 1-21-1210 (West 2012) ("The owner is not responsible for any loss to the renter resulting from storage.").

⁷² WIS. STAT. ANN. § 704.05 (West 2011).

a. *Sale of the abandoned property*

Fourteen states provide that the landlord may or should sell the property if the tenant does not ultimately claim the property.⁷³ Four states required advertisement of the sale in addition to providing the initial notice regarding the abandoned personal property.⁷⁴

Nine of those states expressly allow the landlord to apply proceeds from sale to unpaid rent or costs caused by the abandonment, such as for the removal and storage expenses.⁷⁵ Four states hold that the

⁷³ ALASKA STAT. ANN. § 34.03.260 (West 2012)(thereafter if the property is not removed, the landlord may sell the property at a public sale and dispose of “perishable commodities” as he sees fit); ARIZ. REV. STAT. ANN. § 33-1370 (West 2012); CAL. CIV. CODE § 1988 (West 2012)(“If the personal property described in the notice is not released pursuant to Section 1987, it shall be sold at public sale by competitive bidding.”); FLA. STAT. ANN. § 715.109 (West 2011); HAW. REV. STAT. § 521-56 (West 2012); KAN. STAT. ANN. § 58-2565 (West 2012); ME. REV. STAT. tit. 14, § 6013 (West 2011); MINN. STAT. ANN. § 504B.271 (West 2012); MONT. CODE ANN. § 70-24-430 (West 2011); NEB. REV. STAT. ANN. § 69-2308 (West 2012); N.J. STAT. ANN. § 2A:18-78 (West 2012); N.M. STAT. ANN. § 47-8-34.1 (West 2012)(“where the property has a market value of more than one hundred dollars .”); N.D. CENT. CODE ANN. § 47-16-30.1 (West 2011); OR. REV. STAT. ANN. § 90.675 (West 2012).

⁷⁴ CAL. CIV. CODE § 1988 (West 2012) (“Notice of the time and place of the public sale shall be given by publication pursuant to Section 6066 of the Government Code in a newspaper of general circulation published in the county where the sale is to be held. The last publication shall be not less than five days before the sale is to be held. The notice of the sale shall not be published before the last of the dates specified for taking possession of the property in any notice given pursuant to Section 1983. The notice of the sale shall describe the property to be sold in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by Section 1989 does not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.”); HAW. REV. STAT. § 521-56 (West 2012)(following such notice, “the landlord may sell the personalty after advertising the sale in a daily paper of general circulation within the circuit in which the premises is located for at least three consecutive days”); NEB. REV. STAT. ANN. § 69-2308(West 2012)(“Notice of the time and place of the public sale shall be given by advertisement of the sale published once a week for two consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted no fewer than ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.... The advertisement shall include a description of the goods, the name of the former tenant, and the time and place of the sale. The sale shall take place no sooner than ten days after the first publication. The last publication shall be no less than five days before the sale is to be held. Notice of sale may be published before the last of the dates specified for taking possession of the property in any notice given pursuant to section 69-2303.”); FLA. STAT. ANN. § 715.109 (West 2011).

⁷⁵ ARIZ. REV. STAT. ANN. § 33-1370 (West 2012)(“landlord can sell the property and apply to unpaid rent or costs caused by tenant's abandonment or other costs covered in rental agreement”); HAW. REV. STAT. § 521-56 (West 2012)(“The proceeds of the sale of personalty under subsection (a) shall, after deduction of accrued rent and costs of storage and sale, including the cost of advertising, be held in trust for the tenant for thirty days, after which time the proceeds shall be forfeited to the landlord.”); KAN. STAT. ANN. § 58-2565 (West 2012)(“proceeds from the sale or other disposition of the property as provided in subsection (d) shall be applied by the landlord in the following order: (1) To the reasonable expenses of taking, holding, preparing for sale or disposition, giving notice and selling or disposing thereof; (2) to the satisfaction of any amount due from the tenant to the landlord for rent or otherwise; and (3) the balance, if any, may be retained by the landlord, without liability to the tenant or to any other person, other than a secured creditor who gave notice of creditors interest as provided in subsection (d), for any profit made as a result of a sale or other disposition of such property”); ME. REV. STAT. tit. 14, § 6013 (West 2011) (apply all proceeds to rental arrearages, damages and costs of storage and sale. All remaining balances must be forwarded to the Treasurer of State”. The landlord can only do sell or condition the tenant’s ability to retrieve the property on payment of unpaid rent and storage costs if tenant does not make oral or written claim for the property within 7 days after the notice); MINN. STAT. ANN. § 504B.271 (West 2012)(“The landlord may apply a reasonable amount of the proceeds of a sale to the removal, care, and storage costs and expenses...”); MONT. CODE ANN. §

excess proceeds from the sale are awarded to the tenant.⁷⁶ Kansas and North Dakota allow the landlord to retain the excess funds.⁷⁷

In Montana, if the tenant cannot be found, “the remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county available for general purposes.”⁷⁸ California, Florida, and Nebraska expressly allow the landlord to deduct the costs of storage, advertising, and sale, from the proceeds of the sale of the tenant’s abandoned personal property, but do not mention unpaid rent.⁷⁹ In California and Florida, the remaining money must be paid to the county and the tenant has one year to claim it,⁸⁰ while in Nebraska money not claimed by the former tenant must be turned over to the State Treasurer.⁸¹ Virginia, Tennessee, and Arizona require the landlord to hold the proceeds for a period of time.⁸²

b. *Other options available to landlord*

Five states (California, Hawaii, Nebraska, West Virginia, and Wyoming) give the landlord the option

70-24-430 (West 2011)(“The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and any delinquent rent or damages owing on the premises.”); N.M. STAT. ANN. § 47-8-34.1 (West 2012)(“sell the personal property under any provisions herein, and the proceeds of the sale, if in excess of money due and owing to the owner, shall be mailed to the resident at his last known address along with an itemized statement of the amounts received and amounts allocated to other cost,”); N.D. CENT. CODE ANN. § 47-16-30.1 (West 2011)(“The lessor may recover, from the lessee’s security deposit, any storage and moving expenses in excess of the proceeds from the sale incurred in disposing of the property. . . . If there is no buyer at a sale described under paragraph (a) of this subsection, the personal property is considered to be worth \$8,000 or less, regardless of current market value, and the landlord shall destroy or otherwise dispose of the personal property”); OR. REV. STAT. ANN. § 90.675 (13)(West 2012); VA. CODE ANN. § 55-248.38:1 (West 2012)(“If the landlord received any funds from any sale of abandoned property as provided in this section, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in selling, storing or safekeeping such property. If any such funds are remaining after application, the remaining funds shall be treated as a security deposit under the provisions of § 55-248.15:1.”); WASH. REV. CODE ANN. § 59.18.310 (West 2012)(“The landlord may apply any income derived therefrom against moneys due the landlord, including actual or reasonable costs whichever is less of drayage and storage of the property.”).

⁷⁶ ARIZ. REV. STAT. ANN. § 33-1370 (West 2012)(“mailed to the tenant at the last known address”); MINN. STAT. ANN. § 504B.271 (West 2012)(“Any remaining proceeds of any sale shall be paid to the tenant upon written demand.”); MONT. CODE ANN. § 70-24-430 (West 2011)(“and shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting”); N.M. STAT. ANN. § 47-8-34.1 (West 2012).

⁷⁷ KAN. STAT. ANN. § 58-2565 (West 2012); N.D. CENT. CODE ANN. § 47-16-30.1 (West 2011).

⁷⁸ MONT. CODE ANN. § 70-24-430 (West 2011).

⁷⁹ CAL. CIV. CODE § 1988 (West 2012); FLA. STAT. ANN. § 715.109 (West 2011); NEB. REV. STAT. ANN. § 69-2308 (West 2012); *see also* WIS. STAT. ANN. § 704.05 (West 2011)(provides for the landlord’s recovery of costs of sale and storage, but does not mention rent).

⁸⁰ CAL. CIV. CODE § 1988 (West 2012); FLA. STAT. ANN. § 715.109 (West 2011)(“After deduction of the costs of storage, advertising, and sale, any balance of the proceeds of the sale which is not claimed by the former tenant or an owner other than such tenant shall be paid into the treasury of the county in which the sale took place not later than 30 days after the date of sale. The former tenant or other owner or other person having interest in the funds may claim the balance within 1 year from the date of payment to the county by making application to the county treasurer or other official designated by the county. If the county pays the balance or any part thereof to a claimant, neither the county nor any officer or employee thereof is liable to any other claimant as to the amount paid.”).

⁸¹ NEB. REV. STAT. ANN. § 69-2308 (West 2012).

⁸² ARIZ. REV. STAT. ANN. § 33-1370 (West 2012)(“For a period of twelve months after the sale the landlord shall: 1. Keep adequate records of the outstanding and unpaid rent and the sale of the tenant’s personal property. 2. Hold any excess proceeds that have been returned as undeliverable for the benefit of the tenant.”); TENN. CODE ANN. § 66-28-405 (West 2012)(“Any balances are to be held by the landlord for a period of six (6) months after the sale.”); VA. CODE ANN. § 55-248.38:1 (West 2012).

of retaining the property for the landlord's own use or disposing of it as the landlord sees fit.⁸³ Reaching a similar result, Vermont expressly states that the property becomes the landlord's if the tenant does not claim the property within the required time of notice, and does not mention sale or any other method of disposal.⁸⁴ For property worth more than \$100, New Mexico permits the landlord to retain the property for his own use or the use of others, but the landlord "shall credit the account of the resident for the fair market value of the property against any money due and owing to the owner" and pay any excess funds to the tenant.⁸⁵

Several states simply state that if the property is worth less than a specified value, landlords may dispose of the property as they wish.⁸⁶ Others allow the same for property of any value but only after the appropriate notice procedure is followed.⁸⁷ In Hawaii, the landlord can donate the property to a charitable organization.⁸⁸

6. Death of the tenant

Seven states provide special rules governing the landlord's obligations upon the death of the tenant. They vary, however, with respect to the method the landlord must use to determine who is authorized to retrieve the deceased tenant's property and how to notify them. These variations include:

- In Arizona, New Mexico, Oklahoma and Texas, the tenant may provide or the landlord may request the name and contact information for authorized person to handle personal property upon the tenant's death.⁸⁹ In the latter three states, if the tenant did not provide the landlord with an authorized contact person in case of their death, the landlord "shall have no responsibility after the resident's death for removal, storage, disappearance, damage or disposition of property."⁹⁰

⁸³ CAL. CIV. CODE § 1988 (West 2012) ("However, if the landlord reasonably believes that the total resale value of the property not released is less than three hundred dollars (\$300), the landlord may retain such property for his or her own use or dispose of it in any manner."); HAW. REV. STAT. § 521-56 (West 2012) ("However, if the landlord reasonably believes that the total resale value of the property not released is less than \$500, she or he may retain such property for her or his own use or dispose of it in any manner she or he chooses."); NEB. REV. STAT. ANN. § 69-2308 (West 2012) (identical to Hawaii's, except the value is \$1,000 or less rather than \$500); W. VA. CODE ANN. § 37-6-6 (West 2012); WYO. STAT. ANN. § 1-21-1210 (West 2012) ("If the owner does not receive a written response from the renter within seven (7) days after service of notice . . . the property shall be conclusively deemed abandoned and the owner may retain or dispose of the property.").

⁸⁴ VT. STAT. ANN. tit. 9, § 4462 (West 2012).

⁸⁵ N.M. STAT. ANN. § 47-8-34.1 (West 2012).

⁸⁶ ME. REV. STAT. tit. 14, § 6013 (West 2011) (landlord may dispose of unclaimed personal property after notice that has no reasonable fair market value); HAW. REV. STAT. § 521-56 (West 2012) (any "unsold" personal property or "otherwise left abandoned by the tenant and determined by the landlord to be of no value may be disposed of at the landlord's discretion without liability to the landlord"); MONT. CODE ANN. § 70-24-430 (West 2011) (the landlord has the option, after notice, to destroy or otherwise dispose of the property if the value is "so low the cost of storage or sale exceeds the reasonable value of the property"); N.J. STAT. ANN. § 2A:18-78 (West 2012) ("The landlord may destroy or otherwise dispose of the property if the landlord reasonably determines that the value of the property is so low that the cost of storage and conducting a public sale would probably exceed the amount that would be realized from the sale."); N.M. STAT. ANN. § 47-8-34.1 (West 2012) ("Where the property has a market value of less than one hundred dollars (\$100), the owner has the right to dispose of the property in any manner.").

⁸⁷ CONN. GEN. STAT. ANN. § 47a-11b (West 2012) (after required holding time and notice, "the landlord may dispose of them as he deems appropriate"); MINN. STAT. ANN. § 504B.271 (West 2012) (Also, have an option of selling the property if they wish.); NEV. REV. STAT. ANN. § 118A.460 (West 2011); N.M. STAT. ANN. § 47-8-34.1 (West 2012); OR. REV. STAT. ANN. § 90.675 (West 2012).

⁸⁸ HAW. REV. STAT. § 521-56 (West 2012) (other options include storing at the tenant's expense or selling).

⁸⁹ ARIZ. REV. STAT. ANN. § 33-1314 (West 2012); N.M. STAT. ANN. § 47-8-34.2 (West 2012); OKLA. STAT. ANN. tit. 41, § 130.1 (West 2012); TEX. PROP. CODE ANN. § 92.014 (West 2011).

⁹⁰ N.M. STAT. ANN. § 47-8-34.2 (West 2012); OKLA. STAT. ANN. tit. 41, § 130.1 (West 2012); TEX. PROP. CODE ANN. §

- In Oregon, an heir, devisee, personal representative named in a will or appointed by court, or any person designated in writing by the tenant to be contacted by the landlord upon the death of the tenant will have the same rights and responsibilities as the tenant, and will be notified and may remove the personal property.⁹¹
- In Virginia, if no one else authorized by court order to handle probate matters for the deceased tenant, the landlord must provide notice to either a “person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant” or to the tenant, in accordance with abandonment of personal property procedure.⁹²
- In North Carolina, the landlord is required to find an authorized person in the same manner as Virginia, but if no person is indicated in the rental application, lease, or other paperwork, the ‘landlord shall cause notice of the filing of the affidavit to be posted at the door of the landlord's primary rental office or the place where the landlord conducts business and at the county courthouse in the area designated by the clerk for the posting of notices.’⁹³
- In Connecticut, the landlord’s adherence to the statute is discretionary and may be used in lieu of bringing a summary eviction proceeding to regain possession of the premises.⁹⁴ The landlord must send notice of the tenant’s death and presence of their personal property to next of kin, if known.⁹⁵ In Connecticut as well as North Carolina, the landlord must file an affidavit with the probate court regarding the personal property of the deceased tenant.⁹⁶

The states also vary with respect to the amount of time that the person has to contact the landlord regarding removal of the property. In Arizona and Virginia, the individual has 10 days to contact the landlord after receiving the written notice of the tenant’s death.⁹⁷ In Arizona, if the person does contact the landlord within that required time, the authorized person has “twenty days from the date of initial written contact by the landlord or the last date for which rent is paid, whichever is longer, to remove items from the

92.014 (West 2011).

⁹¹ OR. REV. STAT. ANN. § 90.425 (West 2012).

⁹² VA. CODE ANN. § 55-248.38:3 (West 2012).

⁹³ N.C. GEN. STAT. ANN. § 28A-25-1.2 (West 2011).

⁹⁴ CONN. GEN. STAT. ANN. § 47a-11d (West 2012) (“the landlord may elect to act in accordance with the provisions of this section”).

⁹⁵ CONN. GEN. STAT. ANN. § 47a-11d (West 2012) (“occupant at the last-known address both by regular mail, postage prepaid, and by certified mail, return receipt requested, stating that (1) the occupant has died, (2) the landlord intends to remove any possessions and personal effects remaining in the premises and to rerent the premises, and (3) if the next of kin does not reclaim such possessions and personal effects within sixty days after the date of such notice, such possessions and personal effects will be disposed of as permitted by this section. The notice shall be in clear and simple language and shall include a telephone number and a mailing address at which the landlord can be contacted”).

⁹⁶ CONN. GEN. STAT. ANN. § 47a-11d (West 2012) (“affidavit shall include the name and address of the deceased occupant, the date of death, the terms of the lease, and the names and addresses of the next of kin, if known”); N.C. GEN. STAT. ANN. § 28A-25-1.2 (West 2011) (“the landlord may take possession of the property upon the filing of an affidavit that complies with the provisions of subsection (b) of this section if all of the following conditions have been met: (1) At least 10 days has elapsed from the date the paid rental period for the dwelling unit has expired; (2) No personal representative, collector, or receiver has been appointed for the decedent's estate under the provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county in which the dwelling unit is located; (3) No affidavit related to the decedent's estate has been filed under the provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1 in the county in which the dwelling unit is located”).

⁹⁷ ARIZ. REV. STAT. ANN. § 33-1314 (West 2012) ; VA. CODE ANN. § 55-248.38:3 (West 2012).

rental property.”⁹⁸ In Oregon, the authorized person must contact the landlord within five days from personal delivery or eight days after mailing of the notice.⁹⁹ In Oklahoma, New Mexico, and Texas, the landlord must wait thirty days from the day the request is mailed to dispose of the property.¹⁰⁰ In Connecticut, the authorized individual has sixty days to claim the property before the landlord may dispose of the property.¹⁰¹ In North Carolina, if “no personal representative, collector, or receiver has been appointed” within ninety days, the landlord may sell or donate the property according the detailed requirements provided in the statute.¹⁰²

Finally, similar to abandoned personal property in general, states vary with respect to how the landlord may dispose of abandoned property. In North Carolina, if the abandoned personal property is valued at less than \$500, the landlord may donate the property to a non-profit organization that provides clothing and household goods to those in need for free or a nominal fee provided the landlord and nonprofit organization abide by the statutes specific qualifications.¹⁰³ New Mexico, Oklahoma, and Texas permit the landlord to store the abandoned personal property and deduct the costs of storage and removal from the security deposit.¹⁰⁴ If the tenant did not provide the landlord with an authorized contact person in case of their death, the landlord “shall have no responsibility after the resident's death for removal, storage, disappearance, damage or disposition of property.”¹⁰⁵

7. Case Law

In the absence of a statute, some courts have held that a tenant generally does not automatically forfeit personal property when they leave it behind after termination.¹⁰⁶ “A landlord has no absolute right to retain or destroy personal property belonging to a tenant; even where a tenant is legally dispossessed, landlord's rights extend only to the real property.”¹⁰⁷ Conversely, a Missouri court assumed that because tenants owed the landlord a “substantial sum of money” when they vacated the rental premises, the court inferred that the tenants “intentionally left the personal property . . . on the premises to satisfy the debt.”¹⁰⁸

Much of the case law on abandonment personal property focuses on the tenant’s remedy when the landlord improperly handles or disposes of the property. The Supreme Court of Nebraska explained that, “in the absence of a statute concerning disposition of a tenant's personal property left on residential premises previously leased, the respective rights of landlord and tenant are determined by the common law governing the tort of conversion.”¹⁰⁹ Likewise, a Louisiana appellate court held that a court may find the landlord converted the tenants property if the landlord wrongfully determines the tenant has abandoned the

⁹⁸ ARIZ. REV. STAT. ANN. § 33-1314 (West 2012).

⁹⁹ OR. REV. STAT. ANN. § 90.425 (West 2012).

¹⁰⁰ N.M. STAT. ANN. § 47-8-34.2 (West 2012); OKLA. STAT. ANN. tit. 41, § 130.1 (West 2012) (“property by the thirtieth day after the postmark date of the notice”); TEX. PROP. CODE ANN. § 92.014 (West 2011).

¹⁰¹ CONN. GEN. STAT. ANN. § 47a-11d (West 2012).

¹⁰² N.C. GEN. STAT. ANN. § 28A-25-1.2 (West 2011).

¹⁰³ *Id.*

¹⁰⁴ N.M. STAT. ANN. § 47-8-34.2 (West 2012); OKLA. STAT. ANN. tit. 41, § 130.1 (West 2012); TEX. PROP. CODE ANN. § 92.014 (West 2011).

¹⁰⁵ N.M. STAT. ANN. § 47-8-34.2 (West 2012); OKLA. STAT. ANN. tit. 41, § 130.1 (West 2012); TEX. PROP. CODE ANN. § 92.014 (West 2011).

¹⁰⁶ *See, e.g.,* Bednar v. Marino, 646 A.2d 573, 577-78 (Pa. App. Ct. 1994).

¹⁰⁷ Glass v. Wiener, 480 N.Y.S.2d 760 (N.Y. App. Ct. 1984).

¹⁰⁸ Graff v. Triple B Dev. Corp., 622 S.W.2d 755, 756 (Mo. Ct. App. 1981). Missouri subsequently enacted a statute reaching the same result. Mo. Ann. Stat. § 441.065 (West 2012) (“Any property of a tenant remaining in or at the premises, after the tenant abandons the premises, may be removed or disposed of by the landlord without liability to the tenant for such removal or disposition.”).

¹⁰⁹ Mason v. Schumacher, 439 N.W.2d 61, 70-71 (Neb. 1989).

property and places their personal property into storage.¹¹⁰

In Alaska, landlords have an incentive to act on the procedures for removal of abandoned property set forth in the statute, because if not, they cannot attempt to recover rent or damages for the time the tenant's abandoned personal property sits in the rental premises.¹¹¹ In Oregon, a court held that the landlord must provide the full statutorily required period of time for the tenant to reclaim the property before disposing of it, and even if the landlord only shortens the period by one day, the landlord will not be viewed in compliance of the statute' substantial compliance is not enough.¹¹² A Montana court stated that the landlord must take steps to actually investigate whether the personal property is abandoned, and must follow the statutory provisions, or will be considered conversion.¹¹³

Finally, courts in two states have addressed the landlord and tenant's ability to provide their own agreement regarding the disposition of abandoned property. The Florida Supreme Court recognized the parties' right to contract out of the statutory abandonment provisions and provided an approved lease provision.¹¹⁴ A Georgia appellate court upheld a lease provision that the tenant's personal property would be deemed abandoned and become property of the landlord if left on the premises after termination.¹¹⁵

CONCLUSION AND RECOMMENDATION

The current version of the URLTA is silent on the landlord's obligations regarding tenant's abandoned personal property. Accordingly, the Drafting Committee should consider whether to address the situation in the revised URLTA. More specifically, the Committee should consider the following issues:

1. Independent or court-authorized action. Whether, in the case of tenant's abandonment of the premises, a landlord must pursue a summary eviction proceeding to regain possession of the premises and dispose of the tenant's personal property therein or if the statute will provide procedures for the landlord to dispose of the personal property independent of a court proceeding.

2. Notice. Whether a landlord is required to provide notice to a tenant and an opportunity to claim personal property before the landlord disposes of it. If so:

- a. How much time should the tenant have to reclaim the property before the landlord disposes of it?;
- b. Should the URLTA specify the contents of the notice?; and
- c. How should the notice be given to the tenant?

3. Storage of the property. Whether to specify the landlord's obligations for storing the property and liability if damage occurs while in the landlord's possession.

¹¹⁰ Gibbs v. Harris, 799 So. 2d 665, 671 (La. Ct. App. 2001).

¹¹¹ Brown v. Music, Inc., 359 P.2d 295 (Alaska 1961).

¹¹² Tompte v. Stone, 98 P.3d 1171 (Or. Ct. App. 2004).

¹¹³ Johnston v. Am. Reliable Ins. Co., 833 P.2d 176 (Mont.1992).

¹¹⁴ Florida Bar re Revisions to Simplified Forms, Pursuant to Rule 10-2.1(a) of the Rules Regulating The Florida Bar, 774 So. 2d 611 (Fla. 2000) ("BY SIGNING THIS RENTAL AGREEMENT, TENANT AGREES THAT UPON SURRENDER OR ABANDONMENT, AS DEFINED BY THE FLORIDA STATUTES, LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF TENANT'S PERSONAL PROPERTY.")

¹¹⁵ Kurc v. Herren, 396 S.E.2d 62, 65 (Ga. Ct. App. 1990) ("Accordingly, there being no statutory or public policy prohibition which militates against enforcement of a lessee's agreement that his personalty shall be deemed "abandoned" and become the property of the lessor if left on the premises after the termination of the lease, we hold that such provisions are enforceable in this state according to their terms.").

4. Disposition of the property. Whether the landlord must sell the property and apply the proceeds to storage and removal expenses or if the landlord may otherwise dispose of the property (including retention for the landlord's own use).

5. Death of the tenant. Whether to adopt special rules for disposition of the property after the tenant's death.