

Your Legal Rights In Nebraska

Handbook
and
Guide
To
Resources



Nebraska State Bar Association

Your Legal Rights In Nebraska

Dedication:

Robert M. Spire



This booklet is dedicated to the memory of Robert M. Spire, 1926-1994, who exemplified the highest standards of the legal profession and who helped to make access to justice a reality for more Nebraskans through the creation of the Nebraska State Bar Association's volunteer legal services program, and through his support of Nebraska's legal services programs. He lives in our hearts and remains an inspiration to all who care about justice.

What are my rights?

You have "rights" from many sources, including the United States Constitution, the Nebraska Constitution, and statutory law. Some of these rights, such as freedom of speech or right to a trial, you may already know about. There are others that may be less familiar to you.

When do I need a lawyer?

In an ideal situation, it is best to be able to consult with a lawyer before doing any of the following:

- Buying or selling a house or other real estate.
- Signing a lease or contract.
- Starting a business
- Getting married, divorced, or adopting a child.
- Obtaining a guardianship for a child or adult.
- Filing a lawsuit.
- Writing a will or planning for the distribution of your property after your death.
- Making any "advance directives" such as a Power of Attorney for Health Care or a Living Will.

In other situations, you may need to obtain the services of a lawyer because something has happened to you. You should have a lawyer represent you in any of the following situations:

- When a lawsuit is brought against you.
- If your spouse files for divorce, legal separation, or modification of an existing divorce decree.
- If you are injured in the job or in an accident.
- If you need to make an appearance or file an appeal with any government agency or board.

Why can't I handle my own legal problems?

You can represent yourself in court and you can handle your own legal matters if you wish. There are kits and pre-printed forms sold by different organizations which are supposed to help you handle your own legal matters. "Document Processors" may also offer to prepare legal papers for you. Most lawyers and judges advise against using these products and services because they are not designed to take into consideration individual circumstances and complications which may arise with any legal matter. They also do not necessarily take into account Nebraska law or the changes in Nebraska law which have occurred in recent years. So, in the end, you still may spend time and money on these things and you still may not be able to accomplish what you wish.

Lawyers are trained to provide professional legal assistance, to know the law, court procedures, filing requirements, deadlines, and other details which a non-lawyer might not know, and which could make the difference between winning or losing a given case.

Your rights in regard to Marriage and Divorce

What are my rights if I want to get married?

You must be at least 17 years old to get married with the consent of a parent. You must be at least 19 years old to marry without parental consent. You must apply for a marriage license, and females must take a blood test to screen for Rubella (German measles). The marriage ceremony must be performed by an authorized person, such as a minister, priest, rabbi, or judge.

I have just been served with papers saying that my spouse wants a divorce! What do I do?

You should contact a lawyer right away if there are any issues about which you and your spouse disagree. For example, if there is any disagreement over child custody, visitation, child support, division of joint property or division of joint debts, you need a lawyer.

What are my rights if my spouse wants a divorce?

Nebraska divorce law is based on the principle of "no-fault divorce." This means that a person need not assert specific grounds for the divorce (such as desertion, adultery, etc.) but need only show that the marriage is "irretrievably broken" and that all attempts at reconciliation have failed.

One spouse must file a petition to dissolve the marriage. There is a statutory waiting period of 60 days before the parties can go to court. During this time, the parties and their lawyers try to resolve questions regarding child custody, visitation, child support, and division of property and debts. If the parties cannot agree, the matter will go to trial and be heard before a judge, who will decide how the issues are decided.

Do I have the right to have a lawyer appointed for me?

No. Divorce is a civil matter and the court will not appoint a lawyer for you even if you cannot afford a lawyer. The Constitutional right to a lawyer only applies in cases where a person is charged with a crime where there is the possibility of imprisonment. See the listings at the end of this booklet for legal assistance programs.

Do I have the right to ask for a jury trial?

No. Divorce cases are always tried before a judge alone.

How soon may I remarry after a divorce?

You may remarry six months after the date the divorce decree has been entered, or if your former spouse dies, if sooner than six months.

I am the (mother) (father) of my children. What rights do I have with regard to child custody in a divorce?

Neither the mother nor the father has any greater rights than the other parent just because she or he is the father or mother. Child custody is determined based on what the court finds to be in the best interests of the children. There are a number of factors that the court may look to in determining what would be best for the children.

What is an annulment?

Annulment can be obtained in situations where the original marriage was illegal: for example, if either party was still married to someone else at the time of the marriage in question. Annulment may also be available if one of the parties was impotent or mentally ill at the time of the marriage, or if one of the parties used fraud or force to coerce the other party into marriage. A marriage can be annulled if the parties were too closely related to one another to be able to marry under Nebraska law. The procedure for an annulment is the same as that for a divorce, except that the annulment becomes final immediately upon entry of the court order.

What is legal separation?

A legal separation resolves all the issues of the marriage just as a divorce does, including child custody, child support, visitation, and division of property and debts. However, when the decree of legal separation is entered, the parties are still married and may not remarry. The procedure for a legal separation is the same as that for a divorce.

What are my rights regarding my child if the child's other parent and I were never married?

Either parent is considered to be an appropriate person to have custody of his or her child, unless a court finds otherwise. If there is no court order identifying which parent should have custody, either parent can claim custody of his or her child.

To guarantee that there is no misunderstanding regarding who is the custodial parent, some unmarried parents seek to have custody established through a court action. This is similar to the action taken to determine custody in a divorce case, except there is no divorce. If you wish to establish your custody, you need to be represented by a lawyer.

Just as with custody arrangements in divorces, in relationships where one unmarried parent has custody, the other parent has the right to request visitation and has the duty to help support his or her child.

Domestic Violence

My spouse is abusive and violent. What can I do?

There are assistance programs in many communities in Nebraska which offer crisis hot lines, shelter, advice, and other assistance. Your first need is to get to safety. Look in your local telephone book

for a crisis hotline or a shelter and call them as soon as possible. Once you are in a safe place, you can begin to plan your next steps.

These steps might include:

- Call the police. Always report domestic violence and follow through with pressing charges against the abuser, if necessary.
- Get counseling. Many people who have experienced domestic abuse feel confused and ashamed. Remember: you are not at fault. Get help understanding this so you can protect yourself and your children from further violence.
- Get a Protection Order under Nebraska's Protection from Domestic Abuse Act by filling out a form obtained at the Clerk of District Court's office. You do not need a lawyer to do this.
- Get a separate residence, file for divorce or legal separation and get custody of your children (if there are any).
- Contact your local legal aid organization. See the listings at the end of this booklet.

Landlord - Tenant Relations

What is the Landlord-Tenant Act?

The Nebraska Uniform Residential Landlord and Tenant Act governs both oral and written agreements for residential rentals, and spells out the rights and obligations of landlords and tenants.

What is a lease?

A lease is a contract, and it may be oral or written. As a practical matter, it is usually better to have a written contract to avoid misunderstandings. A lease is a legal contract, and you should not sign it unless you are certain that you understand all the provisions in the lease. If you have any questions, you should talk with a lawyer before you sign. Do not sign a lease which has blank spaces, or which does not contain all of the terms which have been agreed upon. Do not take anyone's word, whether it is the owner or the manager, if he or she says, "We'll work that out later," or "Don't worry about that now." All too often the parties end up having very different ideas of what was agreed upon, and both landlord and tenant are unhappy.

Can I move before the lease expires?

If you sign a lease for a set period of time, such as six months a year, you are obligated to pay the rent for the entire period of the lease. If you leave before the lease is up, your landlord must try to rent the residence to someone else. If he or she is not able to do so, you may end up having to pay all or part of the balance of your rent due under the lease.

What kind of notice is needed for either landlord or tenant to move?

If you are a tenant and have a month-to-month written or oral rental agreement, you must give 30 days written notice that you are going to move. You must give a full rental period's notice. So if your rent is due on the first of the month, and you want to move on June 1, you must give your thirty days notice on or before May 1. If you don't do this, the landlord could hold you liable for the June rent as well.

If you are a landlord, the same 30 day notice provisions apply. Individual leases may provide for other arrangements, such as

longer periods, but an agreement at a minimum must comply with the Landlord and Tenant Act's 30 day provision.

Can the Landlord raise the rent?

Yes, so long as he or she complies with the terms of the lease. Some leases contain specific language allowing the landlord to raise the rent with appropriate notice. If the lease does not provide for raising the rent, then the rent cannot be raised during the term of the lease.

In a month-to-month rental agreement, the landlord may raise the rent provided he or she gives at least 30 days notice. So if your rent is due on the first of month, and the landlord wants to raise the rent effective June 1, he or she must give you 30 days notice on or before May 1.

There is no restriction on how much rent a landlord may charge.

Can the landlord select who is to be able to rent?

Yes, a landlord can select potential residents. But the landlord may not discriminate because of race, color, sex, handicap, religion, national origin, or (in many situations) family status.

What about security deposits?

The landlord may require a security deposit of no more than one month's rent and a pet deposit of no more than 1/4 of one month's rent. So if your month's rent is \$400, a deposit of up to \$400 may be charged and a pet deposit of up to \$100. A landlord may exclude pets if he or she desires.

How do I get my security deposit back?

You should make your request in writing and keep a copy. Mail the request to the landlord. The landlord must refund your deposit within 14 days or provide an itemized listing of any costs or damages paid out of the deposit. The deposit is not intended to remedy normal wear and tear on the property, but only to repair damages or be applied to past due rent.

What if I do not get my deposit back and my landlord will not provide an itemized list of damages? Or what if the landlord provides a list of repair, and I disagree? What can I do?

You may sue the landlord. Since the amount of money involved is usually small, you may wish to sue in Small Claims Court. Be advised that the landlord may transfer the case to County Court, where you will need to have a lawyer represent you. You can obtain information about Small Claims Court at your local County Court. There are special provisions for damages under the Landlord-Tenant Act, so you may wish to talk to a lawyer if you believe you will need to sue.

Your Rights if You Are Arrested

What should I do if I am arrested?

You should not resist arrest or attempt to escape. You should be advised of you "Miranda" rights at the time of your arrest. These rights include the right to have the advice and representation of a lawyer. You should call your lawyer at the first opportunity to do so. You should say nothing without the advice and assistance of your lawyer.

If you cannot afford a lawyer and you are arrested, request the assistance of a lawyer and say nothing else until you have a lawyer representing you. You may not be able to see a lawyer until you

have been brought before a judge and "arraigned." At that point the judge will ask you if you plead guilty or not guilty to the charge. If you plead "not guilty," you may then ask for a lawyer to be provided for you.

Can I always have an appointed lawyer in a criminal case?

No. the court may appoint a lawyer for you if you indigent (very poor), and the judge may decide whether or not you qualify for that service. The court may not appoint a lawyer for you if the crime you were charged is very minor and you are not risking the possibility of serving time in jail.

When can I be arrested?

A police officer may arrest you if you if he or she has a warrant for your arrest. He or she may arrest you without a warrant if he or she has good reason to believe you have committed or are in the process of committing a crime.

Can the police use force to arrest me?

If you resist lawful arrest, the police can use all reasonable force to arrest you. However, after you have been restrained, they cannot continue to use force.

What if I am innocent?

Even if you think you are innocent, it is a crime to resist an officer who arrests you lawfully. You should not resist an arresting officer. If it turns out that you have been arrested illegally, the law provides certain remedies.

Do I have to submit to a search?

A police officer, following an arrest, may search your person and effects, including your car if you are arrested while you are in your car. How far that search may go is governed by law. You should talk to your lawyer if you believe that a search or the extent of a search was improper.

To what tests must I submit if I am arrested for driving while intoxicated?

Nebraska law requires that a law enforcement officer have reasonable cause to believe you are driving while intoxicated before he or she may arrest you for that charge. To assist in determining whether he or she has the necessary reasonable cause, the officer may ask you to perform the field sobriety tests. You do not have to perform the field sobriety tests. However, if you are arrested for driving while intoxicated, the officer will request that you submit to a breath or blood test. Nebraska law does require you to take the test. If you refuse to submit to the breath or blood test, you can have your driver's license suspended by the state department of motor vehicles for one year and be charged in criminal court with driving while intoxicated and refusing to submit to the test, each of which carry separate penalties.

Why is this? By having the privilege of being a licensed driver, you have agreed to abide by the laws governing travel on the public highways. One of these laws includes the agreement to submit to an intoxication test.

Where Do I Go for Help?

Lawyer Referral Services can help you find a lawyer.
Omaha Bar Association
Lawyer Referral: (402) 341-4104
Statewide NSBA: (800) 742-3005

Omaha:
(402) 595-2028 or (800) 382-7820
Health and Human Services System, the Nebraska Department of Social Services:

Legal Services can help you if you cannot afford a lawyer.
Nebraska Legal Services:
(877) 250-2016

P.O. Box 95026,
Lincoln, NE 68509-5026.
(402) 471-3121

NSBA Volunteer Lawyers Project:
(800) 742-3005 or (402) 475-7091

Health and Human Services
Division of Aging:
P.O. Box 95044,
Lincoln, NE 68509.
(402) 471-2306

Other sources of help:

Nebraska Appleseed Center for Law in the Public Interest:
(402) 471-2035 or (800) 742-4712

Workers' Compensation Court:
P.O. Box 98908, Lincoln, NE
68509 (402) 471-6468

Nebraska Civil Liberties Union:
(402) 476-8091

Hotline Numbers

Other state offices that may provide information or referral if you believe have been the victim of discrimination:

Abuse/Neglect Hotline (for either child or elderly adult abuse):
(800) 652-1999

Office of the Public Counsel (Ombudsman's Office):
P.O. Box 94712
Lincoln, NE 68509-4712.
(402) 471-2035 or (800) 742-7690

Child Support Unit:
(800) 831-4573

Nebraska Equal Opportunity Commission: Main Office:
(402) 471-2024 or (800) 642-6112

Hotline for the Handicapped/
Nebraska Childfind: (assistance for the handicapped or those children who are handicapped):
(800) 742-7594

Branch Offices: Panhandle Office
(308) 632-1340 or (800) 830-8633

Statewide Domestic Violence
Hotline: (800) 876-6238

This pamphlet, which is issued to inform, not to advise, has been prepared and published by the Nebraska State Bar Foundation and the Nebraska State Bar Association. It is distributed by those who want to help you obtain your rights under the law.



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