The Iowa General Assembly Must Act to Protect the Personal Property Rights of Tenants

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ABSTRACT: In Iowa, thirty percent of all households rent rather than own. At the termination of a rental agreement, or after abandonment is established, Iowa's current case law gives landlords the power to enter the leased premises and take possession of any remaining personal property without notice to the tenant. In Iowa, residential, commercial, and crop leases are governed by inconsistently applied and antiquated precedent. This Note argues that Iowa's common law rules governing the possession and disposal of a tenant's abandoned personal property by their landlord insufficiently protect the rights of tenants. This Note also examines the landlord-tenant relationship through an economic lens, surveying how other states have treated the acquisition and disposal of abandoned tenant personal property. This Note then identifies how Iowa's common law approach to abandoned tenant personal property unduly burdens tenants and favors landlords. To eliminate the burden on tenants, this Note then proposes statutory reform that balances the interests of tenants, to their personal property, and landlords, to the ability to re-rent their property.

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INTRODUCTION

Suppose that you are renting an apartment in a city or town in Iowa. You consistently pay your rent on time, and you have a good relationship with your landlord. One month, you are a few days late on your rental payment, but you assure your landlord that you'll pay your rent in full as soon as you return from a weekend trip out of town. When you return, you find that the locks to your apartment have been changed and that all your possessions have been thrown onto the street (where the majority of them have been stolen or destroyed). It turns out that while you were gone, your landlord had contacted the sheriff and had you evicted. You sue your landlord on the grounds that they wrongfully evicted you and negligently handled your property. The court rules against you, holding that since you were late on your rental payment and you left the leased premises, you had abandoned both the apartment and your personal property within it. The court adds that, since no Iowa statute imposed

a duty on your landlord to care for your personal property, your landlord acted lawfully in discarding your personal property and is not liable.[1]

How could an Iowa landlord evict their tenant, and discard their tenant's personal property, following a single late rental payment? How does an Iowa landlord establish that their tenant has abandoned the leased premises? When may the landlord access the abandoned property? What must the landlord do with their former tenants abandoned personal property? Iowa courts have consistently deferred to landlords in answering such questions, leaving behind nearly two centuries of unjust caselaw.

This Note argues that Iowa's common law rules governing the possession and disposal of a tenant's abandoned personal property by their landlord insufficiently protect the rights of tenants. The Iowa General Assembly must enact legislation that places landlords and tenants on equal footing in disputes over abandoned personal property—or legislation that prevents those disputes altogether. Specifically, the legislation should clearly delineate the rights and responsibilities of both landlords and tenants and should provide adequate protection for the personal property of tenants.

I. BACKGROUND

As it now stands, no Iowa statute protects the personal property rights of tenants at the termination of any lease. Although precedent exists, it is incomplete and contradictory.[2] Evaluating the foundational elements of personal property law, therefore, is necessary to evaluate any single state's approach. Sections II.A and II.B provide an overview of personal property and abandoned property, respectively. Section II.C discusses the landlord-tenant relationship. Section II.D surveys a selection of representative state statutes from across the United States, framing the discussion of tenant personal property rights within the landlord-tenant relationship.

A. UNDERSTANDING PERSONAL PROPERTY

Personal property is "[a]ny movable or intangible thing that is subject to ownership and not classified as real property."[3] Personal property is often contrasted with (and confused with) real property, which is "[l]and and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land."[4] To illustrate the difference, imagine a furnished house. The house and the land it sits on are real property;

1. The facts of this hypothetical scenario closely resemble those in *Khan v. Heritage Prop. Mgmt.*, 584 N.W.2d 725, 727 (Iowa Ct. App. 1998).

2. *Compare, e.g.*, State v. Lewis, 675 N.W.2d 516, 523–24 (Iowa 2004) (holding that a landlord's entry into a tenant's dwelling was an unconstitutional search), *with* State v. Koop, 314 N.W.2d 384, 387 (Iowa 1982) (holding that a landlord's entry into a tenant's dwelling was a constitutional search).

3. *Personal Property*, BLACK'S LAW DICTIONARY (11th ed. 2019).

4. *Real Property*, BLACK'S LAW DICTIONARY (11th ed. 2019).

the sofa, table, chairs, computer software on the family computer, any patents, copyrights, and trademarks (as well as the other tangible and intangible things) within the house are personal property. Four conceptual features characterize personal property: (1) universality; (2) transferability; (3) exigibility; and (4) excludability.[5] First, the owner of personal property may assert a valid claim to the property against the entire world.[6] Second, the owner of personal property may freely transfer the personal property, subject to some limitations.[7] Third, the individual's ownership of the personal property ceases when the property "ceases to exist."[8] Fourth, the owner of personal property may exclude others from utilizing, interacting with, or enjoying the personal property.[9]

The property interests, and the property rights, of private individuals are often at odds with the property interests, and the property rights, of the government.[10] The "principal purpose" of the government "in establishing the property rights system is to maximize total social and private value."[11] A government typically considers what resources deserve the protection of property law, how those resources should be protected within the mechanism of property law, what rules and regulations govern a property owner's exclusion, and "what limitations . . . the government [may] place on" a property owner's use of their property.[12] On the contrary, the principal purpose of a private individual in acquiring personal property is the individual's desire for ownership.[13] An individual's right to property is their right to possess and dispose of assets at will.[14] An individual also has a right to abandon their property[15]; abandonment may be established even though the property owner may not have intended to abandon their property.[16] The government may establish laws governing abandonment of property, "exercise discretion about when abandonment can occur, [and] take possession of abandoned property itself."[17]

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5. MICHAEL BRIDGE, PERSONAL PROPERTY LAW 1–3 (4th ed. 2015).

6. *Id.* at 1–2.

7. *Id.* at 2.

8. *Id.*

9. *Id.* at 3.

10. *See* Herbert Hovenkamp, *Private Property and the State*, *in* THE FUNDAMENTAL INTERRELATIONSHIPS BETWEEN GOVERNMENT AND PROPERTY 109, 109 (Nicholas Mercuro & Warren J. Samuels eds., 1999).

11. *Id.* at 109.

12. Thomas S. Ulen, *Property Law and Efficient Resource Use*, *in* THE FUNDAMENTAL INTERRELATIONSHIPS BETWEEN GOVERNMENT AND PROPERTY, *supra* note 10, at 259, 260.

13. *See* Joseph L. Sax, *Takings, Private Property and Public Rights*, 81 YALE L.J. 149, 183 (1971).

14. *See* RICHARD PIPES, PROPERTY AND FREEDOM 68, 76 (2007).

15. Lior Jacob Strahilevitz, *The Right to Abandon*, 158 U. PA. L. REV. 355, 360–90 (2010). It is worth noting that, generally, an individual may not abandon real property, subject to limited exceptions. *See id.* at 412–19; Eduardo M. Peñalver, *The Illusory Right to Abandon*, 109 MICH. L. REV. 191, 202–19 (2010).

16. *See infra* Section III.A.

17. Strahilevitz, *supra* note 15, at 404.

B. UNDERSTANDING ABANDONED PROPERTY

Property becomes abandoned when "the owner voluntarily surrenders, relinquishes, or disclaims" it.[18] Abandoned property is often distinguished from either lost or mislaid property.[19] Lost property is "[p]roperty that the owner no longer possesses because of accident, negligence, or carelessness, and that cannot be located by an ordinary, diligent search."[20] Mislaid property is "[p]roperty that has been voluntarily relinquished by the owner with an intent to recover it later—but that cannot now be found."[21] Abandonment of possession is not abandonment of ownership: An individual may abandon personal property without abandoning their ownership of the personal property.[22]

At common law, "[p]roperty is abandoned when the owner no longer wants to possess it."[23] Abandonment is established "by proof that the owner intends to abandon the property and has voluntarily relinquished all right, title and interest in the property."[24] Upon abandonment, "[a]bandoned property belongs to the finder of the property against all others, including the former owner."[25]

Generally, the place where the personal property was found does not create an exception to the rule.[26] Additionally, possession of personal property can "be rebutted by evidence of a better title."[27] If the finder of abandoned property greatly enhanced the value of the personal property through labor, the title to the personal property would have likely passed to the finder.[28] While real property could not be abandoned, personal property found on private real property could be considered abandoned, and its possession could pass to the finder under certain circumstances.[29]

In the modern era, however, the common law distinction between abandoned, lost, or mislaid property has been eliminated by most U.S. jurisdictions in favor of simplicity and ease of application.[30] As of 2016, all fifty states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands

18. *Abandoned Property*, BLACK'S LAW DICTIONARY (11th ed. 2019).

19. *See, e.g.*, Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400, 404–08 (Iowa 1995).

20. *Lost Property*, BLACK'S LAW DICTIONARY (11th ed. 2019).

21. *Mislaid Property*, BLACK'S LAW DICTIONARY (11th ed. 2019).

22. BRIDGE, *supra* note 5, at 48.

23. *Lindner Aviation, Inc.*, 534 N.W.2d at 406 (citing Pearson v. City of Guttenberg, 245 N.W.2d 519, 529 (Iowa 1976)).

24. *Id.* (citing Ritz v. Selma United Methodist Church, 467 N.W.2d 266, 269 (Iowa 1991)).

25. *Id.* (citing *Ritz*, 467 N.W.2d at 269).

26. *See* McAvoy v. Medina, 93 Mass. (11 Allen) 548, 549 (1866).

27. *See* Clark v. Maloney, 3 Del. (3 Harr.) 68, 69 (Super. Ct. 1840).

28. *See* Haslem v. Lockwood, 37 Conn. 500, 506 (1871).

29. *See* Goodard v. Winchell, 52 N.W. 1124, 1124 (Iowa 1892).

30. *See, e.g.*, N.Y. PERS. PROP. LAW §§ 251–252, 254 (McKinney 2013) (eliminating the distinction between lost and mislaid property).

have codified "some form of unclaimed property law."[31] The Revised Uniform Unclaimed Property Act ("RUUPA") is a set of uniform laws, which, in relevant part, allows for the presumption of abandonment of personal property.[32] The act provides different requirements for presuming abandonment of different types of personal property,[33] "taking custody of property presumed [to be] abandoned,"[34] reporting abandoned property,[35] establishing notice "to apparent owner of property presumed abandoned,"[36] and other miscellaneous procedures involving abandoned property.[37] The RUUPA has been received as a positive development in the law of unclaimed property.[38] Thirty-five jurisdictions, including Iowa, have adopted the 1981 version of the RUUPA.[39] Sixteen jurisdictions have adopted the 1995 version of the RUUPA.[40] Eight jurisdictions have adopted the 2016 version of the RUUPA.[41] South Carolina's legislature, has introduced, but has not passed, the 2016 version of the RUUPA.[42] Vermont passed a substantially similar version of the 2016 version of the RUPPA.[43]

C. THE LANDLORD-TENANT RELATIONSHIP

Over the course of the twentieth century, the number of rental units in the United States "increased from eight million to thirty-one million," but this rapid growth was "accompanied [by] a relative decline in market share from fifty-three percent to thirty-four percent."[44] More people are renting, but

31. REVISED UNIF. UNCLAIMED PROP. ACT, prefatory note at 1 (UNIF. L. COMM'N 2016).

32. *Id.* at art. 2. The RUUPA has undergone four revisions, most recently in 2016. *Id.* prefatory note at 1, 11.

33. *Id.* §§ 201–212.

34. *Id.* §§ 301–307.

35. *Id.* §§ 401–405.

36. *Id.* §§ 501–504.

37. *Id.* at art. 6–15.

38. For a discussion of the RUUPA's implications, see generally Ethan D. Millar, Scott Heyman & Charolette Noel, *Building a Better Unclaimed Property Act*, 73 BUS. L. 711, 737–61 (2018).

39. *Unclaimed Property Act, Revised*, UNIF. L. COMM'N, https://www.uniformlaws.org/committees/community-home?communitykey=4b7c796a-f158-47bc-b5b1-f3f9a6e404fa (last visited July 16, 2022). The jurisdictions are Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, the U.S. Virgin Islands, Utah, Virginia, Washington, Wisconsin, and Wyoming. *Id.*

40. *Id.* The jurisdictions are Alabama, Arizona, Arkansas, Hawaii, Indiana, Kansas, Louisiana, Maine, Michigan, Montana, Nevada, New Mexico, North Carolina, the U.S. Virgin Islands, Vermont, and West Virginia. *Id.*

41. *Id.* The jurisdictions are Colorado, the District of Columbia, Indiana, Kentucky, North Dakota, Tennessee, Utah, and Washington. *Id.*

42. *Id.*

43. *Id.*

44. James C. Smith, *The Dynamics of Landlord-Tenant Law and Residential Finance: The Comparative Economics of Home Ownership*, 44 WASH. U. J. URB. & CONTEMP. L. 3, 59 (1993) (first citing BUREAU

renters make up less of the overall population.[45] Two federal policies are to credit for the increase: the federal income tax system and the creation of the Federal Housing Administration.[46] The federal income tax system provides homeowners with the ability to deduct interest paid on their home mortgage loan and their real property taxes.[47] As a result, purchasing a home became an accessible option for more Americans, and many chose to abandon renting in favor of home purchase, "even if they [were] pleased with the physical characteristics of their present accommodations."[48] Upon the creation of the Federal Housing Administration, a home mortgage "for ninety to ninety-five percent of the purchase price, with repayment over twenty-five or thirty years at a low fixed interest rate, became the staple."[49] As a result, "the dream of home ownership became available to any family with a regular source of earned income and no negative credit history."[50] This was a radical change from the pre–Federal Housing Administration lending practices, which "effectively precluded middle-class families who lacked substantial savings and a high income from buying homes" by "demand[ing] high down payments and quick repayment of loan principal."[51]

At the beginning of 2020, approximately thirty-six percent of U.S. households (approximately 43.5 million households) rented their primary residence.[52] Although the ratio of renters to non-renters was consistent with historical records, the negative economic effects of the COVID-19 pandemic placed "an estimated 30 million to 40 million people . . . at risk of eviction," a large portion of whom were low-income tenants.[53] It is well documented that "[l]ow-income tenants who are displaced are generally forced into substandard housing in poorer and higher-crime neighborhoods."[54] It is clear that

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OF CENSUS, UNITED STATES DEP'T OF COMMERCE, 1990 CENSUS OF POPULATION AND HOUSING: SUMMARY POPULATION AND HOUSING STATISTICS, Summary Tape File 1C; and then citing 2 BUREAU OF CENSUS, UNTIED STATES DEP'T OF COMMERCE, HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970, at 646 (1975)).

45. *Id.*

46. *Id.* at 60–61.

47. *Id.*

48. *Id.* at 61.

49. *Id.*

50. *Id.* The Federal Housing Administration was created after Congress passed and President Franklin Roosevelt signed the Wagner–Steagall Housing Act into law. *FDR and Housing Legislation: 75th Anniversary of the Wagner–Steagall Housing Act of 1937*, NAT'L ARCHIVES: FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBR. & MUSEUM, https://www.fdrlibrary.org/housing [https://perma.cc/P84Z-NM6J].

51. Smith, *supra* note 44, at 61.

52. *See* U.S. CENSUS BUREAU, UNITED STATES, https://data.census.gov/cedsci/profile?q=United%20States&g=0100000US [https://perma.cc/96XD-Q9A2].

53. Carl Romer, Andre M. Perry & Kristen Broady, *The Coming Eviction Crisis Will Hit Black Communities the Hardest*, BROOKINGS (Aug. 2, 2021), https://www.brookings.edu/research/the-coming-eviction-crisis-will-hit-black-communities-the-hardest [https://perma.cc/KEA4-V4LG].

54. *Id.*

"[e]victions cause psychological trauma, increase the likelihood of suicide, increase emergency room usage, decrease credit access, and lead to homelessness."[55] Numerous studies have examined the direct relationship between evictions and communities of color.[56] In addition to evictions in the traditional sense, informal evictions have been utilized at a greater rate since the beginning of the COVID-19 pandemic.[57] An informal eviction shares the same goal as a traditional eviction—to remove a tenant from their dwelling—

55. *Id.*; *see* John Eric Humphries, Nicholas Mader, Daniel Tannenbaum & Winnie van Dijk, *Does Eviction Cause Poverty? Quasi-Experimental Evidence from Cook County, IL* 241–42 (Nat'l Bureau of Econ. Rsch., Working Paper No. 2186, 2019); NAT'L L. CTR. ON HOMELESSNESS & POVERTY, PROTECT TENANTS, PREVENT HOMELESSNESS 16–18 (2018), https://homelesslaw.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf [https://perma.cc/RQ25-FFRX].

56. *See generally* MYCHAL COHEN & ELEANOR NOBLE, URB. INST., PREVENTING EVICTION FILINGS: PILOTING A PRE-FILING EVICTION-PREVENTION CLINIC 2 (2020), https://www.urban.org/sites/default/files/publication/102297/preventing-eviction-filings-piloting-a-pre-filing-eviction-prevention-clinic.pdf [https://perma.cc/KY7A-KMTX] (finding that approximately two thirds of St. Paul and Minneapolis, Minnesota landlords use past evictions as a screening tool, a practice that has a disproportionate negative effect on "Black women . . . and Latinx households living in majority-white neighborhoods"); Dan Immergluck, Jeff Ernsthausen, Stephanie Earl & Allison Powell, *Evictions, Large Owners, and Serial Filings: Findings from Atlanta*, 35 HOUS. STUD. 903, 920 (2019) (finding that neighborhood race is a strong predictor of tenant displacement in Atlanta, Georgia and finding that Black neighborhoods in Atlanta have significantly higher nonserial eviction filing rates, which were the eviction filings most likely to result in eviction); Michael C. Lens, Kyle Nelson, Ashley Gromis & Yiwen Kuai, *The Neighborhood Context of Eviction in Southern California*, 19 CITY & CMTY., 912, 924–25 (2020) (finding "court-based eviction filings are less likely to occur in neighborhoods with rising rent or income levels than in neighborhoods with higher poverty rates or shares of African American individuals"); ELORA RAYMOND, RICHARD DUCKWORTH, BEN MILLER, MICHAEL LUCAS & SHIRAJ POKHAREL, FED. RSRV. BANK OF ATLANTA, CMTY. & ECON. DEV. DEP'T, CORPORATE LANDLORDS, INSTITUTIONAL INVESTORS, AND DISPLACEMENT: EVICTION RATES IN SINGLE-FAMILY RENTALS 19 (2016), https://www.atlantafed.org/-/media/documents/community-development/publications/discussion-papers/2016/04-corporate-landlords-institutional-investors-and-displacement-2016-12-21.pdf [https://perma.cc/P52A-VF6A] (finding the Atlanta area to be "spatially concentrated in predominately black census tracts"); LAWYERS' COMM. FOR BETTER HOUS., OPENING THE DOOR ON CHICAGO EVICTIONS: CHICAGO'S ONGOING CRISIS 2 (2019), https://eviction.lcbh.org/reports/chicagos-ongoing-crisis [https://perma.cc/R5WW-JJWK] (finding that neighborhood race is a strong indicator of eviction filing rates in Chicago, Illinois); Matthew Desmond, Weihua An, Richelle Winkler & Thomas Ferriss, *Evicting Children*, 92 SOC. FORCES 303, 312, 319 (2013) (finding that children are a risk factor for eviction and that Black households with children are disproportionately more likely to face eviction than households of other races); Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOCIO. 88, 91 (2012) (describing the prevalence of eviction in Milwaukee's Black neighborhoods, with a disproportionate impact on Black women); Naomi Zewde, Erica Eliason, Heidi Allen & Tal Gross, *The Effects of the ACA Medicaid Expansion on Nationwide Home Evictions and Eviction-Court Initiations: United States, 2000–2016*, 109 AM. J. PUB. HEALTH 1379, 1382 (2019) (finding that although evictions decreased after Medicaid expansion, there was a positive correlation between an increase in Black residents and an increase in evictions filed). *But see generally* Matthew Desmond & Carl Gershenson, *Who Gets Evicted? Assessing Individual, Neighborhood, and Network Factors*, 62 SOC. SCI. RSCH. 362, 363 (2017) (finding that "in racially homogeneous neighborhoods . . . race . . . may do little to predict why some renters are evicted and others are not" and hypothesizing that the same would not be true in racially diverse neighborhoods).

57. Romer et al., *supra* note 53.

but operates differently: A landlord performing an informal eviction will use out-of-court and indirect methods to frustrate, weaken, and suppress their tenant's desire to continue renting.[58] The "methods include [but are not limited to] offering tenants a buy-out, failing to fix maintenance requests, and performing illegal lockouts."[59] Informal evictions are underrepresented in the data, likely "because renters know that the courts are not in their favor and are likely to leave before formal evictions are executed."[60]

Given the "hurdles [that] unrepresented litigants" face and "the orientation of the housing courts, . . . unrepresented tenants lose swiftly regardless of the landlord's representation."[61] The fact remains, however, "that not just any representative will suffice."[62] Adequate representation requires a certain skill threshold; while "the success rate of skilled lay advocates can rival that of skilled attorneys in certain settings," landlord-tenant disputes are not one of those settings.[63] Since "[t]he importance of skilled advocates increases relative to the power stacked against the unrepresented litigants," it follows that skilled attorneys, with knowledge of landlord tenant law, "will be the most effective."[64] Attorneys with limited or no knowledge of landlord tenant law, law students, and pro bono legal organizations that operate outside the scope of landlord-tenant law will be "less effective."[65] As such, strong legal representation is key[66]; still, in most landlord-tenant court disputes, "90% of landlords are represented by an attorney, [and] 90% of tenants are not."[67] As a result, "even when [independent] inspectors find residences to be 'illegal' or 'unfit,' landlords still win 89% of the money held in escrow."[68] The imbalance inherent in the landlord-tenant relationship has been moderated somewhat by both federal and state-level legislation.[69]

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58. *See generally id.* (describing an informal eviction).

59. *Id.*

60. *Id.*; Daniela Aiello et al., *Eviction Lab Misses the Mark*, SHELTERFORCE (Aug. 22, 2018), https://shelterforce.org/2018/08/22/eviction-lab-misses-the-mark [https://perma.cc/5NWA-N5EH]. *See generally* Taylor Shelton, *Mapping Dispossession: Eviction, Foreclosure and the Multiple Geographies of Housing Instability in Lexington, Kentucky*, 97 GEOFORUM 281, 290 (2018) (finding in Lexington, Kentucky, "evictions are not only far more common than foreclosures, but also a much more consistent feature of the housing landscape"). S*ee also generally* Russell Engler, *Connecting Self-Representation to Civil* Gideon*: What Existing Data Reveal About When Counsel Is Most Needed*, 37 FORDHAM URB. L.J. 37 (2010) (discussing the positive effect of retaining counsel in proceedings related to housing).

61. Engler, *supra* note 60, at 82.

62. *Id.*

63. *Id.*; *see id.* at 41, 47.

64. *Id.* at 82.

65. *Id.*

66. *Id.*

67. Romer et al., *supra* note 52.

68. *Id.*

69. *See infra* Sections II.C.1, D.2.

1. The Fair Housing Act

A product of the American civil rights movement, "the Civil Rights Act of 1968 represent[ed] the culmination of three years of congressional consideration of housing discrimination legislation."[70] Title VIII of the Civil Rights Act, known as the Fair Housing Act ("FHA"), provides, in pertinent part, that it is unlawful: "To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin."[71]

In addition, the FHA prohibits discrimination based on "race, color, religion, sex, familial status, or national origin" in the "terms, conditions, or privileges of sale or rental of a dwelling"[72]; the "print[ing], or publish[ing], [of] . . . any notice . . . or advertisement" for "the sale or rental of a dwelling that indicates any preference, limitation, or discrimination"[73]; indicating, based on discriminatory reasoning, that a "dwelling is not available for inspection, sale, or rental" when the dwelling is actually available[74]; and other facially discriminatory practices.[75] Shortly after its passage, the FHA was seen as a milestone in civil rights and housing legislation.[76] It did not take long, however, for academics to characterize the FHA as insufficient legislation with a weak enforcement mechanism that gave the American populous a false sense of progress.[77] Despite this, the passage of the FHA marked the first time that federal legislation prohibited racial discrimination within the housing context.[78] Although it is, of course, open for criticism and scholarly debate, the FHA permanently altered the existing landlord-tenant relationship in

70. Robert G. Schwemm, *Discriminatory Effect and the Fair Housing Act*, 54 NOTRE DAME L. REV. 199, 207 (1978).

71. 42 U.S.C. § 3604(a) (2018).

72. *Id.* § 3604(b).

73. *Id.* § 3604(c).

74. *Id.* § 3604(d).

75. *Id.* § 3604(e)–(f).

76. Schwemm, *supra* note 70, at 207.

77. For an in-depth discussion of the FHA, its history, and its effects, see generally Jonathan Zasloff, *The Secret History of the Fair Housing Act*, 53 HARV. J. ON LEGIS. 247 (2016) (a chronological, in-depth history of the FHA) and see also generally Schwemm, *supra* note 70 (describing the history and impact of the FHA). For discussions on the FHA's insufficiency, see Guido Calabresi, *Preface* to ROBERT G. SCHWEMM, THE FAIR HOUSING ACT AFTER TWENTY YEARS 7 (1989); Deborah Kenn, *Institutionalized, Legal Racism: Housing Segregation and Beyond*, 11 B.U. PUB. INT. L.J. 35, 37 (2001); DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 195 (1993) (arguing that the FHA was insufficient in curbing housing segregation).

78. *See generally* Douglas S. Massey, *The Legacy of the 1968 Fair Housing Act*, 30 SOCIO. F. 571 (2015) (discussing the FHA's historical significance).

twentieth century United States, tilting the scales toward tenants, and laid the ground work for future tenant and personal property rights legislation.[79]

2. The Uniform Residential Landlord and Tenant Act

Also a product of the American civil rights movement, the Uniform Residential Landlord and Tenant Act ("URLTA") is sample legislation drafted by the Uniform Law Commission ("ULC") in 1972.[80] As of 2021, the URLTA has been adopted by twenty-six states—including Iowa.[81] Divided into six articles, the "URLTA establishes the landlord and tenant relationship on the basis of contract (rather than property law) and, thus, gives the parties contractual rights and remedies"[82] and sought

> to simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; . . . to encourage landlords and tenants to maintain and improve the quality of housing; and . . . to make uniform the law with respect to the subject of [the URLTA] among those states which enact it.[83]

Following its drafting, the URLTA was deservingly praised for progressing tenants' rights, regulating landlord conduct, and providing uniformity to otherwise inconsistent and conflicting state common law.[84]

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79. Zasloff, *supra* note 77, at 276–77 ("Shortly before the [FHA]'s passage, testing surveys routinely found the incidence of discrimination upwards of ninety percent. By 1977, when HUD did its first national test, it found that the incidence had declined to less than fifty percent and sometimes as low as thirty-three percent—still far too high, but a remarkable drop, and one that belies casual assertions of legal and policy failure. How did it happen? Since we now know that the [FHA] contained within it potentially powerful enforcement provisions, we can attempt to determine its role—if any—in achieving such a remarkable outcome. Perhaps the specter of DOJ enforcement, and a few high profile cases, were enough to change landlord, seller, and broker behavior. Alternatively (or in addition), we might posit that the *social meaning* of housing discrimination changed in the wake of the [FHA]'s passage. Before passage, white sellers, landlords, and brokers faced strong social pressure to discriminate, whether or not they wanted to. The passage of the [FHA] changed the meaning of renting or selling to African-Americans: such actions were no longer treason to the white community, but rather simply law-abiding behavior—particularly important in the turbulent late 1960s and early 1970s. Or perhaps the [FHA] had no effect on the rapid and sharp reduction in discrimination, and it was simply a matter of changing social mores unconnected with legal change." (footnotes omitted)).

80. *Uniform Law Commission's Uniform Residential Landlord-Tenant Act*, NAT'L CTR. FOR HEALTHY HOUS., https://nchh.org/resource-library/Uniform%20Law%20Commission%20-%20URLTA.pdf [https://perma.cc/FF9K-XSDM].

81. REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT, prefatory note at 1 (UNIF. L. COMM'N 2015). Iowa has adopted the URLTA. *See* IOWA CODE § 562A (2022).

82. *Uniform Law Commission's Uniform Residential Landlord-Tenant Act*, *supra* note 80.

83. UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.102(b) (UNIF. L. COMM'N 1972) (amended 1974).

84. *See generally* Brian J. Strum, *Proposed Uniform Residential Landlord and Tenant Act: A Departure from Traditional Concepts*, 8 REAL PROP. PROB. & TR. J. 495 (1973) (discussing the URLTA during its drafting stage).

The URLTA imposes obligations on landlords.[85] Notably, "[a] landlord may not demand or receive [a] security [deposit] . . . in excess of [one] month[s] periodic rent"[86]; a landlord may not withhold a tenant's security deposit at the termination of the tenancy without cause[87]; a landlord must "disclose to the tenant in writing . . . the name and address of (1) the person authorized to manage the premises[,] and (2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process"[88]; a landlord must "deliver possession of the premises to the tenant in compliance with the rental agreement"[89]; and a landlord must maintain the rented premises in a "habitable condition."[90] Additionally, the URLTA severely limits the remedies previously available to landlords.[91] A landlord now has a duty "to mitigate damages in cases of [a] tenant's abandonment."[92] A landlord may only "terminate the rental agreement if the rent is not paid within" the suggested fourteen day period.[93] Exculpatory clauses, or any clause that limits landlord liability, are entirely prohibited.[94] Finally, the URLTA prohibits landlord retaliation in the form of "increasing . . . rent, decreasing services or threatening to bring an action for possession" in response to a tenant "complain[ing] . . . to a governmental agency regarding a building or housing code violation," complaining to their landlord regarding their landlord's "failure to comply with [their] obligations," or joining "a tenants' union or similar organization."[95]

The URLTA also imposes obligations on tenants.[96] A tenant must maintain the rented premises in a habitable condition, to the extent possible as a tenant.[97] Notably, a tenant must keep the rented space "clean and safe"[98]; dispose of trash "in a clean and safe manner"[99]; "not deliberately or negligently

85. UNIF. RESIDENTIAL LANDLORD & TENANT ACT §§ 2.101–.105 (UNIF. L. COMM'N 1972) (amended 1974).

86. *Id.* § 2.101(a).

87. *Id.* § 2.101(b)–(d).

88. *Id.* § 2.102(a).

89. *Id.* § 2.103.

90. *Id.* § 2.104.

91. Strum, *supra* note 84, at 501–03.

92. *Id.* at 501 (citing UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.203(c) (UNIF. L. COMM'N 1972) (amended 1974)).

93. *Id.* at 502 (citing UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.201(b) (UNIF. L. COMM'N 1972) (amended 1974)).

94. *Id.* (citing UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.403(a) (UNIF. L. COMM'N 1972) (amended 1974)).

95. *Id.* at 503 (citing UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 5.101(a) (UNIF. L. COMM'N 1972) (amended 1974)).

96. UNIF. RESIDENTIAL LANDLORD & TENANT ACT §§ 3.101–.104 (UNIF. L. COMM'N 1972) (amended 1974)).

97. *Id.* § 3.101.

98. *Id.* § 3.101(2).

99. *Id.* § 3.101(3).

destroy, . . . damage, . . . or remove any part of the premises or knowingly permit any person to do so"[100]; and conduct themselves and their guests in a way that ensures, to the best of their ability, their "neighbors' peaceful enjoyment of the premises."[101] "A tenant [may] not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises" or conduct other landlord duties[102]; still, a tenant must allow a landlord to "enter the dwelling unit without consent . . . in case of emergency."[103] The URLTA does provide, however, that a landlord has a "right of access" if "the tenant has abandoned or surrendered the premises."[104]

Despite widespread praise, the URLTA still drew criticism during its drafting.[105] The URLTA codified two principles of landlord-tenant common law: "the theory of implied warranty of habitability" and the theory of lease covenants being made dependent on "maintenance of the premises in a habitable condition by the landlord [as] a condition precedent to [a landlord's] recovery for . . . tenant breach."[106] The fact remains, however, that the URLTA failed to codify "the English rule governing the tenant's right to possession at the inception of the tenancy" and failed to provide "fiduciary-type protection of the tenant's security deposit while in the hands of the landlord."[107] Further, at the time of the URLTA's drafting, the "expansion of tenant rights in the courts ha[d] been halting and sporadic."[108]

Unfortunately, the URLTA failed to draft uniform guidelines for many tenant protections available in jurisdictions across the country.[109] How to

100. *Id.* § 3.101(6).

101. *Id.* § 3.101(7).

102. *Id.* § 3.103(a).

103. *Id.* § 3.103(b).

104. *Id.* § 3.103(d)(3). A landlord's right to possession of the leased premises is discussed further elsewhere in the URLTA. *Id.* § 4.207 ("A landlord may not recover or take possession of the dwelling unit by action or otherwise . . . except in [the] case of abandonment, surrender, or as permitted in [the URLTA].").

105. *See, e.g.*, Note, *The Uniform Residential Landlord and Tenant Act: Facilitation of or Impediment to Reform Favorable to the Tenant?*, 15 WM. & MARY L. REV. 845, 916 (1974) (discussing the compromises made in drafting the URLTA and predicting landlord opposition).

106. *Id.* at 916.

107. *Id.* at 917.

108. *Id.* at 916. A few months before the URLTA's drafting (August 1972), the Supreme Court of the United States decided *Lindsey v. Normet*. The Court held, in relevant part:

> We do not denigrate the importance of decent, safe, and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality . . . . Absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships are legislative, not judicial, functions.

Lindsey v. Normet, 405 U.S. 56, 74 (1972).

109. For a detailed list of omitted tenant protections, see Lawrence R. McDonough, *Then and Now: The Uniform Residential Landlord and Tenant Act and the Revised Residential Landlord and Tenant Act—Still Bold and Relevant?*, 35 U. ARK. LITTLE ROCK L. REV. 975, 995–97 (2013).

dispose of or retain possession of a tenant's personal property upon the termination of the tenant's lease or upon the tenant's abandonment was one of them.[110] The ULC's 2015 revision of the URLTA, the Revised Uniform Residential Landlord and Tenant Act ("RURLTA") included novel provisions governing the rights of tenants and the responsibilities of landlords in the handling and disposal of property abandoned by tenants.[111] Within Article X, "[s]ection 1001 provides the general rules for handling the personal property . . . when the property remains on the premises after the lease terminates or the tenant abandons the lease early."[112] Section 1001 strikes a delicate balance between the interests of landlords and tenants: protecting the personal property rights of tenants and providing landlords with "safe harbors" for dealing with their former tenant's personal property, including clear uniform law.[113] Professors Sheldon F. Kurtz and Alice Noble-Allgire have succinctly described Section 1001:

> For the typical case in which personal property is left behind after a lease terminates or a tenant abandons the lease early, section 1001 provides that the landlord shall give the tenant notice of the right to retrieve the personal property and shall temporarily provide safekeeping of the property in the dwelling unit or another location. The tenant must contact the landlord within eight days after the notice is given and, unless the parties otherwise agree, has five days after making contact to retrieve the property. If the tenant retrieves the property, the landlord may require the tenant to pay any costs of moving, storing, and inventorying the property.
>
> If the tenant fails to contact the landlord or retrieve the property as RURLTA provides, the property is deemed abandoned. Disposition then depends upon whether a sale is economically feasible. If a sale is feasible, RURLTA requires the landlord to sell the property and treat the proceeds as part of the tenant's security deposit, but the landlord may deduct the landlord's costs of moving, storage, inventorying, and sale. If a sale is not economically feasible, the landlord may dispose of the property in any manner the landlord considers appropriate. Notably, RURLTA authorizes the landlord to dispose of the property by following these procedures independent of the court system. By comparison, two states would require

110. *Id.* at 996.

111. John Ahlen & Lynn Foster, *Uniform Residential Landlord-Tenant Law: Changes on the Way*, PROB. & PROP., July/Aug. 2014, at 21, 22–23; *see* Sheldon F. Kurtz & Alice Noble-Allgire, *The Revised Uniform Residential Landlord and Tenant Act: A Perspective from the Reporters*, 52 REAL PROP. TR. & EST. L.J. 417, 487–96 (2018) (discussing Article X of RURLTA).

112. Kurtz & Noble-Allgire, *supra* note 111, at 487 (citing REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1001 (UNIF. L. COMM'N 2015)).

113. *Id.* (citing REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT §§ 1001–1003 (UNIF. L. COMM'N 2015)).

landlords to obtain a court order or judgment authorizing removal of the personal property.[114]

The RURLTA was approved by the ULC in 2015.[115] Although the Iowa General Assembly adopted the 1974 URLTA, they have yet to consider the RURLTA.[116] As of 2022, the act has yet to be adopted by any state.

D. Survey of State-Level Tenant-Abandoned Personal Property Law

Each state's approach to tenant-abandoned personal property law falls within one of three categories: (1) states that have enacted legislation that favors landlords; (2) states that have enacted legislation that favors tenants; and (3) states that have not enacted legislation on the subject. The states that do not have current legislation regulating the abandoned personal property of tenants are Colorado, the District of Columbia, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, and Washington.[117]

1. States that Favor Landlords

State statutes that favor landlords are characterized by (1) failing to define, or provide criteria for determining, abandonment[118]; (2) the requirement of limited or no notice to the tenant before the disposal or the sale of personal property[119]; (3) no reimbursement of the proceeds from the sale of the abandoned personal property to the tenant[120]; (4) a short period of time between a tenant's departure from the leased premises and when their personal

114. *Id.* at 488–92 (footnotes omitted).

115. REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT, prefatory note at 1 (UNIF. L. COMM'N 2015).

116. IOWA CODE § 562A.

117. *See generally* NATIONAL SURVEY OF STATE LAWS 809–32 (Richard A. Leiter ed., 8th ed. 2019) (listing each state's abandoned tenant property statute, if any).

118. *See, e.g.*, CAL. CIV. CODE §§ 1980–1991 (West 2010 & Supp. 2022); DEL. CODE ANN. tit. 25,
§ 5507(e) (West 2014); NEB. REV. STAT. ANN. §§ 69-2301–69-2314 (West 2009 & Supp. 2021); TEX. PROP. CODE ANN. § 54.044 (West 2014); UTAH CODE ANN. § 78B-6-816 (West 2022); WYO. STAT. ANN. § 1-21-1211 (2021).

119. *See, e.g.*, ARK. CODE. ANN. § 18-16-108 (2015); DEL. CODE ANN. tit. 25, § 5507(e); N.D. CENT. CODE § 47-16-30.1 (2014); S.C. CODE ANN. § 27-40-730 (2007); WYO. STAT. ANN. § 1-21-1211.

120. *See, e.g.*, ALASKA STAT. § 34.03.260 (2020); ARK. CODE. ANN. § 18-16-108; CAL. CIV. CODE §§ 1980–1991; CONN. GEN. STAT. § 47a-11b (2017); DEL. CODE ANN. tit. 25, § 5507(e); KAN. STAT. ANN. § 58-2565 (2005); ME. REV. STAT. ANN. tit. 14, § 6013 (West Supp. 2022); MO. REV. STAT. § 441.065 (2000); NEB. REV. STAT. ANN. § 69-2308(4); N.D. CENT. CODE § 47-16-30.1; OKLA. STAT. ANN. tit. 41, § 130 (West 2022); S.C. CODE ANN. § 27-40-730; S.D. CODIFIED LAWS § 43-32-26 (Supp. 2021); TENN. CODE ANN. § 66-28-405 (2015); TEX. PROP. CODE ANN. § 54.044; UTAH CODE ANN. § 78B-6-816; VA. CODE ANN. § 55.1-1254 (2019); WYO. STAT. ANN. § 1-21-1211.

property is considered abandoned[121]; and (5) a short period of time between when the tenant's personal property is considered abandoned and when title to the property passes to the landlord.[122] The states that favor landlords are: Alaska,[123] Arkansas,[124] California,[125] Connecticut,[126] Delaware,[127] Kansas,[128] Maine,[129] Missouri,[130] Montana,[131] Nebraska,[132] North Carolina,[133] North Dakota,[134] Oklahoma,[135] Oregon,[136] South Carolina,[137] South Dakota,[138]

121. *See, e.g.*, ALASKA STAT. § 34.03.260(a) (fifteen days); ARK. CODE. ANN. § 18-16-108(a) (immediately); CONN. GEN. STAT. § 47a-11b(b) (thirty days); KAN. STAT. ANN. § 58-2565(b) (ten days); ME. REV. STAT. ANN. tit. 14, § 6013(2) (7 days); MO. REV. STAT. § 441.065(2) (30 days); MONT. CODE ANN. § 70-24-430(3) (West Supp. 2021) (ten days); NEB. REV. STAT. ANN. § 69-2303(2)(c) (seven or fourteen days); N.C. GEN. STAT. § 42-25.9(d) (2021) (thirty days); N.D. CENT. CODE § 47-16-30.1 (twenty-eight days); OKLA. STAT. ANN. tit. 41, § 130(B) (thirty days); OR. REV. STAT. § 90.425(6) (2021) (varies between type of personal property, but between five and forty-five days); S.C. CODE ANN. § 27-40-730(a) (fifteen days); TENN. CODE ANN. § 66-28-405(a)–(b) (fifteen or thirty days); TEX. PROP. CODE ANN. § 54.044(d) (immediately); UTAH CODE ANN. § 78B-6-816(2)(a)–(b) (fifteen days); VA. CODE ANN. § 55.1-1254 (immediately); WYO. STAT. ANN. § 1-21-1211(a) (immediately).

122. *See, e.g.*, ALASKA STAT. § 34.03.260(a) (immediately); ARK. CODE. ANN. § 18-16-108(a) (immediately); CONN. GEN. STAT. § 47a-11b(d) (immediately); KAN. STAT. ANN. § 58-2565(d) (thirty days); ME. REV. STAT. ANN. tit. 14, § 6013(3) (fourteen days); MO. REV. STAT. § 441.065(4) (immediately); MONT. CODE ANN. § 70-24-430(3) (immediately); NEB. REV. STAT. ANN. § 69-2303 (immediately); N.C. GEN. STAT. § 42-25.9(g) (seven days); N.D. CENT. CODE § 47-16-30.1 (immediately); OKLA. STAT. ANN. tit. 41, § 130(B) (immediately); OR. REV. STAT. § 90.425(6) (immediately); S.C. CODE ANN. § 27-40-730(d) (immediately); TENN. CODE ANN. § 66-28-405(c) (thirty days); TEX. PROP. CODE ANN. § 54.044(d) (immediately); UTAH CODE ANN. § 78B-6-816(2)(a)–(b) (immediately); VA. CODE ANN. § 55.1-1254 (one day); WYO. STAT. ANN. § 1-21-1211(a) (immediately).

123. ALASKA STAT. § 34.03.260.

124. ARK. CODE. ANN. § 18-16-108.

125. CAL. CIV. CODE §§ 1980–1991.

126. CONN. GEN. STAT. § 47a-11b.

127. DEL. CODE ANN. tit. 25, § 5507(e).

128. KAN. STAT. ANN. § 58-2565.

129. ME. REV. STAT. ANN. tit. 14, § 6013.

130. MO. REV. STAT. § 441.065.

131. MONT. CODE ANN. § 70-24-430.

132. NEB. REV. STAT. ANN. §§ 69-2301–69-2314.

133. N.C. GEN. STAT. § 42-25.9.

134. N.D. CENT. CODE § 47-16-30.1.

135. OKLA. STAT. ANN. tit. 41, § 130.

136. OR. REV. STAT. § 90.425.

137. S.C. CODE ANN. § 27-40-730.

138. S.D. CODIFIED LAWS §§ 43-32-25–42-32-26.

Tennessee,[139] Texas,[140] Utah,[141] Virginia,[142] Wisconsin,[143] and Wyoming.[144] This Section surveys six states: Arkansas, Montana, North Carolina, North Dakota, Texas, and Wisconsin. These six states are representative of the category of states with statutes favoring landlords in landlord-tenant jurisprudence.

i. Arkansas

In Arkansas, all property left in or around the leased premises at the termination of the lease is considered abandoned and may be disposed of by the landlord without notice or the passing of a waiting period.[145] Arkansas' statute "does not require intent to abandon" personal property.[146] Instead, the termination of the lease is sufficient to establish abandonment.[147] This strict standard has led to several cases where tenants have demonstrated intent to retrieve personal property only to lose title of the personal property to their former landlord.[148]

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139. TENN. CODE ANN. § 66-28-405.

140. TEX. PROP. CODE ANN. § 54.044.

141. UTAH CODE ANN. § 78B-6-816.

142. VA. CODE ANN. § 55.1-1254.

143. WIS. STAT. § 704.05 (2019–2020).

144. WYO. STAT. ANN. § 1-21-1211.

145. ARK. CODE. ANN. § 18-16-108 ("(a) Upon the voluntary or involuntary termination of any lease agreement, all property left in and about the premises by the lessee shall be considered abandoned and may be disposed of by the lessor as the lessor shall see fit without recourse by the lessee. (b) all property placed on the premises by the tenant or lessee is subject to a lien in favor of the lessor for the payment of all sums agreed to be paid by the lessee.").

146. *See* Dole Air, Inc. v. City of Texarkana, No. 10-cv-04147, 2012 WL 1207384, at *5 (W.D. Ark. Apr. 11, 2012).

147. *See* Omni Holding & Dev. Corp. v. C.A.G. Invs., Inc., 258 S.W.3d 374, 381 (Ark. 2007).

148. *See* Derrick v. Haynie, 522 S.W.3d 831, 834 (Ark. Ct. App. 2017) (holding that a landlord who terminated a commercial lease with one month's notice had the right to dispose of the property left by his tenant at the expiration of the lease). The court noted that the tenant operated an antique business in the leased space, where she held inventory valued at approximately $261,000, and intended to retrieve her inventory but could not because she was feeling unwell between the time that she received the notice and when the lease expired. *Id.* at 832–33. The landlord presented no evidence that her tenant intended to abandon her personal property, and according to the statute, she did not need to: the landlord only needed to establish that a lease existed, that the lease was terminated, and that the tenant had left personal property at the expiration of the lease. *Id.* at 834; s*ee also* Harris v. Whipple, 974 S.W.2d 482, 483 (Ark. Ct. App. 1998) (holding that a landlord who changed the locks on a residential trailer after their tenant fell one month behind on rent payments had come into possession of the tenant's personal property left behind in the trailer). At the time the landlord changed the trailer's locks, the tenant was in the process of moving out and had left a "new washer, dryer, and [the tenant's] children's clothes." *Id.* at 482. The court reasoned that because there was no proof that the tenant "intended to remain in the trailer," and the tenant "did not give notice to [the landlord] that she was moving," the tenant's actions implied she was "voluntar[ily] or involuntary[ily] terminat[ing]" the lease agreement. *Id.* at 483. The court emphasized that the Arkansas "legislature intended mandatory compliance with the statute unless such an interpretation would lead to an absurdity." *Id.* (first citing Campell v. State, 846 S.W.2d 639 (Ark. 1993); and then

ii. Montana

In Montana, a tenancy terminated by court order results in all personal property within the leased premises being abandoned.[149] If a tenancy terminates in a way other than a court order, the landlord must present "clear and convincing evidence" that the tenant has abandoned the personal property and must wait forty-eight hours after receiving that evidence to remove the then-abandoned personal property.[150] Abandonment, in Montana, requires both "'concurrence of act and intent,' wherein the act is 'the relinquishment of possession and the intent is a manifestation not to resume beneficial use of [the property].'"[151] Intent may be presumed,[152] and when express intent is missing, "intent not to resume beneficial use may be inferred by the acts of the owner."[153] The statute has been applied inconsistently.[154]

iii. North Carolina

In North Carolina, personal property is considered "abandoned if the landlord finds evidence that clearly shows the premises has been voluntarily vacated," and abandonment can be presumed ten days after a landlord conspicuously posts "a notice of suspected abandonment" inside and outside

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citing Loyd v. Knight, 705 S.W.2d 393 (Ark. 1986)). Still, the court built its reasoning on the assumption that by failing to notify her landlord that she was in the process of moving, the tenant intended to signal that she was abandoning her residence and the personal property within it. *Id.*

149. MONT. CODE ANN. § 70-24-430(1)(a) ("If a tenancy terminates by court order, the personal property is considered abandoned and the landlord may immediately dispose of the personal property as allowed by law.").

150. *Id.* § 70-24-430(1)(b) ("If a tenancy terminates in any manner other than by court order and the landlord has clear and convincing evidence that the tenant has abandoned all personal property that the tenant has left on the premises and a period of time of at least 48 hours has elapsed since the landlord obtained that evidence, the landlord may immediately remove the abandoned property from the premises and immediately dispose of any trash or personal property that is hazardous, perishable, or valueless.").

151. Milanovich v. Dwyer, No. 02-347, 2004 WL 785462, at *3 (Mont. Apr. 13, 2004) (alteration in original) (quoting Shammel v. Vogl, 396 P.2d 103, 106 (Mont. 1964)).

152. *Id.* at *5–6 (Leaphart, J., dissenting) ("Although noting a lack of proof that O'Brien received either of the two notices, the District Court concluded that he 'ignored' the notices. He cannot be said to have 'ignored' notices which he may not have received.").

153. *Id.* at *3 (majority opinion) (citing Hawkins v. Mahoney, 990 P.2d 776, 780 (Mont. 1999)).

154. *Compare* Napier v. Adkison, 678 P.2d 1143, 1145–46 (Mont. 1984) (holding that intent to abandon and an absolute relinquishment were established after tenants missed a rental payment, rarely were in their leased space, and left their dogs unattended in the leased space), *with* Whalen v. Taylor, 925 P.2d 462, 466 (Mont. 1996) (holding that a landlord failed to establish their tenant's "absolute relinquishment" of possession because the tenant had left possessions in the apartment, contacted the landlord about their late rental payment, and paid the late rent). *See also generally Milanovich*, 2004 WL 785462, at *3–5 (holding that a tenant who had approximately $200,000 of dental equipment left in the leased space, was attempting to pay late rent, and negotiated with the new tenant to purchase the dental equipment had established both the act and intent requirements necessary to constitute abandonment).

of the leased premises and receives no response.[155] If a tenant abandons personal property in a "demised premise[]" with a total value of $750 or less, their landlord may deliver the property to a nonprofit organization that habitually handles donated goods on the condition that the nonprofit "agree[] to identify and separately store the property for [thirty] days and to" allow the tenant to retrieve the property, free of charge, within thirty days of the property being in their possession.[156] Alternatively, a landlord may execute a writ of possession after abandonment is suspected and must wait seven days to dispose of, sell, or keep personal property with a value above $500[157] and must wait five days to dispose of, sell, or keep personal property with a value below $500.[158]

iv. North Dakota

In North Dakota, personal property left by a tenant with an approximate total value of $2,500 or less may be disposed of without notice twenty-eight days after the landlord receives "notice that the [tenant] has vacated the premises or twenty-eight . . . days after it reasonably appears to the [landlord] that the [tenant] has vacated the premises."[159] The landlord is entitled to any proceeds from the sale of the personal property.[160]

v. Texas

In Texas, all personal property remaining in the leased premises after the tenant has abandoned may be seized by the landlord and placed into their

155. N.C. GEN. STAT. § 42-25.9(e); *see* Heaton-Sides v. Snipes, 755 S.E.2d 648, 650–52 (N.C. Ct. App. 2014) (affirming the trial court's decision that a tenant who failed to "inform anyone that she wanted to retrieve additional personal property from the residence" clearly establishes that the premises had been vacated and that the personal property had been abandoned); *see also* Hall-Alston v. Smith, No. COA01-1545, 2002 WL 31306570, at *3 (N.C. Ct. App. Oct. 15, 2002) (holding that because the tenant and landlord had not established a written lease, the landlord was not bound by the state abandoned property statute); Echols v. Branch Banking and Trust, No. 14-cv-40, 2015 WL 5725521, at *2, *5 (E.D.N.C. Sept. 30, 2015) (holding that the burden of proof to establish inadequate notice is on the tenant).

156. N.C. GEN. STAT. § 42-25.9(d) ("If any tenant abandons personal property of seven hundred fifty dollar ($750.00) value or less in the demised premises . . . the landlord may . . . deliver the property into the custody of a nonprofit organization regularly providing free or at a nominal price clothing and household furnishings to people in need, upon that organization agreeing to identify and separately store the property for 30 days and to release the property to the tenant at no charge within the 30-day period.").

157. *Id.* § 42-25.9(g) ("Seven days after being placed in lawful possession by execution of a writ of possession, a landlord may dispose of personal property remaining on the premises . . . .").

158. *Id.* § 42-25.9(h) ("If the total value of all property remaining on the premises at the time of execution of a writ of possession in an action for summary ejectment is less than five hundred dollars ($500.00), the property shall be deemed abandoned five days after the time of execution, and the landlord may throw away or dispose of the property.").

159. N.D. CENT. CODE § 47-16-30.1.

160. *Id.* § 47-16-30.1 ("The lessor is entitled to the proceeds from the sale of the property.").

possession.[161] Abandonment is not defined, and there is no waiting period or notice requirement.[162]

vi. Wisconsin

In Wisconsin, a "landlord may presume, in the absence of a written agreement between the landlord and the tenant to the contrary, that the tenant has abandoned the personal property" at the tenant's departure from the premises.[163] The landlord may dispose of the tenant's abandoned property in the way that they see fit, apart from medical items, which must be held for seven days before disposal.[164] "If the landlord does not intend to store personal property left behind by a tenant," the landlord must provide written notice to the tenant at the time that the tenant and landlord enter into a lease agreement.[165] The statute has often been interpreted and applied in the light most favorable of the landlord.[166]

2. States That Favor Tenants

State statutes that favor tenants are characterized by (1) clear definitions of, or criteria for, defining abandonment[167]; (2) the requirement of fair and adequate written notice to the tenant before the disposal or the sale of personal property[168]; (3) reimbursement of the proceeds from the sale of the abandoned personal property to the tenant[169]; (4) a long period of time between a tenant's departure from the leased premises and when their personal property is considered abandoned[170]; and (5) a long period of time

161. TEX. PROP. CODE ANN. § 54.044(d) ("If the tenant has abandoned the premises, the landlord or the landlord's agent may remove its contents.").

162. *Id.*

163. WIS. STAT. § 704.05(5)(a)(1).

164. *Id.* §§ 704.05(5)(a)(1)–(2).

165. *Id.* § 704.05(5)(b)(2)(bf).

166. *See* Reed v. Rossa, No. 2013AP1043, 2014 WL 463551, at *1 (Wis. Ct. App. Feb. 6, 2014) (affirming lower court's judgment on the grounds that appellant-tenant failed to present a complete record on appeal); *see also* Markworth v. McMasters, No. 2012AP1387, 2013 WL 3924316, at *4 (Wis. Ct. App. July 31, 2013) (finding no clear error in circuit court's reasoning despite an inconsistent factual record).

167. *See, e.g.*, ALA. CODE § 35-12A-8 (2014); ARIZ. REV. STAT. ANN. § 33-1370 (Supp. 2021); IND. CODE ANN. § 32-31-4-2 (West 2013); NEV. REV. STAT. § 118A.450 (2021); N.J. STAT. ANN. § 2A:18-72 (West 2015); VT. STAT. ANN. tit. 9, § 4462 (2020); W. VA. CODE § 37-6-6 (2011).

168. *See, e.g.*, ALA. CODE § 35-12A-8; ARIZ. REV. STAT. ANN. § 33-1370(A)–(C), (J)(1); FLA. STAT. §§ 715.105–.106 (2021); IND. CODE ANN. § 32-31-4-3(a); MINN. STAT. § 504B.271, subd. 1(b)–(c), (2018); NEV. REV. STAT. § 118A.460(b) (2021); N.J. STAT. ANN. §§ 2A:18-73, 2A:18-74; VT. STAT. ANN. tit. 9, § 4462(c)(1), (d); W. VA. CODE § 37-6-6.

169. *See, e.g.*, ALA. CODE § 35-12A-11(c); ARIZ. REV. STAT. ANN. § 33-1370(E); FLA. STAT. § 715.109(4); MINN. STAT. § 504B.271, subdiv. 1(c); N.J. STAT. ANN. § 2A:18-80.

170. *See, e.g.*, ALA. CODE § 35-12A-8(c) (forty-five days); N.J. STAT. ANN. § 2A:18-74(a) (thirty or seventy-five days); VT. STAT. ANN. tit. 9, § 4462(c)(1) (sixty days); W. VA. CODE § 37-6-6(d) (thirty or sixty days).

between when the tenant's personal property is considered abandoned and when title to the property passes to the landlord.[171] The states that favor tenants are: Alabama,[172] Arizona,[173] Florida,[174] Indiana,[175] Minnesota,[176] Nevada,[177] New Jersey,[178] Vermont,[179] and West Virginia.[180] This subsection surveys four states: Arizona, Minnesota, New Jersey, and Vermont. The four states are representative of the category of states with laws favoring tenants in landlord-tenant jurisprudence.

i. Arizona

In Arizona, abandonment may be established either by "[t]he absence of the tenant from the dwelling unit, without notice to the landlord for at least seven days" or "[t]he absence of the tenant for at least five days, if the rent for the dwelling unit is . . . unpaid for five days and none of the tenant's personal property is in the dwelling unit."[181] After abandonment is established, the landlord must "send the tenant a notice of abandonment by certified mail . . . to the tenant's last known address," or any alternative addresses.[182] The landlord must "also post a notice of abandonment on the door to the dwelling unit or any other conspicuous place on the property for five days."[183] After those five days have passed, "the landlord may retake . . . and rerent the dwelling unit" if none of the tenant's "personal property remains in the dwelling unit."[184] The landlord has a responsibility to "make reasonable efforts to rent the dwelling unit" and mitigate damages.[185]

After retaking "possession of the dwelling unit, . . . if the tenant's personal property remains in the dwelling unit, the landlord shall prepare an inventory and notify the tenant of the location and cost of storage of the personal property."[186] The landlord must then "hold the tenant's personal property for" fourteen days, using reasonable care in transporting and storing "the

171. *See, e.g.*, ALA. CODE § 35-12A-8(a) (forty-five days); IND. CODE ANN. § 32-31-4-5 (ninety days); MINN. STAT. § 504B.271, subdiv. 1(b) (twenty-eight days); NEV. REV. STAT. § 118A.460(1)(a) (thirty days).

172. ALA. CODE § 35-12A-8.

173. ARIZ. REV. STAT ANN. § 33-1370.

174. FLA. STAT. §§ 715.10–.111.

175. IND. CODE ANN. §§ 32-31-4-1, 32-31-4-5.

176. MINN. STAT. § 504B.271.

177. NEV. REV. STAT. § 118A.460.

178. N.J. STAT. ANN. §§ 2A:18-72–:18-84.

179. VT. STAT. ANN. tit. 9, § 4462.

180. W. VA. CODE § 37-6-6.

181. ARIZ. REV. STAT. ANN. § 33-1370(J).

182. *Id.* § 33-1370(A).

183. *Id.*

184. *Id.* § 33-1370(B).

185. *Id.* § 33-1370(C); Dushoff v. Phoenix Co., 528 P.2d 637, 641 (Ariz. Ct. App. 1974).

186. ARIZ. REV. STAT. ANN. § 33-1370(D).

tenant's personal property."[187] At the expiration of fourteen days, the landlord may either: (1) "donate the personal property to a qualifying charitable organization"; (2) "sell the property," retaining "the proceeds and apply[ing] them toward the tenant's outstanding rent or other costs . . . and excess proceeds shall be mailed to the tenant at the tenant's last known address"; or (3) "destroy or . . . dispose of some or all of the property if the landlord" determines that the property is not worth "the cost of moving and storing the property."[188] Further, "[i]f the tenant notifies the landlord in writing" before the landlord donates, sells, disposes of, or destroys the personal property, the tenant has a statutorily protected right to claim the property within five days.[189] Failure "to surrender possession of the personal property to the tenant" allows the tenant to sue for recovery of "the possessions or an amount equal to the damages determined by [a] court."[190]

ii. Minnesota

In Minnesota, a landlord may take temporary possession of personal property left behind by a tenant but may only dispose of the property twenty-eight days following "actual notice of the abandonment, or [twenty-eight] days after it reasonably appears to the landlord that the tenant has abandoned the premises, whichever occurs last."[191] Although the landlord has temporary possession of the property, they must "store and care for the property."[192] The landlord must "make reasonable efforts to notify the tenant of the sale at least [fourteen] days prior to the sale, by" either personal delivery or certified mail to the tenant's last known address and by posting a written "notice of the sale in a conspicuous place on the premises at least [fourteen days] prior to the sale."[193] The statute explicitly provides a tenant the right to sue their landlord for punitive damages.[194]

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187. *Id.* § 33-1370(F).

188. *Id.*

189. *Id.* § 33-1370(H).

190. *Id.*

191. MINN. STAT. § 504B.271, subdiv. 1(b).

192. *Id.* § 504B.271, subdiv. 1(a); *see* Bass v. Equity Residential Holdings, LLC, 849 N.W.2d 87, 89, 93 (Minn. Ct. App. 2014) (holding that a landlord failed to adequately store and care for their tenant's personal property after the landlord removed the tenant's personal property from the tenant's dwelling unit and disposed of it into a snow-filled dumpster where the personal property became soaked beyond repair).

193. MINN. STAT. § 504B.271, subdiv. 1(d).

194. *Id.* § 504B.271, subdiv. 2; *see* Follis v. State Armory Bldg. Comm'n, No. A14-2198, 2015 WL 7940309, at *2–3 (Minn. Ct. App. Dec. 7, 2015) (noting that a claim for damages under the statute requires proof of actual damage). *But see* Carlson v. Masters, No. A14-0714, 2015 WL 404619, at *4 (Minn. Ct. App. Feb. 2, 2015) (affirming the district court's determination that damages were not appropriate because the landlord made the leased premises available to the tenant for the retrieval of the tenant's property).

iii. New Jersey

In New Jersey, a landlord may dispose of personal property left on the leased premises after providing the tenant with written notice either "by certified mail, return receipt requested or by receipted first class mail addressed to the tenant, at the tenant's last known address . . . and at any alternate . . . addresses known to the landlord, in an envelope endorsed 'Please Forward.'"[195] The landlord must also reasonably believe "that the tenant has left the [personal] property upon the premises with no intention of asserting any further claim to the premises or the [personal] property" and either a "warrant for removal has been" issued and the landlord has regained possession of the leased premises or the tenant was provided with "written notice that he or she is voluntarily relinquishing possession of the premises."[196] After providing adequate notice, a landlord must store all of the tenant's personal property "in a place of safekeeping and shall exercise reasonable care."[197] A tenant may reclaim their personal property by contacting their landlord within the date provided on the notice.[198] Upon retrieval of the personal property, the "tenant [must] reimburse the landlord for the reasonable cost of storage."[199] Personal property "conclusively presumed to be abandoned" may be sold, destroyed, disposed of, or a combination of any of the three.[200] If the personal property is sold, the landlord may use the proceeds to cover "the reasonable costs of notice, storage and sale and any unpaid rent and charges not covered by a security deposit."[201] After accounting for the above listed deductions, "the remaining proceeds" from the sale go to the tenant.[202] If the tenant cannot be located, the proceeds are held, by the Superior Court, for ten years.[203] If at the conclusion of the ten

195. N.J. STAT. ANN. § 2A:18-73; *see* Bernstein v. Shulman, No. DC-19848-08, 2010 WL 4117142, at *15 (N.J. Super. Ct. App. Div. Apr. 1, 2010) (holding, in part, that "written notice by the tenant" is still required even if the tenant informally told the landlords that the tenant was leaving personal property in the unit at departure).

196. N.J. STAT. ANN. § 2A:18-72; *see* Eden Wood Realty, LLC v. Luxury Home 1, Inc., No. A-3385-16T2, 2019 WL 2479376, at *3 (N.J. Super. Ct. App. Div. June 13, 2019) (holding that a landlord who failed to provide written notice of intent to dispose of tenant's personal property was liable for damages arising out of the unlawful disposal of property); *In re* Sussex SkyDive, LLC, No. 14-30236-ABA, 2016 WL 10516018, at *6–7 (Bankr. D.N.J. Apr. 17, 2016) (holding, in part, that a landlord whose tenant left an airplane in a leased hangar "could not reasonably believe that the [tenant] had abandoned the [airplane]" absent written notice).

197. N.J. STAT. ANN. § 2A:18-75.

198. *Id.* § 2A:18-76(a). *See generally* Wall St. Inv. Grp., LLC v. Plevy & Plevy Real Est. Holdings, LLC, No. A-5714-13T3, A-5967-13T3, 2016 WL 4651441 (N.J. Super. Ct. App. Div. Sept. 7, 2016) (addressing dispute over a tenant reclaiming property that their landlord considered to be abandoned).

199. N.J. STAT. ANN. § 2A:18-77.

200. *Id.* § 2A:18-78.

201. *Id.* § 2A:18-80.

202. *Id.*

203. *Id.*

years the tenant has not claimed the proceeds, the proceeds pass to the State of New Jersey.[204]

iv. Vermont

In Vermont, a landlord must satisfy a three-part test to establish tenant abandonment.[205] First, the overall circumstance "would lead a reasonable person to believe that the dwelling unit is no longer occupied as a full-time residence."[206] Second, the tenant is behind on their rental payments.[207] Third, "the landlord has made reasonable efforts" to determine whether the tenant intended to abandon the dwelling unit.[208] Any personal property remaining on the premises after tenant abandonment must be placed "in a safe, dry, secured location," and the landlord must provide the tenant with written notice "mailed to the tenant's last known address" indicating that the landlord will dispose of or destroy the property sixty days after the notice is mailed.[209] A tenant may reclaim their personal property by providing both "a reasonable written description of the property" and "payment of the fair and reasonable cost of storage and any related reasonable expenses incurred by the landlord."[210]

II. THE IOWA GENERAL ASSEMBLY MUST ADDRESS HOW THE STATE'S COMMON LAW HAS FAILED TO ADEQUATELY PROTECT THE PERSONAL PROPERTY RIGHTS OF TENANTS

Iowa's common law fails to adequately protect the personal property rights of tenants. Section III of this Note discusses the evolution and origins of Iowa's tenant personal property caselaw. Section III answers three questions: (1) When has a tenant abandoned their personal property?[211]; (2) When may a landlord enter the premises of abandoned property?[212]; and (3) What must a landlord do with a tenant's abandoned personal property?[213]

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204. *Id.*

205. VT. STAT. ANN. tit. 9, § 4462(a).

206. *Id.* § 4462(a)(1).

207. *Id.* § 4462(a)(2).

208. *Id.* § 4462(a)(3). *See generally* Sawyer v. Robson, 915 A.2d 1298 (Vt. 2006) (holding that although landlords had presented evidence that their tenant no longer occupied the residence as a full time dwelling and that their tenant's rental payments were no longer current, the landlords failed to satisfy the three part test as long as they do not provide evidence that the landlord made reasonable efforts to determine whether the tenant intended to abandon the dwelling).

209. VT. STAT. ANN. tit. 9, § 4462(c)(1). *See generally* Howard v. Mattell, No. 2005-465, 2006 WL 5849679 (Vt. July 1, 2006) (holding that landlords who notified tenant of their intent to dispose of abandoned property and then disposed of abandoned property twenty-four days later failed to provide adequate notice per Vermont's statute, which requires a sixty-day waiting period between notice and disposal).

210. VT. STAT. ANN. tit. 9, §§ 4462(c)(1)(A)–(B).

211. *See infra* Section III.A.

212. *See infra* Section III.B.

213. *See infra* Section III.C.

Built on antiquated precedent and inconsistently applied, Iowa's common law: (1) allows landlords to enter their leased premises immediately upon abandonment, taking possession of the personal property that remains[214]; and (2) has adopted, and erroneously applied, a high threshold for establishing landlord conversion of a tenant's personal property.[215]

A. WHEN A TENANT'S PERSONAL PROPERTY IS ABANDONED

First articulated by the Iowa Supreme Court in *Vawter v. McKissick*, "[a]bandonment as applied to leases involves an absolute relinquishment of premises by a tenant, and consists of acts or omissions and an intent to abandon."[216] In *Vawter*, a landlord sought a judgment against former tenants who abandoned their leased property in the middle of their lease term.[217] Vawter, a landlord, "leased the first floor and basement" of a building to the McKissicks, tenants, for the operation of their drug store.[218] The lease was to begin in November 1960 and terminate in May 1966.[219] At the beginning of 1965, the McKissicks notified Vawter of their intent to sell the drug store by the end of the year.[220] In October 1965, the McKissicks sold their drug store and paid their monthly rent through December 1965.[221] On the last day of December 1965, the McKissicks dropped off the keys to Vawter's building.[222] Vawter immediately filed suit for unpaid rent between January and May 1966.[223] The Iowa Supreme Court sided with the McKissicks, holding that Vawter failed to take reasonable efforts to mitigate her loss from the McKissicks' abandonment.[224]

Relevant here is the Iowa Supreme Court's establishment of a succinct standard for determining abandonment.[225] Composed of three parts, an abandonment, in the context of leased property, must (1) involve "an absolute relinquishment of premises by a tenant"; (2) "consist[] of acts or omissions"; and (3) "consist[] of . . . an intent to abandon."[226] The Washington case that the *Vawter* court sites as authority for the abandonment rule, *Tuschoff v. Westover*, makes an additional claim: "The burden is upon him who sets up

214. *See infra* Section III.B.

215. *See infra* Section III.C.

216. Vawter v. McKissick, 159 N.W.2d 538, 540 (Iowa 1968) (citing Tuschoff v. Westover, 395 P.2d 630, 632 (Wash. 1964)).

217. *Id.* at 540.

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.* at 542–43 (noting the only "affirmative act" Vawter took to sublet the premises was "plac[ing] a 'For Rent' sign in the window" of the premises).

225. *Id.* at 540.

226. *Id.* (citing Tuschoff v. Westover, 395 P.2d 630, 632 (Wash. 1964)).

abandonment to prove the same by clear, unequivocal and decisive evidence."[227] This heightened standard of proof both shifts the burden of establishing abandonment to landlords and also makes establishing abandonment more difficult. The *Vawter* court points to the McKissicks' "clear . . . intention to abandon,"[228] but makes no mention of imposing a burden of proof on Vawter to establish abandonment, nor does the court mention establishing a heightened standard resembling the *Tuschoff* "clear, unequivocal and decisive evidence"[229] standard.

It might be worth focusing on the *Vawter* court's omission of the heightened *Tuschoff* standard. The *Tuschoff* standard is found in the sentence immediately following the portion of *Tuschoff* cited in *Vawter*.[230] It is possible that the omission was intentional, signaling that the Iowa Supreme Court did not want to adopt a heightened standard for establishing abandonment. An intentional omission could also signal that the Iowa Supreme Court only wanted to use *Tuschoff* for its narrow rule on abandonment, and no other rules. It is also possible that the omission was unintentional. The *Vawter* court's omission of the *Tuschoff* standard may have been an unintentional oversight because, in creating the *Tuschoff* standard, the *Tuschoff* court drew upon three cases,[231] each from a foreign jurisdiction—one of which was the Iowa Supreme Court case *Ward v. Incorporated Town of Clover Hills*.[232] In *Ward*, the Iowa Supreme Court held, in part, that "proof of abandonment must be clear"[233] and thus establishing a relatively low abandonment standard. Interestingly, the *Vawter* court failed to cite *Ward*, either refusing to or unintentionally omitting a standard for establishing abandonment within the landlord-tenant context.

Two years after *Vawter*, the Iowa Supreme Court provided a "more comprehensive statement"[234] on abandonment of property in *Read v. Estate of Mincks*. The *Read* court articulated that, "[i]n order to constitute an abandonment[,] . . . there must be an intent to abandon and conduct by which the intention [to abandon] is carried into effect,"[235] or a relinquishment of the premises by the tenant, which would "justify an immediate resumption of possession by the landlord."[236] The *Read* court stated that "abandonment

227. *Tuschoff*, 395 P.2d at 632 (first citing 1 AM. JUR. *Abandonment* § 17; then citing Hoff v. Girdler Corp, 88 P.2d 100 (Colo. 1939); then citing Ward v. Inc. Town of Clover Hills, 38 N.W.2d 109 (Iowa 1949); and then citing McCartney v. McKendrick, 85 So.2d 164 (Miss. 1956)).

228. *Vawter*, 159 N.W.2d at 540.

229. *See supra* note 227 and accompanying text.

230. *See supra* notes 226–27 and accompanying text.

231. *See Hoff*, 88 P.2d at 103; *Ward*, 38 N.W.2d at 112; *McCartney*, 85 So.2d at 169–70.

232. *Ward*, 38 N.W.2d at 112.

233. *Id.*

234. Read v. Estate of Mincks, 176 N.W.2d 192, 194 (Iowa 1970).

235. *Id.* (quoting 51C C.J.S. *Landlord and Tenant* § 125(2)).

236. *Id.*

cannot be inferred unless it can fairly be shown that nonuse[] by the lessee is coupled with an intent to relinquish all rights in the premises,"[237] adding that "[i]n order to constitute an abandonment . . . , there must be a real or symbolic delivery of the possession of the entire property."[238]

Since *Read*, Iowa courts have consistently applied the *Vawter* and *Read* standards, turning to the intent of the abandoning party and relying heavily on the facts of the case at hand. In applying the *Vawter* and *Read* standards, however, Iowa courts have reached inconsistent results, as the following cases illustrate. In *Read*, the Iowa Supreme Court held that the sale of farm equipment by the executor of the estate of a now-deceased tenant does not constitute abandonment because "neither a real nor symbolic intent" to abandon the leased property existed.[239] The *Read* court reasoned that equating the sale of farm equipment to "an abandonment or surrender" would fail to consider the possibility that the executor of the estate of the tenant "could have farmed the leased land by use of rented machinery, under arrangements with a neighboring farmer, or on a custom basis."[240] In the case *In re Estate of Willenborg v. Mayhall*, however, the Iowa Court of Appeals held that a tenant engaged in a farm lease had abandoned the farm property when, upon the death of her husband and upon the suggestion of her mother-in-law (also, her landlord), she moved into town and sublet the farm lease.[241] In *Hallinan v. Westpointe Apartments and Townhomes*, the District Court of Iowa, Polk County, held that not residing in an apartment for approximately a month combined with a failure to make an effort to pay rent constituted an abandonment of an apartment.[242]

Iowa's common law requires a party establishing abandonment to surpass a moderately high threshold. "[P]roof of abandonment must be clear"[243]; a party must demonstrate "an [a]bsolute relinquishment of the premises by a tenant . . . consist[ing] of acts or omissions [a]nd an intent to abandon."[244] Iowa's thorough approach resembles Vermont's statutory three-part test for

237. *Id.*

238. *Id.*

239. *Id.* While the death of a tenant seems like it would constitute an abandonment, the tenant died in the middle of the crop year (between November 1, 1968 and March 1, 1968). *Id.* As a result, "the widow, as sole surviving beneficiary and executor of her deceased husband's estate, claimed a continuing right to possession and occupancy of the premises for the 1969 crop year." *Id.* at 192.

240. *Id.* at 194.

241. *In re* Est. of Willenborg v. Mayhall, No. 02-0659, 2003 WL 190775, at *1–2 (Iowa Ct. App. Jan. 29, 2003).

242. Hallinan v. Westpointe Apartments & Townhomes, No. LACL 116667, 2011 WL 1212925, at *8 (Iowa Dist. Ct. Feb. 25, 2011).

243. Ward v. Inc. Town of Clover Hills, 38 N.W.2d 109, 112 (Iowa 1949).

244. *Est. of Mincks*, 176 N.W.2d at 194 (quoting Vawter v. McKissick, 159 N.W.2d 538, 540 (Iowa 1968)).

establishing abandonment[245]: Abandonment may be established only if: (1) the overall circumstance "would lead a reasonable person to believe that the dwelling unit is no longer occupied as a full-time residence"[246]; (2) the tenant is behind on their rental payments[247]; and (3) "the landlord has made reasonable efforts" to determine whether the tenant intended to abandon the dwelling unit.[248] Vermont's heightened standard provides tenants and their personal property with greater security against an unwanted intrusion by a landlord. Contrasted with the Vermont statute, Wisconsin's statute allows a landlord to "presume, in the absence of a written agreement between the landlord and the tenant to the contrary, that the tenant has abandoned the personal property" at the tenant's departure from the premises.[249] Similarly, North Carolina's statute considers personal property to be "abandoned if the landlord finds evidence that clearly shows the [leased] premises has been voluntarily vacated."[250] Arkansas's statute is even less forgiving: The termination of a lease establishes abandonment and all property left in or around the leased premises at the termination of the lease is considered abandoned regardless of a tenant's contrary intent.[251]

B. When a Landlord May Enter the Premises of Abandoned Property

The issue of when a landlord may enter the premises of property abandoned by their tenant was decided by the Iowa Supreme Court in 1851, as a matter of first impression, in *Packer v. Cockayne*.[252] Cockayne and Packer entered into a written lease where Packer would lease "about twenty-five acres of land for the term of six years" in exchange for the construction of a "fence on three sides of the land," a house, a well, and a one-third share of the crops yielded from the property from the second year onward.[253] During the fourth year of the rental agreement, Packer left the premises.[254] Cockayne filed suit "to recover rent for the use of farming land."[255] The court held "that if Packer abandoned the premises, Cockayne had a right to the possession, and to an action for back rents."[256] The court reasoned that although Packer surrendered the premises, he did not surrender his obligation to pay "due and unpaid"

245. VT. STAT. ANN. tit. 9, § 4462(a).

246. *Id.* § 4462(a)(1).

247. *Id.* § 4462(a)(2).

248. *Id.* § 4462(a)(3).

249. WIS. STAT. § 704.05(5)(a)(1).

250. N.C. GEN. STAT. § 42-25.9(e).

251. ARK. CODE ANN. § 18-16-108(a) (2015); Dole Air, Inc. v. City of Texarkana, No. 10-cv-04147, 2012 WL 1207384, at *5 (W.D. Ark. Apr. 11, 2012); Omni Holding & Dev. Corp. v. C.A.G. Invs., Inc., 258 S.W.3d 374, 381 (Ark. 2007).

252. Packer v. Cockayne, 3 Greene 111, 113 (Iowa 1851).

253. *Id.* at 111–12.

254. *Id.* at 112.

255. *Id.* at 111.

256. *Id.* at 113.

rents.[257] At the time of Packer's abandonment, "400 rails and . . . 100 stakes" were missing from the fence; the court reasoned that Cockayne was owed the value of those rails and stakes.[258] Although *Packer* was decided within the context of the recovery of rent from a crop-share lease, the case's narrow holding has been interpreted broadly in recent years.[259]

Iowa's common law provides limited protection for tenants upon actual or constructive abandonment.[260] Under *Packer*, a landlord who reasonably believes their tenant to have abandoned their leased property may repossess the property.[261] *Packer* is not only a case from 170 years ago that discusses a dispute over a farm lease; it is also the leading Iowa case on when a landlord may enter the premises of abandoned property.[262] Although foundational, *Packer* addresses a specific set of facts and provides a specific holding that has been broadened over the years.[263] Underlying *Packer*'s holding is the theory that, since the abandoned land is cropland, time is of the essence, and allowing a landlord's prompt entry onto and swift repossession of the leased premises is essential.[264] It is difficult to contemplate that *Packer*'s holding, decided in the nineteenth century within the specific context of a crop lease, intended to apply to modern-day residential leases across the state. *Packer*, because of its age, fact pattern, and limited holding, should not govern the conduct of landlords in twenty-first century Iowa.

Since Iowa codified the URLTA, landlords have had the ability to enter their leased property and repossess it under *Packer* after their tenant has been absent for over fourteen days.[265] Although Iowa's statutes provide landlords with the "right to enter their leased premises under certain circumstances," this right does "not supersede the tenant's constitutional right to be free from unreasonable searches."[266] Generally, a landlord's entry into their tenant's dwelling has been held to be an unconstitutional search,[267] but not always.[268]

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257. *Id.*

258. *Id.*

259. *See e.g.*, *In re* Est. of Willenborg v. Mayhall, No. 02-0659, 2003 WL 190775, at *1 (Iowa Ct. App. Jan. 29, 2003) ("Where a lessee abandons the premises, a lessor may take possession at once." (citing *Packer*, 3 Greene at 112)).

260. *See infra* text accompanying notes 261–64.

261. *See Packer*, 3 Greene 112.

262. *See In re Est. of Willenborg*, 2003 WL 190775, at *1 (citing *Packer*, 3 Greene at 112).

263. *See id.*

264. *See Packer*, 3 Greene at 113.

265. IOWA CODE § 562A.29(2) (2021); *see also id.* § 562A.19 (providing additional rules on landlord access to tenants' dwelling units).

266. State v. Lewis, 675 N.W.2d 516, 524 (Iowa 2004) (citing State v. Baker, 441 N.W.2d 388, 392 (Iowa Ct. App. 1989)).

267. *See Lewis*, 675 N.W.2d at 527; *see also Baker*, 441 N.W.2d at 392 (holding that a sheriff's entry into a house "at the request of the property owner" was an unreasonable and unlawful search).

268. *See* State v. Koop, 314 N.W.2d 384, 387 (Iowa 1982); *see also Lewis*, 675 N.W.2d 516, 527–30 (Iowa 2004) (Cady, J., dissenting) (failing to discuss the landlord's role in initiating the

The limited protection offered by Iowa's common law resembles Texas's statute allowing a landlord to seize, without providing notice, all personal property remaining in the leased premises after a tenant has abandoned.[269]

C. WHAT A LANDLORD MUST DO WITH A TENANT'S ABANDONED PERSONAL PROPERTY

Iowa courts have long defined "[c]onversion [as] the act of wrongful control or dominion over another's personal property in denial of or inconsistent with that person's possessory right to the property."[270] In *Kendall/Hunt Pub. Co. v. Rowe*, the Iowa Supreme Court incorporated the Restatement (Second) of Torts and articulated six "factors to be considered in determining the seriousness of the interference"[271]:

(a) the extent and duration of the actor's exercise of dominion or control;

(b) the actor's intent to assert a right in fact inconsistent with the other's right of control;

(c) the actor's good faith;

(d) the extent and duration of the resulting interference with the other's right of control;

(e) the harm done to the chattel;

(f) the inconvenience and expense caused to the other.[272]

Since *Kendall/Hunt*, the Iowa Supreme Court has consistently applied these factors in the light most favorable to defendant-landlords.[273] In *McCray v. Carstensen*, the Iowa Supreme Court held that defendant-landlords who failed to provide notice of tenants' default on rental payments and who changed the locks on the leased premises without notice, disallowing the tenants from retrieving their personal property, were not liable for conversion as they did not "seriously interfere[] with plaintiffs' rights."[274] In *Khan v. Heritage Property Management*, the Iowa Court of Appeals held that a defendant-

search and failing to discuss the tension between a landlord's right to enter their leased property and their tenant's right to be free from an unreasonable search).

269. TEX. PROP. CODE ANN. § 54.044(d).

270. Kendall/Hunt Publ'g Co. v. Rowe, 424 N.W.2d 235, 247 (Iowa 1988) (first citing Welke v. City of Davenport, 309 N.W.2d 450, 451 (Iowa 1981); then citing Jensma v. Allen, 81 N.W.2d 476, 480 (Iowa 1957); and then citing 18 AM. JUR. 2D *Conversion* § 1 (1985)).

271. *Kendall/Hunt*, 424 N.W.2d at 247.

272. *Id.* (citing RESTATEMENT (SECOND) OF TORTS § 222(A)(2) (AM. L. INST. 1965)).

273. *See, e.g.*, McCray v. Carstensen, 492 N.W.2d 444, 445–46 (Iowa Ct. App. 1992); Khan v. Heritage Prop. Mgmt., 584 N.W.2d 725, 730 (Iowa Ct. App. 1998); Nathan Lane Assocs., L.L.P. v. Merchs. Wholesale of Iowa, Inc., 698 N.W.2d 136, 140 (Iowa 2005); Lewis v. Jaeger, 818 N.W.2d 165, 189 (Iowa 2012); Theis v. Kalvelage, No. 14-1568, 2015 WL 7567548, at *6 (Iowa Ct. App. Nov. 25, 2015).

274. *McCray*, 492 N.W.2d at 445.

landlord who evicted a tenant and had a deputy sheriff remove all of the tenant's personal property, placing it on the street where the majority of it was vandalized or stolen, was not liable for conversion because: (1) No Iowa statute imposes a duty of care on landlords for tenant's personal property in the case of eviction or abandonment; and (2) although the residential lease contained a clause requiring the landlord to care for tenant's property, the clause would only be activated upon the tenant's unnotified absence.[275] Since the tenant notified the landlord that they would be out of town for a short period of time, the landlord had no duty of care for the tenant's personal property.[276] The *Khan* court "conclu[ded], we decline to impose a duty of care upon a landlord to protect or care for an evicted tenant's personal property where our legislature has chosen not to do so."[277]

The *Khan* court sent a clear message that absent clear contrary instruction from the Iowa legislature, the court would refuse to act on behalf of tenants in cases involving disputes over a landlord's duty of care for their tenant's personal property.[278] The Iowa Supreme Court chose, again, to give deference to defendant-landlords in the case of *Lewis v. Jaeger*.[279] The *Lewis* court chose not "to disturb the district court's [conversion] finding[]" stating "that [the landlord] was more credible on the issue" of a dispute between the landlord and tenant over whether the landlord "return[ed] some of [the tenant's] belongings after [the tenant's] eviction, including $450 earrings, a blanket, and a DVD player."[280] The *Lewis* court previously stated that "[t]he conversion claim is an action at law and reviewable for errors at law"[281] but failed to apply the *Kendall/Hunt* factors to determine the seriousness of the interference. In *Theis v. Kalvelage*, the Iowa Court of Appeals went one step further and held that a tenant's "inaction or apparent consent to dispose of [personal] property" is sufficient to preclude a landlord from liability for conversion.[282]

Iowa courts have frequently applied the *Kendall/Hunt* factors in a manner inconsistent with the Restatement's intent.[283] The wholistic intent of the Restatement's section 222A(2) factors, and the Restatement's liberal application guidelines, are articulated in section 222A comment d:

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275. *Khan*, 584 N.W.2d at 726–30.

276. *Id.* at 728–29.

277. *Id.* at 730.

278. *See id.*

279. *See* Lewis v. Jaeger, 818 N.W.2d 165, 188–89 (Iowa 2012).

280. *Id.*

281. *Id.* at 175–76 (first citing Murray v. Conrad, 846 N.W.2d 814, 817 (Iowa 1984); and then citing Larsen v. Housh, 146 N.W.2d 314, 315 (Iowa 1966)).

282. Theis v. Kalvelage, No. 14-1568, 2015 WL 7567548, at *5 (Iowa Ct. App. Nov. 25, 2015).

283. *See, e.g.*, McCray v. Carstensen, 492 N.W.2d 444, 446 (Iowa Ct. App. 1992); *Khan*, 584 N.W.2d at 730; Nathan Lane Assocs., L.L.P. v. Merchs. Wholesale of Iowa, Inc., 698 N.W.2d 136, 140 (Iowa 2005); *Lewis*, 818 N.W.2d at 189; *Theis*, 2015 WL 7567548, at *6.

> No one factor is always predominant in determining the seriousness of the interference, or the justice of requiring the forced purchase at full value. Those listed in Subsection (2) are not intended to be exclusive. The question is nearly always one of degree, and no fixed line can be drawn. There is probably no type of conduct with respect to a chattel which is always and under all circumstances sufficiently important to amount to a conversion, since the interference with the right of the plaintiff may in each case be either trivial or serious. Not only the conduct of the defendant, but also its consequences, are to be taken into account. In each case the question to be asked is whether the actor has exercised such dominion and control over the chattel, and has so seriously interfered with the other's right to control it, that in justice he should be required to buy the chattel.[284]

Viewing the Restatement through the lens of its drafters makes clear that the § 222A(2) factors, as described in *Kendall/Hunt* and as treated by Iowa courts, are inconsistent with the Restatement's wholistic approach to determining conversion. Of course, the Restatement admits that there is no bright line rule for determining whether a conversion has taken place.[285] Still, consideration of "the conduct of the defendant, [and] its consequences, are to be taken into account."[286] Iowa courts have failed to consider the consequences of a defendant-landlord's conduct.[287] Iowa courts have also failed to ask both "whether the [defendant-landlord] has exercised such dominion or control over the chattel" and "whether the [defendant-landlord] . . . has so seriously interfered with the [plaintiff-tenant's] right to control it."[288] Notably, the Iowa Supreme Court has found that no conversion existed in two cases that closely resemble an illustration of the existence of conversion found in the illustrations to Restatement section 222A:

> 12. A takes possession of a house, and finds in it some of B's furniture. In order to keep out intruders, A changes the locks on the doors, as a result of which B, coming to get his furniture, is prevented from obtaining it for one day, until he can find A and get the keys. This is not a conversion.
>
> 13. The same facts as in Illustration 12, except that A changes the locks with the intention of appropriating the furniture and preventing B from recovering it. This is a conversion.[289]

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284. RESTATEMENT (SECOND) OF TORTS § 222A cmt. d (AM. L. INST. 1965).

285. *Id.* (noting that "no fixed line can be drawn").

286. *Id.*

287. *See, e.g.*, *McCray*, 492 N.W.2d at 446; *Khan*, 584 N.W.2d at 730; *Lewis*, 818 N.W.2d at 189; *Theis*, 2015 WL 7567548, at *6.

288. *Id.*; *See, e.g.*, *McCray*, 492 N.W.2d at 446; *Khan*, 584 N.W.2d at 730; *Lewis*, 818 N.W.2d at 188–89; *Theis*, 2015 WL 7567548, at *6.

289. RESTATEMENT (SECOND) OF TORTS § 222A cmt. d., illus. 12, 13 (AM. L. INST. 1965).

In both *McCray v. Carstensen* and *Lewis v. Jaeger*, defendant-landlords changed the locks on plaintiff-defendant's leased property, denied plaintiff-tenants access to their personal property, and were not found to have converted their tenant's property.[290] It is difficult to reconcile the Restatement's illustration and the court's holding in both cases.

III. RECOMMENDATION FOR REFORM: LEGISLATIVE ACTION

Given the Iowa courts' unsatisfactory, inconsistent, and misapplied case law, the Iowa General Assembly should enact legislation that provides sufficient protection over the personal property of tenants throughout their lease, at the termination of their lease, and upon abandonment. The enacted legislation should clearly establish: (1) when a tenant's property is considered abandoned; (2) when the landlord may enter the leased premises to retrieve or dispose of the abandoned property; and (3) what the landlord must do with the abandoned property after they have established abandonment and retrieved the abandoned property. This Note suggests that the Iowa General Assembly draft and enact legislation, using language from the RURLTA and from other state statutes, that will clearly delineate the rights and responsibilities of both landlords and tenants and will provide adequate protection for the personal property of tenants.

First, the enacted legislation should clearly establish when a tenant's property is considered abandoned. Under the RURLTA, a leased premises is considered abandoned when "the tenant vacates the unit at the termination of the tenancy"[291] or when a tenant abandons per section 604.[292] As a preliminary matter, the RURLTA requires affirmative action on behalf of the tenant to establish abandonment, unlike the statutes in Arkansas,[293] Montana,[294] North Carolina,[295] and Wisconsin.[296] Additionally, section 604 of the RURLTA provides a high threshold for determining tenant abandonment,

290. *See McCray*, 492 N.W.2d at 444–46; *Lewis*, 818 N.W.2d at 171–75, 188–89.

291. REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1001(a)(1) (UNIF. L. COMM'N 2015).

292. *Id.* § 1001(a)(2); *see supra* Section II.C.1. RURLTA section 604(b) provides that

> [a] tenant abandons a dwelling unit if: (1) [T]he tenant delivers possession of the unit to the landlord before the end of the term by returning the keys or other means of access or otherwise notifies the landlord the unit has been vacated; or (2) rent that is due was not paid for at least [five] days and the tenant has: (A) vacated the unit by removing substantially all of the tenant's personal property from the unit and the premises; and (B) caused the termination of an essential service or otherwise indicated by words or conduct that the tenant has no intention to return to the unit.

REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 604(b) (UNIF. L. COMM'N 2015).

293. *See supra* note 145 and accompanying text.

294. *See supra* note 149 and accompanying text.

295. *See supra* note 155 and accompanying text.

296. *See supra* note 163 and accompanying text.

which closely resembles Vermont's three-part test.[297] The RURLTA clearly and sufficiently establishes when a tenant's property is considered abandoned.

Second, the enacted legislation should clearly establish when the landlord may enter the leased premises to retrieve or dispose of the abandoned property. Under the RURLTA, if a personal property is left on the leased premises, a landlord may not disturb the personal property except to ensure that the property is safe and must "exercise reasonable care in moving or storing the property."[298] Additionally, the landlord must provide notice[299] and must wait eight days before taking possession of the personal property.[300] Two facets of the RURLTA are worth mentioning. First, RURLTA's provision requiring that a landlord may not disturb or may disturb only to keep the personal property left by a tenant safe mirror Arizona's,[301] Minnesota's,[302] New Jersey's,[303] and Vermont's[304] statutes requiring that a landlord take temporary possession of the tenant's personal property only to safekeep that property. Statutes like the ones above require little effort on behalf of the landlord and provide significant benefit to the tenant. Additionally, many states allow the landlord to recuperate the fair market value of the cost of storage and personal labor at the eventual sale of the personal property.[305] Second, the RURLTA's eight-day waiting period between when notice is sent to a tenant and when a landlord may dispose of the tenant's personal property is an insufficient amount of time. Because the RURLTA requires notice to "be posted at the dwelling unit and . . . sent to any forwarding address the tenant provided . . . or, if no address is provided, to the address of the unit,"[306] and, following receipt of notice, the tenant must contact the landlord via phone, email, or mail,[307] eight days is not enough time to receive and respond to given notice; many states provide thirty or more days, with a few states providing ninety days under specific circumstances.[308] Further, the RURLTA already imposes an obligation on landlords to store tenant property: If the property is being

297. *See supra* note 205–10 and accompanying text.

298. REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1001(b)(2) (UNIF. L. COMM'N 2015); *see supra* Section II.C.2.

299. REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1001(c) (UNIF. L. COMM'N 2015); *see supra* Section II.C.2.

300. REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1001(d) (UNIF. L. COMM'N 2015); *see supra* Section II.C.2.

301. *See supra* note 181–85 and accompanying text.

302. *See supra* note 191–92 and accompanying text.

303. *See supra* note 195–96 and accompanying text.

304. *See supra* note 205–10 and accompanying text.

305. *See, e.g.*, *supra* note 199 and accompanying text.

306. REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1001(c)(1) (UNIF. L. COMM'N 2015).

307. *See id.* §§ 1001(c)(3)–(d).

308. *See supra* notes 170–71 and accompanying text.

stored and is not interfering with the landlord's activities, why not allow additional time for the tenant to retrieve it? It is also worth noting that the eight-day language in the RURLTA is bracketed, indicating flexibility on behalf of the ULC and allowing individual state legislatures to modify the length of time. The RURLTA clearly establishes when a landlord may enter the leased premises to retrieve or dispose of the abandoned property, but it does not allow adequate time for tenants to receive and respond to given notice. In considering the RURLTA, the Iowa General Assembly should strongly consider modifying the suggested eight-day time period.

Third, the enacted legislation should clearly establish what the landlord must do with the abandoned property after they have established abandonment and retrieved the abandoned property. Under the RURLTA, a landlord who has established abandonment may either sell the personal property, applying the proceeds from the sale toward the tenant's security deposit, or "dispose of the property in any manner the landlord considers appropriate."[309] What is the purpose of a law that allows an individual to do whatever they consider appropriate? Although efficient at first glance, this method allows for the unnecessarily rapid disposal of a tenant's abandoned personal property. After all, it would be as imprudent to allow a landlord to dispose of a tenant's property hastily as it would be to force a landlord to maintain possession of a tenant's property for an extended period. Establishing a structure wherein a landlord is incentivized to establish abandonment and claim their former tenant's personal property is not wise. Legislation governing a landlord's rights to dispose of a tenant's abandoned property should not include subjective language, such as "in any manner the landlord considers appropriate,"[310] that gives significant deference to landlords. Legislation that informs what a landlord must do with abandoned property that has come into their possession should either: allow the landlord to sell the abandoned property, withholding from the proceeds any amount to cover reasonable cost of storage or sale[311]; allow the landlord to donate the abandoned property to a nonprofit organization[312]; or pass to the state.[313] RURLTA does not clearly establish what a landlord must do with the abandoned property after they

309. REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1001(g)(2) (UNIF. L. COMM'N 2015); *see supra* Section II.C.3.

310. REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1001(g)(2) (UNIF. L. COMM'N 2015).

311. *See, e.g.*, *supra* notes 188, 199 and accompanying text.

312. *See, e.g.*, *supra* notes 156, 188 and accompanying text.

313. *See, e.g.*, *supra* notes 203–04 and accompanying text. New Jersey's provision balances the interests of landlords and tenants by allowing a landlord, after performing their due diligence, to either sell their tenants' property, and use the proceeds to compensate them for the sale or avoid the trouble of a sale altogether: Either the tenant receives payment or neither party receives payment. *See supra* Section II.D.2.iii. New Jersey's provision, unlike any other state provision, prohibits the landlord from collecting the proceeds from the sale of the tenant's personal property upon unsuccessfully reaching the tenant. *See supra* Section II.D.2.iii.

have established abandonment and retrieved the abandoned property. In considering RURLTA, the Iowa General Assembly should strongly consider not adopting the Section 1001(g) language allowing landlords to dispose of their tenant's abandoned personal property "in any manner the landlord considers appropriate"[314] and should instead adopt a statute that does not incentivize landlords to establish abandonment in an attempt to seize their tenant's personal property.

CONCLUSION

At this moment, the personal property rights of tenants in Iowa are limited by archaic and insufficient caselaw. A landlord may enter a tenant's leased premises immediately following abandonment and may dispose of a tenant's personal property after entering the leased premises, so long as the landlord did not seriously interfere with the tenant's rights. When landlord-tenant disputes over conversion of personal property go to court, the facts and circumstances are considered in the light most favorable to the landlord, and a large portion of tenant claims are unsuccessful. Although Iowa has taken strides to bolster tenant's rights, through compliance with the FHA and adoption of the URLTA, establishing adequate tenant's rights will require additional legislation. As such, the Iowa General Assembly must enact legislation, using language from the RURLTA and from other state statutes, that will clearly delineate the rights and responsibilities of both landlords and tenants and will provide adequate protection for the personal property of tenants with the intention of placing landlords and tenants on equal footing in disputes over abandoned personal property—or, avoiding those disputes altogether. This statutory reform will protect the personal property rights of Iowa tenants, lessening the imbalance between landlords and tenants.

314. REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1001(g)(2) (UNIF. L. COMM'N 2015).