RESEARCH MEMORANDUM

To: **Professor Noble-Allgire**

From: **Co-Reporters Shelly Kurtz and Alice Noble-Allgire**[1]

Re: **Retaliatory conduct under URLTA**

Date: **October 2, 2012**

This memorandum examines the statutory and common law developments relating to retaliatory conduct by landlords against tenants who exercise their rights under housing codes or other laws governing tenant rights. As discussed in greater detail below, the vast majority of states have enacted statutes on the subject, with many using the basic framework of the Uniform Residential Landlord and Tenant Act or a substantially similar methodology. There has been great variation, however, with respect to the types of conduct landlords are prohibited from doing, the types of tenant activities that are protected, and the remedies available for a violation of the statute.

The memorandum provides a brief background of the evolution of retaliatory evictions law in Part I, followed in Part II by an analysis of the variations in the law across the states. It concludes with a recommendation that the Drafting Committee consider whether to revise URLTA's provisions to bring them up to date with modern practice and enhance the enactability of a revised URLTA.

I. BACKGROUND

The law prohibiting retaliatory conduct developed hand in hand with the movement to improve the nation's rental housing stock through housing codes and the implied warranty of habitability. In the 1968 landmark case of *Edwards v. Habib*,[2] the court observed that protecting tenants from retaliatory evictions was critical to the free exercise of their rights under the nascent housing codes:

> There can be no doubt that the slum dweller, even though his home be marred by housing code violations, will pause long before he complains of them if he fears eviction as a consequence. Hence an eviction under the circumstances of this case would not only punish appellant for making a complaint which she had a constitutional right to make, . . . but also would stand as a warning to others that they dare not be so bold . . . .[3]

Concluding that retaliatory evictions would frustrate the purposes of the District of Columbia's housing code, the court held that "while the landlord may evict for any legal reason or for no reason at all, he is

[1] This memorandum was prepared with research assistance from Brian Lee, Jason Williams, and Dean Davis, research assistants to Professor Noble-Allgire.
[2] 397 F.2d 687 (D.C. Cir. 1968).
[3] *Id*. at 701.

not, we hold, free to evict in retaliation for his tenant's report of housing code violations to the authorities."[4]

Other states quickly followed suit, and by the time URLTA was promulgated four years later, courts in five additional states had recognized a retaliatory eviction defense to the landlord's action for possession as a matter of state common law and legislatures in fourteen states had done so by statute. Today, forty states and the District of Columbia have statutes that provide varying degrees of protection from retaliatory action[5] and four additional states have recognized the doctrine as a matter of state common law.[6]

The laws are far from uniform, however, even among the twenty-one states that have adopted URLTA. Two states (MS and OK), for example, omitted the entire section on retaliatory conduct when they enacted other provisions of URLTA.[7] Others have added or deleted specific provisions of URLTA or otherwise modified its terms. The following discussion examines the deviations among URLTA states, as well as the non-URLTA statutes and the common law in other states. The memorandum focuses largely upon the statutory enactments but includes case law where necessary to give a more complete understanding of the issues.

II. ANALYSIS OF SPECIFIC ISSUES

URLTA addresses retaliatory conduct in Section 5.101, which is divided into three main subsections: (a) describing the prohibited conduct of the landlord and protected activities of the tenant; (b)

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[4] *Id.* at 699.

[5] *See* ALA. CODE § 35-9A-501; ALASKA STAT. § 34.03.310(a); ARIZ. REV. STAT. § 33-1381; CAL. CIV. CODE § 1942.5; COLO. REV. STAT. § 38-12-509; CONN. GEN. STAT. §§ 47a-20, 47a-20a, 47a-33; DEL. CODE tit. 25, § 5516; D.C. CODE § 42-3505.02; FLA. STAT. § 83.64; HAW. REV. STAT. § 521-74; 765 ILL. COMP. STAT. 720/1; IND. CODE § 32-31-9-8; IOWA CODE § 562A.36; KAN. STAT. § 58-2572; KY. REV. STAT. § 383.705; ME. REV. STAT. tit. 14, § 6001; MD. CODE, REAL PROP. §§ 8-208(d)(8), 8-208.1, 8-208.2; MASS. GEN. LAWS ch. 186, § 18; MICH. COMP. LAWS § 600.5720; MINN. STAT. §§ 504B.285(2), 504B.441; MONT. CODE § 70-24-431; NEB. REV. STAT. § 76-1439; NEV. REV. STAT. § 118A.510; N.H. REV. STAT. §§ 540:13-a, 540:13-b; N.J. STAT. §§ 2A:42-10.10 – 10.12; N.M. STAT. § 47-8-39; N.Y. REAL PROP. LAW § 223-b; N.C. GEN. STAT. §§ 42-37.1, 42-42.2; OHIO REV. CODE § 5321.02; OR. REV. STAT. § 90.385; PA. STAT. tit. 68, §§ 398.16, 399.11; R.I. GEN. LAWS § 34-18-46; S.C. CODE § 27-40-910; S.D. CODIFIED LAWS §§ 43-32-27 – 43-32-29; TENN. CODE § 66-28-514; TEX. PROP. CODE §§ 92.331 – 92.335; VT. STAT. tit. 9, § 4465; VA. CODE § 55-248.39; WASH. REV. CODE §§ 59.18.240, 59.18.250; W. VA. CODE § 55-3a-3(g) (*see* Criss v. Salvation Army Residences, 319 S.E.2d 403, 409 (W.Va. 1984)(stating that this section "specifically provides for the defense of retaliation")); WIS. STAT. § 704.45; WIS. ADMIN. CODE ATCP § 134.09(5). Missouri had a retaliatory eviction statute at one point, but it was repealed in 1998. MO. REV. STAT. § 441.620 (repealed by 1998 Mo. Laws, HB Nos. 997 & 1608 § A).

[6] *See* Wright v. Brady, 889 P.2d 105, 109 (Idaho Ct. App. 1995) (recognizing retaliatory eviction defense based upon legislature's adoption of URLTA-based retaliatory conduct provision for mobile homes); Bldg. Monitoring Sys., Inc. v. Paxton, 905 P.2d 1215, 1218 (Utah 1995) (recognizing common law retaliatory eviction defense); New Hope Gardens, Ltd. v. Lattin, 530 So. 2d 1207, 1211 (La. Ct. App. 1988) (retaliatory eviction falling under abuse of rights doctrine); *see also* Murphy v. Smallridge, 468 S.E.2d 167, 172 (W. Va. 1996) (extending *Criss*, 319 S.E.2d 403, to recognize an affirmative cause of action for retaliatory eviction). Georgia case law would also appear to recognize a retaliatory eviction defense if retaliation were the landlord's sole motivation. In one of only a handful of cases addressing the issue, the court suggests that a landlord's retaliatory motive might be relevant in an eviction proceeding, but would not defeat an eviction if the landlord otherwise had good cause for the eviction. Green v. Hous. Auth. of City of Atlanta, 296 S.E.2d 758, 759-60 (Ga. Ct. App. 1982).

[7] MISS. CODE §§ 89-8-1 – 89-8-27; OKLA. STAT. tit. 41, §§ 101—136.

providing remedies and a presumption that conduct is retaliatory if committed within a certain time after a tenant's protected act; and (c) exceptions to prohibited retaliatory conduct that provide safe harbors for landlord conduct.[8] A fourth subsection simply specifies that a tenant may pursue remedies against the landlord under both Section 5.101 and Section 4.101(b), which provides remedies for the landlord's failure to comply with the lease or with URLTA's warranty provision.

A. Prohibited conduct of the landlord and protected activities of the tenant

Section 5.101(a) of URLTA identifies a limited number of situations in which a tenant is protected from certain types of conduct by a landlord. It states:

> (a) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:
> (1) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety; or
> (2) the tenant has complained to the landlord of a violation under Section 2.104; or
> (3) the tenant has organized or become a member of a tenant's union or similar organization.[9]

As discussed further below, some states have deviated from URLTA by omitting some protections or, more frequently, by including additional types of prohibited conduct by the landlord or additional protected tenant activities.

1. *Prohibited conduct by the landlord*

Most states have generally followed URLTA with respect to the three types of prohibited conduct: increasing rent, decreasing services, or bringing or threatening to bring an action for possession. A few states have expanded the list, however, either by adding other types of specific conduct or by adopting a generalized standard that could encompass a broad range of conduct. Among the specific provisions that some states have added are the following:

- Refusal to renew a lease (DC, IL, NV, NY, SC, WI);[10]
- Termination of a periodic tenancy (IL, MD, NV);[11]
- Termination of public housing without cause (MI);[12]

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[8] UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 5.101 (1972).
[9] *Id.* § 5.101(a).
[10] D.C. CODE § 42-3505.02(a); 765 ILL. COMP. STAT. 720/1; NEV. REV. STAT. § 118A.510(1); N.Y. REAL PROP. LAW § 223-b(2) (but the landlord "shall not be required . . . to offer a new lease or a lease renewal for a term greater than one year and after such extension of a tenancy for one year shall not be required to further extend or continue such tenancy"); S.C. CODE § 27-40-910(g); WIS. STAT. § 704.45(1). *But see* S.D. CODIFIED LAWS § 43-32-27 (refusal to renew is not retaliation). While Vermont courts have extended protection to tenants whose leases are not renewed because of a landlord's retaliation, courts in Michigan and Ohio have refused to do so. *Compare* Houle v. Quenneville, 787 A.2d 1258, 1263 (Vt. 2001) *with* Frenchtown Villa v. Meadors, 324 N.W.2d 133, 136 (Mich. Ct. App. 1982) *and* Indian Hills Senior Cmty., Inc. v. Sanders, No. 78780, 2001 WL 958055, at *3 (Ohio Ct. App. Aug. 23, 2001).
[11] 765 ILL. COMP. STAT. 720/1; MD. CODE, REAL PROP. § 8-208.1(a)(1)(iii); NEV. REV. STAT. § 118A.510(1).

- Increased obligations under the lease (MI, MN, WA);[13]
- Substantial alteration in the terms of the tenancy (PA, VT);[14]
- Depriving the tenant of the use of the premises (TX);[15] and
- Materially interfering, in bad faith, with the tenant's rights under the lease (TX).[16]

The District of Columbia statute has the most comprehensive list. It includes not only increases in rent or decreases in services but other actions that:

- increase the obligation of a tenant,
- constitute undue or unavoidable inconvenience,
- violate the privacy of the tenant,
- harass,
- reduce the quality or quantity of service,
- refuse to honor a lease or rental agreement or any provision of a lease or rental agreement,
- refuse to renew a lease or rental agreement,
- terminate a tenancy without cause, or
- constitute any other form of threat or coercion.[17]

2. *Protected activities of the tenant*

URLTA designates only three specific types of tenant activities that are protected – complaints to the landlord regarding violations of URLTA's warranty provision, complaints to a governmental agency regarding a violation of housing or building codes, and organizing or becoming a member of a tenant's union or similar organization. The vast majority of statutes follow a similar pattern, with a couple of notable deviations.

The most prevalent deviation is to emphasize that the tenant's complaints to the landlord or to a governmental agency must be made in good faith, a point that was emphasized by statutes in seventeen states.[18] A second major deviation, emphasized by nine states, is to require that the landlord have notice or knowledge of the protected activity.[19] In addition, a few states have departed from URLTA with

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[12] MICH. COMP. LAWS § 600.5720(1)(d).
[13] MICH. COMP. LAWS § 600.5720(1)(e); MINN. STAT. § 504B.441; WASH. REV. CODE § 59.18.240.
[14] PA. STAT. tit. 68, § 399.11; VT. STAT. tit. 9, § 4465(a).
[15] TEX. PROP. CODE § 92.331(b)(2).
[16] TEX. PROP. CODE § 92.331(b)(5).
[17] D.C. CODE § 42-3505.02(a).
[18] CAL. CIV. CODE § 1942.5; COLO. REV. STAT. § 38-12-509(1); CONN. GEN. STAT. § 47a-20; DEL. CODE tit. 25, § 5516(b); FLA. STAT. § 83.64(1); HAW. REV. STAT. § 521-74(a); MD. CODE, REAL PROP. § 8-208.1(a)(2); NEV. REV. STAT. § 118A.510(1); N.H. REV. STAT. § 540:13-a; N.J. STAT. § 2A:42-10.10(b); N.Y. REAL PROP. LAW § 223-b(1); N.C. GEN. STAT. § 42-37.1(a); OR. REV. STAT. § 90.385(1); S.D. CODIFIED LAWS § 43-32-27; TEX. PROP. CODE § 92.331(a); WASH. REV. CODE § 59.18.240; WIS. STAT. § 704.45(1)(a).
[19] *See* CAL. CIV. CODE § 1942.5(a) (requiring that landlord have notice of the tenant's protected activities); MD. CODE, REAL PROP. § 8-208.1(a)(2) (requiring that tenant provide notice to landlord of complaint to the landlord or governmental agency); N.H. REV. STAT. § 540:13-b (stating that presumption of retaliation applies if landlord's

respect to protection of tenant union activities. Three URLTA-based statutes omitted this provision[20] and other non-URLTA statutes are silent on the issue.

Similar to the provisions on prohibited landlord conduct, many statutes have added a number of specific types of protected activities. In most cases, the protected activities relate to the tenant's rights regarding the lease, including the following:

- The tenant exercises rights under the lease or granted under a landlord and tenant statute (AK, CA, DE, DC, MI, MN, NM, NY, NC, TN, TX, WA, WI),[21] including a right granted by law to abate rent (DC, MI, NM);[22]
- A governmental agency gives the landlord notice or a formal complaint of a housing or building code violation (CA, CT, DE, HI, NV, NC);[23]
- The tenant complains to governmental agencies regarding the violation of other laws or exercises rights under other laws, such as housing discrimination, rent control, or wage-price stabilization laws, or protections for domestic violence survivors in a landlord-tenant act (AK, AZ, CT, IN, ME, NV, NM, NY, NC, OR);[24]
- The tenant successfully defends against an action for possession (OR);[25]
- The tenant fails to agree to a new rule or regulation after the tenancy begins (NV);[26] and
- A service member tenant exercises the statutory right to terminate the lease (FL).[27]

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action is taken within six months after the landlord receives notice of the protected conduct); N.J. STAT. § 2A:42-10.10 ("tenant shall originally bring his good faith complaint to the attention of the landlord or his agent and give the landlord a reasonable time to correct the violation before complaining to a governmental authority"); S.C. CODE ANN. § 27-40-910(f) (requiring that landlord has notice of the violation and tenant's complaint of the violation); S.D. CODIFIED LAWS § 43-32-27 (requiring that landlord has received notice of complaint to government agency or tenant has filed written notice with the landlord regarding a condition needing repair); VT. STAT. tit. 9, § 4465(c) (presumption applies if landlord's action is within 90 days of receiving notice of a violation from a governmental agency); VA. CODE § 55-248.39(A) (landlord may not retaliate by engaging in prohibited conduct "after he has knowledge" of the enumerated tenant activities); *see also* Leeth v. J & J Props., No. 2090758, 2010 WL 4371355, at *4 (Ala. Civ. App. Nov. 5, 2010).

[20] *See* CONN. GEN. STAT. § 47a-20; S.C. CODE § 27-40-910; WIS. STAT. § 704.45(1) (but the concept may be included under § 704.45(1)(c), which prohibits retaliation for tenants "[e]xercising a legal right relating to residential tenancies").

[21] *See* ALASKA STAT. § 34.03.310(a)(1); CAL. CIV. CODE § 1942.5; DEL. CODE tit. 25, § 5516(b)(4); D.C. CODE § 42-3505.02(a)(5); MICH. COMP. LAWS § 600.5720; MINN. STAT. § 504B.285(2); N.M. STAT. § 47-8-39(A)(3); N.Y. REAL PROP. LAW § 223-b(1); N.C. GEN. STAT. § 42-37.1(a)(1); TENN. CODE § 66-28-514(a)(1); TEX. PROP. CODE § 92.331(a)(1); WASH. REV. CODE § 59.18.240; WIS. STAT. § 704.45(1)(c).

[22] *See* D.C. CODE § 42-3505.02(a)(3); MICH. COMP. LAWS § 600.5720; N.M. STAT. § 47-8-39(A)(7).

[23] *See* CAL. CIV. CODE § 1942.5(a); CONN. GEN. STAT. § 47a-20; DEL. CODE tit. 25, § 5516(2); HAW. REV. STAT. § 521-74(a)(2); NEV. REV. STAT. § 118A.510(1)(d); N.C. GEN. STAT. § 42-37.1(a)(3).

[24] *See* ALASKA STAT. § 34.03.310(a)(4) (complaint to agency responsible for housing, wage, price or rental controls); ARIZ. REV. STAT. § 33-1381(4) (wage-price stabilization act); CONN. GEN. STAT. § 47a-33; (housing discrimination); IND. CODE § 32-31-9-8 (domestic violence provisions of landlord and tenant act); ME. REV. STAT. tit. 14, § 6001(3)(e) (housing discrimination); NEV. REV. STAT. § 118A.510(1)(g) (housing discrimination); N.M. STAT. § 47-8-39(A)(4) (housing discrimination); N.Y. REAL PROP. LAW § 223-b (rent gouging); N.C. GEN. STAT. § 42-42.2 (domestic violence protections of landlord and tenant act); OR. REV. STAT. § 90.385(1)(a)(B), (C) (housing discrimination, laws concerning delivery of mail).

[25] *See* OR. REV. STAT. § 90.385(1)(e).

[26] *See* NEV. REV. STAT. § 118A.510(1)(f).

[27] *See* FLA. STAT. § 83.64(1)(d).

In other cases, however, the protected activities are stated with much broader language, thereby encompassing rights that are not necessarily related to the tenancy, such as:

- The tenant pursues a legal action against the landlord (DC, MD, NM, VA);[28]
- The tenant testifies against the landlord in court (NM, OR, VA);[29] and
- The tenant exercises rights and remedies under virtually any municipal, state, or national law (MI, NJ, RI, TX).[30]

B. Presumption of retaliation

Section 5.101(B) of URLTA includes an evidentiary presumption that also has received a mixed reaction. It states that

> In an action by or against the tenant, evidence of a complaint within [1] year before the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. "Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.[31]

Ten states (AL, AK, FL, HI, KS, NE, OR, SC, TN, VA) have omitted the presumption from their URLTA-based statutes.[32] Nevada also omitted the presumption in adopting a statute substantially similar to URLTA.[33] Colorado went further to emphasize the opposite presumption – that "[i]f the landlord has a right to increase rent, to decrease service, or to terminate the tenant's tenancy at the end of any term of the rental agreement . . . there shall be a rebuttable presumption that the landlord's exercise of any of these rights was *not* retaliatory."[34]

Fifteen jurisdictions include the presumption that the landlord's conduct is retaliatory but have deviated from the one-year time period used in URLTA. Nine of those states and the District of Columbia

[28] *See* D.C. CODE § 42-3505.02(a)(6); MD. CODE, REAL PROP. § 8-208.1(2)(ii); N.M. STAT. § 47-8-39(A)(5); VA. CODE § 55-248.39(A)(iii).
[29] *See* N.M. STAT. § 47-8-39(A)(6); OR. REV. STAT. § 90.385(1)(d); VA. CODE § 55-248.39(A)(iv).
[30] *See* MICH. COMP. LAWS § 600.5720 (1)(a) (tenant's "attempt to secure or enforce rights under the lease or agreement or under the laws of the state, of a governmental subdivision of this state, or of the United States"); N.J. STAT. § 2A:42-10.10(b) ("tenant's efforts to secure or enforce any rights under the lease or contract, or under the laws of the State of New Jersey or its governmental subdivisions, or of the United States"); R.I. GEN. LAWS § 34-18-46(a)(4) ("tenant has availed himself or herself of any other lawful rights and remedies"); TEX. PROP. CODE § 92.331(a)(1) (tenant exercise of "right or remedy granted to the tenant by lease, municipal ordinance, or federal or state statute").
[31] UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 5.101(b) (1972).
[32] ALA. CODE § 35-9A-501; ALASKA STAT. § 34.03.310(b); FLA. STAT. § 83.64(2); HAW. REV. STAT. § 521-74(c); KAN. STAT. § 58-2572(b); NEB. REV. STAT. § 76-1439(2); OR. REV. STAT. § 90.385(3); S.C. CODE § 27-40-910(b); TENN. CODE § 66-28-514; VA. CODE § 55-248.39(B).
[33] NEV. REV. STAT. § 118A.510;.
[34] COLO. REV. STAT. § 38-12-509(3) (emphasis added).

opted for a six-month time frame (AZ, CA, CT, DC, MA, MT, NH, NM, RI, TX)[35] and five states adopted a ninety-day period (DE, MI, MN, VT, WA).[36] Only two states with URLTA-based statutes adopted the one-year period.[37] One non-URLTA state, New Jersey, omits any time frame from its presumption.[38]

One final notable variation concerns the limitation on the presumption (i.e., that the presumption does not arise if the tenant made the complaint after receiving notice of a proposed rent increase or diminution of services). Of the seventeen statutes that generally include the presumption, only six (AZ, IA, KY, MT, NH, RI) also include the limiting language.[39]

C. Landlord's Safe Harbors

Section 5.101(c) of URLTA lists three instances in which the landlord's conduct would not be viewed as a retaliatory act even if the conduct would otherwise fall within URLTA's prohibited conduct. The Act states:

> (c) Notwithstanding subsections (a) and (b), a landlord may bring an action for possession if:
> (1) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of his family, or other person on the premises with his consent; or
> (2) the tenant is in default in rent; or
> (3) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.[40]

Fourteen states have included this provision or substantially similar provisions in their statutes (AL, AK, AZ, IA, KS, KY, MT, NE, OR, RI, TN, TX, VA, WI).[41] Many states, however, have expanded upon this list with additional exceptions. In some cases, these exceptions are stated as an exception to the presumption of retaliation, but in others they are listed as a safe harbor exclusion, as in URLTA. In a handful of states, the exception is stated as a broadly worded standard, providing that the retaliatory actions section does not apply if the landlord proves that the eviction is for "good cause,"[42] in "good

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[35] ARIZ. REV. STAT. § 33-1381(B); CAL. CIV. CODE § 1942.5(a); CONN. GEN. STAT. § 47a-20; D.C. CODE § 42-3505.02(b); MASS. GEN. LAWS ch. 186, § 18; MONT. CODE § 70-24-431(2); N.H. REV. STAT. § 540:13-b; N.M. STAT. § 47-8-39(A); R.I. GEN. LAWS § 34-18-46(b); TEX. PROP. CODE § 92.331(b).
[36] DEL. CODE tit. 25, § 5516(c); MICH. COMP. LAWS § 600.5720(2); MINN. STAT. § 504B.285(2); VT. STAT. tit. 9, § 4465(c); WASH. REV. CODE § 59.18.250.
[37] IOWA CODE § 562A.36(2); KY. REV. STAT. § 383.705(2).
[38] N.J. STAT. § 2A:42-10.12.
[39] ARIZ. REV. STAT. § 33-1381(B); IOWA CODE § 562A.36(2); KY. REV. STAT. § 383.705(2); MONT. CODE § 70-24-431(2); N.H. REV. STAT. § 540:13-b; R.I. GEN. LAWS § 34-18-46(b); *cf.* WASH. REV. CODE § 59.18.240 (presumption that tenant's complaint to government agency was not in good faith if made within 90 days after receiving notice of rent increase or other good faith action by the landlord).
[40] UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 5.101(c) (1972).
[41] ALA. CODE § 35-9A-501(a); ALASKA STAT. § 34.03.310(c); ARIZ. REV. STAT. § 33-1381(C); IOWA CODE § 562A.36(3); KAN. STAT. § 58-2572(d); KY. REV. STAT. § 383.705(3); MONT. CODE § 70-24-431(4); NEB. REV. STAT. § 76-1439(3); OR. REV. STAT. § 90.385(4); R.I. GEN. LAWS § 34-18-46(c); TENN. CODE § 66-28-514(b); TEX. PROP. CODE § 92.332(b); VA. CODE § 55-248.39(C); WIS. STAT. § 704.45(2), (3).
[42] FLA. STAT. § 83.64(3); NEV. REV. STAT. § 118A.510(3)(b).

faith"[43] or "for any reason not prohibited by law unless the court finds that the primary reason for the termination was retaliation."[44] Most states, however, follow the format of URLTA in providing a list of specifically enumerated conduct.

Specifically enumerated exceptions fall into two general categories: exceptions that would permit increases in rent and exceptions that apply to other types of prohibited landlord conduct. Provisions that states have included in their statutes to identify cases in which increases in rent would be permissible include:

- The increase applies in a uniform manner to all tenants (AK, DE, HI, NM, NV, SC, TX);[45]
- The increase is not in excess of fair market value (AK, HI, SC, SD, VA);[46]
- The increase reflects capital improvements made by the landlord to the premises (AK, DE, HI, OH, WA);[47]
- The increase reflects a substantial increase in the costs of operation of the premises (AK, CT, DE, HI, IA, KS, OH, TX);[48]
- The landlord can establish that the increase in rent is not directed at the particular tenant as a result of any retaliatory acts (DE);[49] and
- The landlord has received certification that the premises were in compliance with all health laws and regulations on the date the tenant filed the complaint (HI).[50]

Provisions that states have included in their statutes to identify cases in which other landlord actions are permissible include:

- The tenant has violated other material violations of the lease or the landlord and tenant act for which the tenant may be evicted (AL, DE, FL, NC, VA, WA);[51]

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[43] CAL. CIV. CODE § 1942.5(e).
[44] VA. CODE § 55-248.39(D); *see also* MASS. GEN. LAWS ch. 186, § 18 (presumption of retaliation is rebutted "only by clear and convincing evidence that such person's action was not a reprisal against the tenant and that such person had sufficient independent justification for taking such action"); WASH. REV. CODE § 59.18.250 (if the landlord, in a notice to the tenant of a rent increase, "specifies reasonable grounds for said increase").
[45] ALASKA STAT. § 34.03.310(d)(3); DEL. CODE tit. 25, § 5516(d)(12); HAW. REV. STAT. § 521-74(b)(5); NEV. REV. STAT. § 118A.510(3)(d); N.M. STAT. § 47-8-39(C); S.C. CODE § 27-40-910; TEX. PROP. CODE § 92.332(a)(2).
[46] ALASKA STAT. § 34.03.310(d)(3); HAW. REV. STAT. § 521-74(b)(5); S.C. CODE § 27-40-910(e); S.D. CODIFIED LAWS § 43-32-27; VA. CODE § 55-248.39(A).
[47] ALASKA STAT. § 34.03.310(d)(2) (landlord may increase rent if the landlord "has completed a capital improvement of the dwelling unit or the property of which it is a part and the increase in rent does not exceed the amount that may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the dwelling units benefited by the improvement"); DEL. CODE tit. 25, § 5516(d)(11) (similar to Alaska); HAW. REV. STAT. § 521-74(d)(3) (virtually identical to Alaska); OHIO REV. CODE § 5321.02(C) (landlord is not prohibited "from increasing the rent to reflect the cost of improvements installed by the landlord"); WASH. REV. CODE §§ 59.18.240, 59.18.250 (presumption of retaliation inapplicable "if the landlord . . . specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter").
[48] ALASKA STAT. § 34.03.310(d)(1); CONN. GEN. STAT. § 47a-20a(b)(2); DEL. CODE tit. 25, § 5516(d)(10); HAW. REV. STAT. § 521-74(d)(2); IOWA CODE § 562A.36(2); KAN. STAT. § 58-2572(c); OHIO REV. CODE § 5321.02(C); TEX. PROP. CODE § 92.332(a)(1) (if the lease has a rent escalation clause permitting increases for such purposes).
[49] DEL. CODE tit. 25, § 5516(d)(12).
[50] HAW. REV. STAT. § 521-74(d)(1).

- The tenant is committing waste or a nuisance, is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of the rental agreement (AK, CT, HI),[52] or intentionally damages the premises or presents a risk of personal safety to others (TX);[53]
- The tenant holds over and the landlord has a good faith belief that the tenant might adversely affect the quiet enjoyment by other tenants or neighbors, materially affect the health or safety of the landlord, other tenants, or neighbors, or damage the property of the landlord, other tenants, or neighbors (TX);[54]
- The landlord seeks in good faith to recover possession of the dwelling unit for his own dwelling (AK, CT, DE, HI, NC);[55]
- The landlord seeks in good faith to recover possession of the dwelling unit for the purpose of substantially altering, remodeling, or demolishing the premises (AK, DE, HI, NC);[56]
- The landlord seeks in good faith to recover possession of the dwelling unit to immediately terminate its use as a dwelling unit (AK, DE, NC);[57]
- The landlord has in good faith contracted to sell the property to a bona fide purchaser (NY)[58] and, in three states (AK, DE, HI), the contract contains a representation by the purchaser of an intent to use for purchaser's own dwelling, to substantially remodel or demolish, or to terminate its use as a dwelling unit;[59]
- The landlord is seeking to terminate a periodic tenancy and gave notice of termination to the tenant before the tenant's complaint (CT, DE, HI, NC);[60]
- The rental was in full compliance with all codes, statutes and ordinances on the date of the filing of tenant's complaint or the landlord's notice of termination (DE, HI);[61]
- The condition the tenant complained of was impossible to remedy prior to the end of the period to cure it (DE);[62]

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[51] ALA. CODE § 35-9A-501(4); DEL. CODE tit. 25, § 5516(d)(1); FLA. STAT. § 83.64(3); N.C. GEN. STAT. § 42-37.1(c)(1); VA. CODE § 55-248.39(C)(4); WASH. REV. CODE § 59.18.250.

[52] ALASKA STAT. § 34.03.310(c)(3) ("the tenant is committing waste or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of the rental agreement"); CONN. GEN. STAT. § 47a-20a(a)(1) (the tenant "is using the dwelling unit for an illegal purpose or for a purpose which is in violation of the rental agreement"); HAW. REV. STAT. § 521-74(b)(1) (virtually identical to Alaska).

[53] TEX. PROP. CODE § 92.332(b)(2) ("the tenant, a member of the tenant's family, or a guest or invitee of the tenant intentionally damages property on the premises or by word or conduct threatens the personal safety of the landlord, the landlord's employees, or another tenant").

[54] TEX. PROP. CODE § 92.332(b)(2).

[55] ALASKA STAT. § 34.03.310(c)(4); CONN. GEN. STAT. § 47a-20a(a)(2); DEL. CODE tit. 25, § 5516(d)(2); HAW. REV. STAT. § 521-74(b)(2); N.C. GEN. STAT. § 42-37.1(c)(6).

[56] ALASKA STAT. § 34.03.310(c)(5); DEL. CODE tit. 25, § 5516(d)(3); HAW. REV. STAT. § 521-74(b)(3); N.C. GEN. STAT. § 42-37.1(c)(6).

[57] ALASKA STAT. § 34.03.310(c)(6); DEL. CODE tit. 25, § 5516(d)(4); N.C. GEN. STAT. § 42-37.1(c)(6). California has established this rule through case law. *See* Drouet v. Superior Court, 73 P.3d 1185, 1193 (Cal. 2003).

[58] N.Y. REAL PROP. LAW § 223-b(6).

[59] ALASKA STAT. § 34.03.310(c)(7); DEL. CODE tit. 25, § 5516(d)(7); HAW. REV. STAT. § 521-74(b)(6).

[60] CONN. GEN. STAT. § 47a-20a(a)(4); DEL. CODE tit. 25, § 5516(d)(8); HAW. REV. STAT. § 521-74(b)(7); N.C. GEN. STAT. § 42-37.1(c)(6).

[61] DEL. CODE tit. 25, § 5516(d)(6); HAW. REV. STAT. § 521-74(b)(5).

[62] DEL. CODE tit. 25, § 5516(d)(9).

- The complaint by the tenant was made in an unreasonable manner or at an unreasonable time or was repeated in a manner having the effect of unreasonably harassing the landlord (OR);[63] and
- The landlord can establish that the changes in services are consistent with those imposed on other residents of similar rental units and are not directed at the particular resident (NM).[64]

D. Landlords with Multiple Motives

One issue that URLTA did not address – nor have the statutes in most states – is the liability of a landlord with mixed motives for taking a particular action. Of the few legislatures and courts that have addressed the issue, there has been substantial variation in the standard they apply to determine whether a landlord's conduct is retaliatory, with jurisdictions generally adopting one of three approaches:

- The "sole motivation" test requires the tenant to prove that the retaliatory basis for the eviction was the sole reason for the eviction. This test imposes a substantial burden upon the tenant to prove that the landlord had no other motivation for taking the prohibited action.

- At the other extreme is an "independent motivation test." Once the tenant has produced sufficient proof to raise a presumption of retaliation, the landlord must rebut the presumption by showing that "the decision to evict was reached independent of any consideration of the activities of the tenants protected by the statute."[65]

- An intermediate approach is the "primary motive test," which considers whether a retaliatory motive was the primary or predominant reason for the eviction.

A handful of states have addressed the issue by statute with mixed results. Michigan and Virginia have adopted the primary motive test. Michigan's retaliatory eviction defense applies if "the alleged termination was intended *primarily* as a penalty" for the tenant's protected activities.[66] The safe harbor provision of Virginia's statute states that the landlord may terminate periodic tenancies "for any other reason not prohibited by law *unless the court finds that the primary reason for the termination was retaliation*."[67]

The Massachusetts statute adopts the independent motivation test, requiring the landlord to rebut a presumption of retaliation

> by clear and convincing evidence that such person's action was not a reprisal against the tenant and that such person had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken,

[63] OR. REV. STAT. § 90.385(4)(a).
[64] N.M. STAT. § 47-8-39(C).
[65] Silberg v. Lipscomb, 285 A.2d 86, 88 (N.J. Dist. Ct. 1971).
[66] MICH. COMP. LAWS § 600.5720 (emphasis added).
[67] VA. CODE § 55-248.39(D) (emphasis added).

> regardless of tenants engaging in, or the belief that tenants had engaged in, activities protected under this section.[68]

Minnesota's statute would achieve a similar result; it prohibits landlord conduct that "was intended in whole or in part as a penalty" for the tenant's protected activities.[69]

Connecticut's summary eviction statute, however, adopted the more stringent test, requiring tenants to prove that retaliation was the landlord's *sole* motivation.[70] Iowa's anti-retaliation statute similarly provides that a landlord may not retaliate against a tenant "solely because" the tenant or a member of the tenant's household is a member of the protected class under the domestic violence protections in the landlord and tenant act.[71]

The courts are similarly divided on the issue. Several courts have cited or followed the Restatement (Second) of Property, which endorses the view that the landlord must be "primarily motivated" to take action because of the tenant's protected activities.[72] Other courts, however, have required the tenant to prove that retaliation was the landlord's sole motivation,[73] while a handful of states have adopted the independent motivation test.[74]

E. Dissipation of Retaliatory Motives

Another issue URLTA does not expressly address is when a retaliatory motive ceases to exist, thereby making it possible for a landlord to evict a tenant or engage in other actions on the prohibited

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[68] MASS. GEN. LAWS ch. 186, § 18 (West).
[69] MINN. STAT. § 504B.285(2).
[70] CONN. GEN. STAT. § 47a-33 (West) (in a summary eviction process, "it shall be an affirmative defense that the plaintiff brought such action solely because" of tenant's protected activities).
[71] IND. CODE § 32-31-9-8(a).
[72] RESTATEMENT (SECOND) OF PROPERTY § 14.8 (1977); *see* Bldg. Monitoring Sys., Inc. v. Paxton, 905 P.2d 1215, 1218 (Utah 1995) (citing Restatement's primary motive standard); *see also* Wright v. Brady, 889 P.2d 105, 109 (Idaho Ct. App. 1995) (holding that "a landlord's claim for eviction of a tenant may be defeated by a showing that the primary motive for the eviction is retaliation against the tenant for reporting to authorities violations of housing or safety codes"); Hillview Assocs. v. Bloomquist, 440 N.W.2d 867, 871 (Iowa 1989) (listing factors tending to show that landlord's primary motivation was not retaliatory).
[73] *See* Patterson v. Dykins, No. HDSP-148040, 2008 WL 5050635, at *3 (Conn. Super. Ct. Nov. 10, 2008) (holding that the defense of retaliatory eviction failed where it was not the sole basis for the eviction).Am. Mgmt. Consultant, LLC. v. Carter, 915 N.E.2d 411, 426 (Ill. App. Ct. 2009) ("The *prima facie* elements of retaliatory eviction are that the tenant made complaints to a governmental authority, violations were found, the landlord was notified of the violations and the tenancy was terminated solely because of the tenant's complaints.") (quoting Shelby Cty. Hous. Auth. v. Thornell, 493 N.E.2d 1109, 1112 (Ill. App. Ct. 1986)); Dickhut v. Norton, 173 N.W.2d 297, 302 (Wis. 1970) (holding that retaliatory eviction defense requires tenant to prove by clear and convincing evidence that "a condition existed which in fact did violate the housing code, that the plaintiff-landlord knew the tenant reported the condition to the enforcement authorities, and that the landlord, for the sole purpose of retaliation, sought to terminate the tenancy"); *see also* Green v. Hous. Auth. of City of Atlanta, 296 S.E.2d 758, 759-60 (Ga. Ct. App. 1982) (if housing authority could prove that the tenant was evicted for breach of a lease condition, the landlord's ulterior motive for evicting the tenant would be immaterial).
[74] Silberg v. Lipscomb, 285 A.2d 86, 88 (N.J. Dist. Ct. 1971); *see also* Joe Lebnan LLC v. Oliva, 26 Misc. 3d 1220(A) (N.Y. Civ. Ct. 2009) (court must "determine if the landlord's decision to evict the tenant was reached independently of the activities of his tenant protected by ordinance") (citing Cornell v. Dimmick, 342 N.Y.S.2d 275, 280 (City Ct. 1973)).

conduct list. In *Edwards v. Habib*, the court stated that a tenant is not entitled to stay in perpetuity once the tenant has proven a retaliatory motive existed. To the contrary, "[i]f this illegal purpose is dissipated, the landlord can, in the absence of legislation or a binding contract, evict his tenants or raise their rents for economic or other legitimate reasons, or even for no reason at all."

The court did not discuss how a landlord could prove the retaliatory purpose had dissipated. However, other courts and legislatures that have addressed the issue have taken one of the following approaches:

- Maryland's statute focuses on the length of time that has elapsed since the tenant's protected action. It states that a landlord's action "may not be deemed to be retaliatory . . . if the alleged retaliatory action occurs more than 6 months after a tenant's action that is protected under . . . this section."[75]

- Some courts have suggested that the landlord may return to the status quo ante once the landlord has repaired the condition that prompted the tenant's complaint and can show that his subsequent actions are not the result of retaliatory motives.[76]

- Courts in Utah and New York permitted the landlord to evict a tenant immediately after repairs have been made, provided that the landlord "can demonstrate that he has given the tenant a reasonable opportunity to procure other housing."[77]

- A Hawaii court adopted the Restatement (Second) of Property position that dissipation of a retaliatory motive should be treated as a question of fact to be determined by the weight of the evidence.[78] The Restatement explains this approach in a comment:

> *i. Dissipation of the landlord's primary motive.* The primary motivation of the landlord in exercising his right may be retaliatory as of one particular time and not retaliatory at a later date. It is a question of fact each time the landlord acts whether that particular action is retaliatory. . . . Factors relevant in determining whether a previous determination of retaliatory action has continued significance will be the length of time that has elapsed since the previous determination and whether the tenant has repeated the acts which previously caused the landlord to retaliate.[79]

F. Remedies

There are three general issues that arise with respect to the remedies available for retaliatory conduct: (1) whether the retaliatory conduct doctrine may be used only as a defense or if a tenant may

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[75] MD. CODE, REAL PROP. § 8-208.1(e).
[76] *See, e.g.*, Robinson v. Diamond Hous. Corp., 463 F.2d 853, 865-66 (D.C. Cir. 1972) (if landlord "brought the premises up to housing code standards so that rent was again due and then evicted the tenant for some unrelated, lawful reason, the eviction would be permissible").
[77] Bldg. Monitoring Sys., Inc. v. Paxton, 905 P.2d 1215, 1219 (Utah 1995); *see also* Markese v. Cooper, 333 N.Y.S.2d 63, 75 (Cnty. Ct. 1972).
[78] Windward Partners v. Delos Santos, 577 P.2d 326, 334 (Hawaii 1978); RESTATEMENT (SECOND) OF PROPERTY § 14.8 Reporter's Note 7 (1977).
[79] *Id*. cmt. i.

bring an affirmative claim for damages or injunctive relief; (2) what damages are recoverable; and (3) whether the landlord is entitled to damages from a tenant who files a complaint in bad faith. As discussed below, the vast majority of states have followed URLTA's approach to each of these issues.

1. *Types of relief*

URLTA provides that a tenant "is entitled to the remedies provided in Section 4.107 and has a defense in any retaliatory action against him for possession."[80] Thus, it permits the use of the retaliatory conduct doctrine as both a defense and an affirmative cause of action. A majority of states that have adopted URLTA, as well as several of the states with similar statutes, follow this approach with little variation.[81] There are a handful of states, however, that recognize the doctrine only as a defense to the landlord's action for possession.[82]

2. *Amount of damages*

Section 4.107 of URLTA allows the tenant to "recover an amount not more than [3] months' periodic rent or [threefold] the actual damages sustained by him, whichever is greater, and reasonable attorney's fees."[83] A small number of states deviate from this remedy, permitting recovery of actual damages and attorney fees but not the treble damages allowed under URLTA.[84] California and Texas permit recovery of a monetary penalty in addition to actual damages.[85] New Hampshire does not require a tenant who has proven a retaliation claim to plead or prove actual damages, but imposes a penalty on the landlord of up to three months' rent.[86]

3. *Bad faith claims against tenants*

As indicated above, a substantial number of states – including those that have generally adopted URLTA – have included language that would protect a tenant only when complaints of housing conditions have been made in good faith.[87] A handful of states (MD, SC, TX, WA) have gone further to

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[80] UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 5.101(b) (1972).
[81] ALA. CODE § 35-9A-501(b); ALASKA STAT. § 34.03.310(b); ARIZ. REV. STAT. § 33-1381(B); CAL. CIV. CODE § 1942.5; DEL. CODE tit. 25, § 5516(e); HAW. REV. STAT. § 521-74; KAN. STAT. § 58-2572(b); KY. REV. STAT. § 383.705(2); MD. CODE, REAL PROP. § 8-208.1(b)(2) & (c)(1); MASS. GEN. LAWS ch. 186, § 18; MONT. CODE § 70-24-431(2); NEB. REV. STAT. § 76-1439(2); NEV. REV. STAT. § 118A.510(2); N.M. STAT. § 47-8-39(B); OR. REV. STAT. § 90.385(3); R.I. GEN. LAWS § 34-18-46(b); S.D. CODIFIED LAWS § 43-32-28; VT. STAT. tit. 9, § 4465. Although the statutes in Illinois and West Virginia would appear to offer only a retaliatory eviction defense, courts in those states have recognized an affirmative cause of action as well. *See* Morford v. Lensey Corp., 442 N.E.2d 933, 938 (Ill. App. Ct. 1982); Murphy v. Smallridge, 468 S.E.2d 167, 172 (W. Va. 1996).
[82] CONN. GEN. STAT. § 47a-20; FLA. STAT. § 83.64(1) & (2); N.Y. REAL PROP. LAW § 223-b(4); N.H. REV. STAT. § 540:13-a; S.C. CODE § 27-40-910(f).
[83] *Id.* § 4.107.
[84] HAW. REV. STAT. § 521-74(c); IOWA CODE § 562A.36(2); N.Y. REAL PROP. LAW § 223-b(3); OHIO REV. CODE § 5321.02(B); TEX. PROP. CODE § 92.333; VT. STAT. tit. 9, § 4465(b); VA. CODE § 55-248.39(B). *Cf.* N.Y. REAL PROP. LAW § 223-b(5-a) (permits damages and triple the amount of an improper fee or charge, but no attorney fees).
[85] CAL. CIV. CODE § 1942.5(f); TEX. PROP. CODE § 92.333.
[86] Sherryland, Inc. v. Snuffer, 837 A.2d 316, 320 (N.H. 2003).
[87] *See supra* note 18 and accompanying text.

allow a landlord to recover damages from the tenant for claims made in bad faith.[88] Maryland's statute mirrors the remedy available to tenants, permitting a landlord to recover "damages not to exceed the equivalent of three months' rent, reasonable attorney fees, and costs."[89] Texas permits the landlord to recover possession, as well as a civil penalty of one month's rent plus $500, court costs, and reasonable attorney fees.[90] In Washington, a landlord who prevails is entitled to the costs of the action and a reasonable attorney's fee.[91]

G. Other Relief

Section 5.101(d) of URLTA makes it clear that the retaliatory conduct provision is cumulative to any remedy to which the tenant is entitled for the landlord's noncompliance with obligations under the lease or URLTA's warranty provision. It states: "The maintenance of an action under subsection (c) does not release the landlord from liability under Section 4.101(b)."[92] About half of the states with URLTA-based statutes have enacted this provision verbatim or with minor wording variation.[93] The language is missing in the other half of states with URLTA-based statutes.[94]

H. Scope Issues

Statutes in a handful of states include provisions delineating the statute's scope. In New York, for example, the statute is not applicable to owner-occupied dwellings with fewer than four units.[95] Two statutes specifically address the issue of holdover tenants. Hawaii's statute expressly provides that the retaliatory conduct provision applies to holdover tenants.[96] Conversely, North Carolina expressly excludes

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[88] MD. CODE, , REAL PROP. § 8-208.1(c)(2); S.C. CODE § 27-40-910(b); TEX. PROP. CODE § 92.334; WASH. REV. CODE § 59.18.250.

[89] MD. CODE,, REAL PROP. § 8-208.1(c)(2); *see also* S.C. CODE § 27-40-910(b)(up to three months' rent or treble the actual damages, whichever is greater).

[90] TEX. PROP. CODE § 92.334.

[91] WASH REV. CODE § 59.18.250.

[92] UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 5.101(d) (1972). Section 4.101(b) provides that "[e]xcept as provided in this Act, the tenant may recover actual damages and obtain injunctive relief for noncompliance by the landlord with the rental agreement or Section 2.104. If the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees." *Id.* § 4.101(b).

[93] ALA. CODE § 35-9A-501(d); ALASKA STAT. § 34.03.310(e); ARIZ. REV. STAT. § 33-1381(C)(2); KY. REV. STAT. § 383.705(4); MONT. CODE § 70-24-431(5); NEB. REV. STAT. § 76-1439; OR. REV. STAT. § 90.385(7); R.I. GEN. LAWS § 34-18-46(d); S.C. CODE § 27-40-910(d); TENN. CODE § 66-28-514(b)(2); *see also* CAL. CIV. CODE § 1942.5(h) ("the remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law"), NEV. REV. STAT. § 118A.510 (similar to URLTA), S.C. CODE § 27-40-910(f) ("all other rights or remedies of the lessor and the lessee pursuant to any other provision of law are preserved . . . .").

[94] CONN. GEN. STAT. §§ 47a-20, 47a-20a, FLA. STAT. § 83.64; HAW. REV. STAT. § 521-74; 765 ILL. COMP. STAT. 720/1; IOWA CODE § 562A.36; KAN. STAT. § 58-2572; MICH. COMP. LAWS § 600.5720; N.M. STAT. § 47-8-39; VA. CODE § 55-248.39; WASH. REV. CODE §§ 59.18.240, 59.18.250.

[95] N.Y. REAL PROP. LAW § 223-b(6).

[96] HAW. REV. STAT. § 521-74(a) ("[n]otwithstanding that the tenant has no written rental agreement or that it has expired").

a holdover tenant with a tenancy for a fixed period that has no option to renew.[97] Similarly, courts in Maryland, Oregon, and Washington have refused to extend protection to holdover tenants.[98]

III. CONCLUSION AND RECOMMENDATION

The foregoing analysis of URLTA's retaliatory conduct provision suggests that the majority of states embrace both the general concept of protecting tenants from retaliatory acts of the landlord and most of URLTA's methodology. There are a few issues, however, that could be addressed or clarified in the revision of the Act. Accordingly, the drafting committee should consider whether modifications of the Act are desirable to address some or all of the following issues:

1. Whether to expand URLTA's lists of:
    a. Prohibited landlord conduct;
    b. Protected tenant activities;
    c. Landlord's defenses/safe harbor conduct;

2. Whether the landlord must have knowledge of the tenant's activities;

3. Whether to add a requirement that tenant's complaints must be in "good faith";

4. Whether to maintain or modify the presumption of retaliation (particularly the time period in which the presumption applies after a protected tenant activity);

5. Whether to require that the landlord's conduct be solely (or only primarily or partly) motivated by the tenant's protected activity;

6. Whether to provide a means for the landlord to prove that the retaliatory motive has dissipated;

7. Whether the section should apply to holdover tenants; and

8. Whether to exempt owner-occupied dwellings of fewer than four units from the section.

[97] N.C. GEN. STAT. § 42-37.1(c)(2).
[98] *See* Eames v. Forest City Enters., Inc., No. 212163, 2001 WL 35913244 (Md. Cir. Ct. Dec. 6, 2001); Pendergrass v. Fagan, 180 P.3d 110, 113 (Or. Ct. App. 2008); Carlstrom v. Hanline, 990 P.2d 986, 989-90 (Wash. Ct. App. 2000).