



## Kansas Legislative Research Department

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February 25, 2025

**To:** House Committee on Judiciary

**From:** Natalie Nelson, Principal Research Analyst

**Re:** Squatting Laws and Legislation

This memorandum provides an overview of Kansas law that may apply in cases of unauthorized occupancy of real property, commonly known as “squatting,” and includes examples of recently enacted laws and legislation considered in other states addressing the issue of squatting.

### **Kansas Law**

#### ***Adverse Possession***

KSA 60-503 is the adverse possession statute in Kansas, which provides that no action may be maintained against a person for the recovery of real property when such person has been in open, exclusive, and continuous possession of the property, either under a claim knowingly adverse or under a belief of ownership, for a period of 15 years. As described in *American Jurisprudence*, a treatise providing guidance to attorneys on various legal doctrines, the concept of adverse possession is based upon a presumption of an “ancient or lost grant of title” to a person who holds uninterrupted possession of property for a long period of time while exercising control over such property. The presumption recognizes that the lapse of time may cure the failure to properly secure title, so that when the appropriate statutory limitations period expires, the grant “crystallizes into a rule of law and become irrebuttable.” See 3 Am. Jur. 2d Adverse Possession § 7.

#### ***Terminating a Rental Agreement Under Landlord-Tenant Laws***

When a landlord and tenant have entered into a rental agreement involving residential property, the Kansas Residential Landlord and Tenant Act, KSA 58-2540 through 58-2573, applies. If the property involved includes a mobile home, KSA 58-25,100 through 59-25,126, the Mobile Home Parks Residential Landlord and Tenant Act, applies. Rental agreements involving non-residential property are governed by KSA 58-2501 through 58-2533. Termination of a rental agreement must be done in compliance with these laws when a valid landlord-tenant relationship exists. However, KSA 58-2573 specifies that the Kansas Residential Landlord and Tenant Act does not apply to any person who enters and remains in a dwelling unit without a rental agreement and without the landlord's knowledge and such person knows that such person is not authorized or privileged to do so and an order to leave has been personally

communicated to such person by the landlord. The statute further provides that such person may be prosecuted for criminal trespass.

In the case of residential rental agreements, a landlord may terminate a lease for the tenant's material noncompliance with the rental agreement or obligations imposed upon the tenant by applicable provisions of building and housing codes materially affecting health and safety with the amount of notice dependent upon the type of violation.

For terminations for unpaid rent, notice must be given at least three business days (plus two more days if mailed) before the lease will terminate to give the tenant a chance to pay rent to avoid eviction.

If a tenant violates another term of the lease not involving the payment of rent, the landlord must give notice of the violation and what is required to remedy the violation; if the tenant does not comply within 14 days of the notice, the lease may be terminated 30 days after the original notice of violation was delivered. If a tenant repeats substantially similar violations within the same lease term, the landlord is not required to give the tenant a chance to remedy the violation and may instead provide a notice that the lease will terminate in 30 days. See KSA 58-2564.

In the case of a tenant who remains in possession of property without the landlord's consent after expiration of the lease, the landlord may obtain a court order to take possession of the property, but the landlord must do so in accordance with standard rules of civil procedure. After a hearing and presentation of evidence on the motion, and if the judge is satisfied that granting immediate possession of the property to the landlord is in the interest of justice and will properly protect the interests of all the parties, the judge may order for the immediate restitution of the premises to the landlord. See KSA 58-2570.

A landlord may not recover or take possession of the premises by action or by willful diminution of services to the tenant by interrupting or causing the interruption of essential services to the tenant; forcible removal may only be accomplished by those authorized to execute a writ of restitution pursuant to eviction proceedings. See KSA 58-2569; KSA 61-3808.

## **Eviction**

KSA 61-3801 through 61-3808 govern the eviction process to be followed when a tenant has violated the terms of a lease or when evicting any person who does not have a right of possession over the property.

**Notice.** If a landlord-tenant relationship exists, the landlord must serve a notice to leave the premises within the time periods specified in the previous section of this memorandum. If no landlord-tenant relationship exists and another notice period does not otherwise apply, the notice must be delivered at least three days before the eviction petition is filed. Delivery of notice must either be accomplished through personal delivery to the defendant or by leaving a copy of the notice with a person who lives at the rental property who is at least 12 years old. If no one can be found on the rental property, the notice must be posted in a conspicuous place or delivered by registered or certified mail to the defendant. See KSA 58-2510; KSA 61-3803.

**Petition.** The landlord must file a petition for eviction with the district court in the county where the property is located. The landlord may also file a petition for a judgment for unpaid rent at the same time. See KSA 58-2542; KSA 61-3804.

**Summons.** After the eviction suit has been filed, the court will issue an eviction summons for the defendant to appear in court on a day determined by the court between 3 and 14 days after the day the summons is issued. The summons must be served by someone authorized to serve process under Kansas law. See KSA 61-3003; KSA 61-3805.

**Answer.** The defendant is required to appear in person or by counsel at the time and date set forth in the summons, or file a written answer on or before such date. If the defendant fails to file an answer or appear in court, a default judgment will be awarded to the landlord. See KSA 61-3002; KSA 61-3806.

**Trial.** If necessary, the trial must be conducted within 14 days of the appearance date stated in the summons, and no continuance may be granted unless the defendant files a bond condition for the payment of all damages and rent that may accrue if judgment is entered against the defendant.

**Execution of writ.** If judgment is entered against the defendant, the court shall issue, at the request of the landlord, a writ of restitution ordering the tenant to vacate the premises. The writ must be executed within 14 days of being received by the process server, and such server may use reasonable force if necessary to execute the writ.

### ***Prosecution for Criminal Trespass***

Under KSA 21-5808, criminal trespassing is, in relevant part, entering or remaining upon land or a structure when the person knows they are not authorized or privileged to do so and: enters or remains in defiance of an order to leave by the property owner or other authorized person or the property is locked, fenced, or otherwise secured against passage or entry, or when signage on the property indicates trespassing is not authorized. Criminal trespass is a class B nonperson misdemeanor, punishable for a period up to 6 months in county jail, a fine up to \$1,000, or both, and a probation term of up to two years.

A law enforcement officer would be authorized to arrest a person on property when the officer has probable cause to believe that the person is committing or has committed criminal trespass under KSA 22-2401. Only a county or district attorney may bring charges against a person for criminal trespass pursuant to KSA 22-3201, or in the case of a violation of a city ordinance prohibiting criminal trespass, a city prosecutor may prosecute pursuant to KSA 12-4110.

## **Relevant Legislation Enacted or Considered in Other States**

### ***Enacted Legislation***

The following states have recently enacted legislation regarding the topic of squatting:

- Alabama allows local law enforcement to quickly remove individuals who are occupying a dwelling without authorization through sworn affidavit of the owner ([HB 182](#));
- Florida allows sheriffs to immediately remove unauthorized occupants under certain conditions ([CS/CS/HB 621](#));

- Georgia outlaws squatting and requires accused squatters to produce proof of legal residency within three days or risk arrest ([HB 2017](#));
- New York defines the term “squatter” and specifies that a tenant does not include a squatter ([S8306C](#));
- Oklahoma allows property owners to request assistance from sheriffs for immediate removal of unauthorized occupants under certain conditions ([SB 1994](#)); and
- West Virginia specifies a squatter cannot be considered a tenant and specifies that eviction is not required to remove a squatter from possession of a property ([HB 4940](#)).

### **Legislation Under Consideration**

Several states have considered legislation regarding squatting:

- Arkansas would criminalize unlawful squatting ([H 1049](#));
- California would prescribe a procedure for the notice and removal of a squatter by law enforcement and would authorize a property owner or agent to serve a demand to vacate ([S 448](#));
- Colorado would create the crime of squatting and require the squatter to vacate the premises upon conviction and would allow law enforcement to remove a squatter within 24 hours of the owner providing proof of ownership ([H 1104](#));
- Connecticut would establish a process to evict a squatter ([HB 6116](#)) and would create the crime of illegal squatting ([HB 6384](#));
- Georgia would require the sheriff to eject a squatter within five days of receiving a sworn affidavit from the property owner that the squatter is unauthorized to be there ([S 184](#));
- Hawaii would establish a working group to study and provide recommendations regarding the issue of squatting in the state ([H 225](#)) and would create a limited alternative process for the removal of unauthorized persons from residential property ([H 709](#));
- Illinois would allow a property owner or authorized agent to request a law enforcement officer to remove an unlawful occupant of a residential dwelling if certain conditions are met ([H 65](#));
- Indiana would allow a property owner to obtain an expedited removal of a squatter under certain circumstances ([HB 1083](#));
- Kentucky would allow a person to request a peace officer to immediately remove a squatter if certain conditions are met ([H 10](#), [H 142](#));

- Mississippi would outline the process to remove a squatter and specify squatters who commit trespass do not accrue property rights ([HB 1200](#));
- Montana would create the offense of unlawful squatting and would allow a property owner or authorized agent to request law enforcement to remove a squatter ([S 101](#));
- Nebraska would require a law enforcement officer, when such officer has probable cause to believe a person has committed unlawful squatting, to issue a warning citation advising that the person must provide documentation of authorization to reside on the premises within three days of receiving the citation ([L 443](#));
- New Jersey would criminalize the unlawful occupancy of dwellings ([S725](#));
- New Mexico would criminalize unlawful squatting and allow an alleged unlawful squatter the opportunity to contest a citation for unlawful squatting ([H 332](#));
- Ohio would allow property owners to request immediate removal of a person unlawfully occupying residential property when certain conditions are met ([HB 478](#));
- Oregon would require the Department of Justice to study the issue of squatting and make recommendations for legislation ([H 2783](#)); would provide that an owner may evict a squatter upon 24 hours' written notice ([H 3522](#)); and would allow a court to evict an unauthorized occupant, including a person who is a squatter, under the process for eviction of a residential tenant ([S 1002](#));
- Pennsylvania would criminalize the unauthorized occupancy of dwellings and allow the owner to request the removal of such unauthorized person by submitting an affidavit swearing to certain facts ([S 195](#));
- South Carolina would allow the immediate removal of a person unlawfully occupying a residential dwelling ([H 5468](#)); and
- Washington would expand its anti-squatting law to include former tenants who are no longer occupying the premises pursuant to a valid rental agreement and to authorize law enforcement to remove squatters without delay ([S 5250](#)).

In addition, two bills were introduced in the U.S. House of Representatives regarding squatting in 2024:

- [H 7959](#), which would amend the Immigration and Nationality Act to prohibit an immigrant's admission to the United States and to allow an immigrant's deportation from the United States when such immigrant has been convicted of or admits having committed trespass; and
- [H 10009](#), which would make several findings regarding squatting and would withhold Community Development Block Grant funding for jurisdictions that permit squatting.