

DRAFT
FOR DISCUSSION ONLY

**REVISED UNIFORM RESIDENTIAL LANDLORD
AND TENANT ACT (2015)**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

REDLINE DRAFT WITH PRELIMINARY COMMENTS

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October 17, 2014

DRAFTING COMMITTEE ON REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

JOAN ZELDON, District of Columbia Superior Court, 515 Fifth St. NW, Room 219,
Washington, DC 20001, *Chair*

WILLIAM W. BARRETT, 600 N. Emerson Ave., P.O. Box 405, Greenwood, IN 46142

MICHAEL A. FERRY, 200 N. Broadway, Suite 950, St. Louis, MO 63102

LYNN FOSTER, University of Arkansas at Little Rock, William H. Bowen School of Law,
1201 McMath Ave., Little Rock, AR 72202

CARL H. LISMAN, 84 Pine St., P.O. Box 728, Burlington, VT 05402

REED L. MARTINEAU, P.O. Box 45000, 10 Exchange Pl., 11th Floor, Salt Lake City, UT
84145-5000

ROBERT L. MCCURLEY, JR., P.O. Box 861287, Tuscaloosa, AL 35486

JANICE L. PAULS, 1634 N. Baker St., Hutchinson, KS 67501

KEVIN P.H. SUMIDA, 735 Bishop St., Suite 411, Honolulu, HI 96813

V. DAVID ZVENYACH, 1350 Pennsylvania Ave. NW, Suite 4, Washington, DC 20004

SHELDON F. KURTZ, University of Iowa College of Law, Boyd Law Bldg. – 446, Iowa City,
IA 52242, *Co-Reporter*

ALICE NOBLE-ALLGIRE, Southern Illinois University School of Law, Mail Code 6804,
1150 Douglas Dr., Lesar Law Bldg., Carbondale, IL 62901, *Co-Reporter*

EX OFFICIO

HARRIET LANSING, P.O. Box 1347, 1201 N. Market St., 18th Fl., Wilmington, DE 19899,
President

NORA WINKELMAN, Office of Chief Counsel, House Democratic Caucus, Pennsylvania
House of Representatives, Main Capitol Building, Room 620, Harrisburg, PA 17120,
Division Chair

AMERICAN BAR ASSOCIATION ADVISORS

PETER A. BUCHSBAUM, 126 Bowne Station Rd., Stockton, NJ 08559, *ABA Advisor*

STEVEN J. EAGLE, George Mason University School of Law, 3301 Fairfax Dr., Arlington, VA
22201-4426, *ABA Section Advisor*

AMERICAN LAW INSTITUTE ADVISOR

STEVEN L. HARRIS, Chicago-Kent College of Law, 565 W. Adams St., Chicago, IL 60661-
3691, *ALI Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
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REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (201~~→~~5)

TABLE OF CONTENTS

**ARTICLE 1
GENERAL PROVISIONS**

SECTION 101. SHORT TITLE. 1
SECTION 102. DEFINITIONS. 1
SECTION 103. SCOPE. 10
SECTION 104. ENFORCEMENT; DUTY TO MITIGATE. 12
SECTION 105. OBLIGATION OF GOOD FAITH. 12
SECTION 106. UNCONSCIONABILITY. 13
SECTION 107. KNOWLEDGE AND NOTICE. 14
SECTION 108. REQUIRED DISCLOSURES BY LANDLORD. 15
SECTION 109. REQUIRED DISCLOSURES BY TENANT. 17
SECTION 110. COMMON LAW AND PRINCIPLES OF EQUITY 18

**ARTICLE 2
GENERAL PROVISIONS APPLICABLE TO LEASE**

SECTION 201. TERMS AND CONDITIONS OF LEASE. 18
SECTION 202. EFFECT OF UNSIGNED, UNDELIVERED LEASE; IMPLIED LEASE. 19
SECTION 203. PROHIBITED PROVISIONS IN LEASE. 20
SECTION 204. SEPARATION OF RENT FROM DUTY TO MAINTAIN PREMISES 21
SECTION 205. ATTORNEY’S FEES [AND COSTS]. 21

**ARTICLE 3
LANDLORD’S DUTIES**

SECTION 301. DELIVERY OF POSSESSION OF DWELLING UNIT TO TENANT. 22
SECTION 302. LANDLORD’S DUTY TO MAINTAIN PREMISES. 23
SECTION 303. DUTIES OF LANDLORD PERFORMED BY TENANT. 25
SECTION 304. LIMITATIONS ON LANDLORD’S LIABILITY. 27
SECTION 305. RULES OF LANDLORD. 28

**ARTICLE 4
TENANT REMEDIES**

SECTION 401. NOTICE AND OPPORTUNITY TO REPAIR. 29
SECTION 402. NONCOMPLIANCE BY LANDLORD; IN GENERAL. 30
SECTION 403. LANDLORD’S FAILURE TO DELIVER POSSESSION TO TENANT 37
SECTION 404. SELF-HELP 38
SECTION 405. LANDLORD’S WRONGFUL FAILURE TO PROVIDE ESSENTIAL
SERVICE. 40

SECTION 406. LANDLORD’S NONCOMPLIANCE AS DEFENSE TO ACTION FOR NONPAYMENT OF RENT.	40
SECTION 407. FIRE OR OTHER CASUALTY DAMAGE.....	42
SECTION 408. UNLAWFUL REMOVAL, EXCLUSION, OR DIMINUTION OF ESSENTIAL SERVICE.....	44

**ARTICLE 5
TENANT’S DUTIES**

SECTION 501. TENANT’S DUTIES.....	45
-----------------------------------	----

**ARTICLE 6
LANDLORD REMEDIES**

SECTION 601. TENANT’S FAILURE TO PAY RENT; OTHER NONCOMPLIANCE WITH LEASE.	57
SECTION 602. WAIVER OF LANDLORD’S RIGHT TO TERMINATE.....	60
SECTION 603. DISTRAINT FOR RENT; LIENS.....	60
SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION.....	61
SECTION 605. RECOVERY OF POSSESSION LIMITED; INTERRUPTION OF ESSENTIAL SERVICE.....	63

**ARTICLE 7
ACCESS TO THE DWELLING UNIT**

SECTION 701. LANDLORD’S ACCESS TO DWELLING UNIT.	64
SECTION 702. REMEDIES FOR ABUSE OF ACCESS.....	65

**ARTICLE 8
PERIODIC AND HOLDOVER TENANCIES; DEATH OF TENANT**

SECTION 801. TERMINATION OF PERIODIC TENANCY	66
SECTION 802. HOLDOVER TENANCY.....	67
SECTION 803. DEATH OF TENANT.....	67

**ARTICLE 9
RETALIATION**

SECTION 901. RETALIATION PROHIBITED.....	69
SECTION 902. TENANT REMEDIES FOR RETALIATORY CONDUCT.....	71
SECTION 903. PRESUMPTION OF RETALIATORY CONDUCT.....	72

ARTICLE 10
DISPOSITION OF TENANT’S PERSONAL PROPERTY

SECTION 1001. DISPOSITION OF TENANT’S PERSONAL PROPERTY ON THE
PREMISES; IN GENERAL..... 72
SECTION 1002. DISPOSITION OF PERSONAL PROPERTY ON TENANT’S DEATH..... 74
SECTION 1003. EXERCISE OF RIGHTS BY CONTACT PERSON..... 76

ARTICLE 11
EFFECT OF DOMESTIC VIOLENCE

SECTION 1101. EARLY RELEASE OR TERMINATION OF LEASE BECAUSE OF ACT OF
DOMESTIC VIOLENCE. 77
SECTION 1102. LANDLORD’S OBLIGATIONS IN EVENT OF EARLY RELEASE OR
TERMINATION..... 80
SECTION 1103. VERIFICATION. 81
SECTION 1104. PERPETRATOR’S LIABILITY FOR DAMAGES..... 83
SECTION 1105. CHANGE OF LOCKS AS RESULT OF AN ACT OF DOMESTIC
VIOLENCE..... 84
SECTION 1106. EFFECT OF COURT ORDER TO VACATE. 85
SECTION 1107. TERMINATION OF PERPETRATOR’S INTEREST UNDER LEASE
WITHOUT COURT ORDER. 86
SECTION 1108. LIMITATIONS ON LANDLORD’S CONDUCT WITH 87
RESPECT TO VICTIMS OF AN ACT OF DOMESTIC VIOLENCE..... 87

ARTICLE 12
SECURITY DEPOSITS, FEES, AND UNEARNED RENT

SECTION 1201. PAYMENTS REQUIRED AT THE COMMENCEMENT OF LEASE..... 89
SECTION 1202. LANDLORD, TENANT, AND THIRD PARTY INTERESTS IN SECURITY
DEPOSIT. 90
SECTION 1203. SAFEKEEPING OF SECURITY DEPOSIT..... 93
SECTION 1204. RETURN OF SECURITY DEPOSIT AND UNEARNED RENT. 94
SECTION 1205. DISPOSITION OF SECURITY DEPOSIT AND UNEARNED RENT UPON
TERMINATION OF LANDLORD’S INTEREST IN PREMISES..... 96

ARTICLE 13
MISCELLANEOUS PROVISIONS

SECTION 1301. UNIFORMITY OF APPLICATION AND CONSTRUCTION 98
SECTION 1302. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
NATIONAL COMMERCE ACT. 98
SECTION 1303. REPEALS 98
SECTION 1304. EFFECTIVE DATE..... 98

1 **REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT**
2 **ARTICLE 1**

3 **GENERAL PROVISIONS**

4 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Revised Uniform
5 Residential Landlord and Tenant Act (2015-).

6 **Comment**

7 The provisions of this act are largely non-default rules. Thus, they apply unless the
8 provision stating setting for the rule expressly provides that it may be varied by other law or by
9 agreement of parties. For example, section 104(b) provides that a party seeking relief under this
10 [act] has a duty to mitigate damages. This provision cannot be waived by the mutual agreement
11 of the landlord and tenant. [This provision to be relocated once preamble is written.]

12 **SECTION 102. DEFINITIONS.** In this [act]:

13 (1) “Abandonment” means relinquishment of the right to possession of a dwelling unit
14 with the intent not to return before the end of the term of the lease.

15 (2) “Actual damages” means compensation for direct, consequential, or incidental
16 injuries or losses. The term includes fees payable to a landlord or tenant under the terms of the
17 lease for a violation of ~~the a~~ lease.

18 (3) “Action” means an action for damages, possession, ejectment, or quiet title, or any
19 other judicial proceeding in which rights under ~~the a~~ lease or this [act] are determined.

20 (4) “Attesting third party” means a law enforcement official, licensed health-care
21 professional, victim’s advocate, or victim-services provider, ~~that has had contact with a victim of~~
22 ~~domestic violence who is a tenant or an immediate family member.~~

23 (5) “Bank” means an organization that is engaged in the business of banking. The term
24 includes a savings bank, savings and loan association, credit union, and trust company.

25 (6) “Bank account” means a federally insured checking, demand, time, savings,
26 passbook, or similar account maintained at a bank.
27

1 (7) “Building, housing, or health code” includes any law, ordinance, or governmental
2 regulation concerning fitness for habitation or the construction, maintenance, operation,
3 occupancy, use, or appearance of the premises.

4 (8) “Contact person” means a person designated by a tenant under Section 109(b).

5 (9) “Criminal act” or “criminal activity” means:

6 (A) the illegal manufacture, sale, distribution, use, or possession with intent to
7 manufacture, sell, distribute, or use of a controlled substance as defined by law other than this
8 [act] when done by the tenant, an immediate family member, or other individual under the
9 control of or acting with the permission of the tenant on the premises; and

10 (B) any activity by the tenant, an immediate family member, or other individual
11 under the control of or acting with the permission of the tenant that is illegal under the criminal
12 law of this state that: that:

13 (A1) threatens the health or safety of other tenants on the premises, the
14 landlord, or the landlord’s agents; or

15 [(B2) threatens the right to peaceful enjoyment of the premises by other
16 tenants.]; or

17 (C) any drug-related criminal activities on or near the premises];

18 (910) “Dating violence” means dating violence as defined by [insert reference to
19 definition in other state law].

20 (4011) “Diminution in value of the dwelling unit” means a reduction from the rent
21 provided in a lease that reflects the extent to which a noncompliant condition of the premises
22 impairs the tenant’s use and enjoyment of the dwelling unit.

23 (4112) “Domestic violence” means domestic violence as defined by [insert reference to

1 definition in other state law]. The term includes dating violence, stalking, and sexual assault.

2 ~~——(12) “Drug-related criminal activities” means the illegal manufacture, sale, distribution,~~
3 ~~use, or possession with intent to manufacture, sell, distribute, or use of a controlled substance as~~
4 ~~defined by other law.~~

5 (13) “Dwelling unit” means property leased to a tenant for use as a home, residence, or
6 sleeping place by an individual or by two or more individuals who maintain a common
7 household, regardless of their relationship to each other. For purposes of this paragraph, property
8 includes:

9 (A) a single family residence, together with fixtures and appurtenances therein,
10 the land on which it is located, and any other structures on the land; and

11 (B) a structure or the part of the structure in which the tenant resides, together
12 with fixtures and appurtenances ~~therein~~thereto, and any other area of the land on which the
13 structure is located to which the tenant is given an exclusive right of possession during the term
14 of the lease, including a designated parking space or storage area.

15 (14) “Electronic” means ~~relating to~~ technology having electrical, digital, magnetic,
16 wireless, optical, electromagnetic, or similar capabilities.

17 (15) “Essential service” means heat, hot and cold running water, ~~plumbing~~sewage
18 ~~disposal~~, and electricity. The term includes gas, air conditioning, or other service if required to
19 be supplied to a tenant by the lease or by law which, if not supplied to the tenant, would create a
20 serious threat to the health, safety, or property of the tenant or an immediate family member.

21 (16) “Fees” means amounts payable by a tenant to a landlord for which the landlord
22 has no obligation to account or return to the tenant. The term does not include a security deposit
23 or rent.

1 (1617) “Funds” means money, checks, bank-account credits, [certificates of deposit], or
2 the like.

3 (1718) “Good faith” means honesty in fact and the observance of reasonable commercial
4 standards of fair dealing.

5 (1819) “Immediate family member” means any of the following, ~~other than a~~
6 ~~perpetrator,~~ who habitually resides in a dwelling unit with a tenant; ~~and is not a perpetrator;~~

7 (A) an individual related to the tenant by blood, adoption, marriage, [civil union,]
8 or [domestic partnership];

9 (B) an individual having [an intimate~~+~~] [a romantic, dating, or sexual]
10 relationship with the tenant; or

11 (C) a foster child, stepchild, or [ward] of the tenant or of an individual named in
12 subparagraph (A) or (B).

13 (1920) “Landlord” means an owner of a dwelling unit or the building of which it is a part,
14 a successor in interest to the landlord, and any person that enters into a lease on behalf of an
15 undisclosed owner. The term includes a sublessor if the landlord did not consent to the sublease
16 and a person described in Section 108(d).

17 (2021) “Lease,” ~~when used as a noun,~~ means a contract, oral or in a record, between a
18 landlord and tenant in which the landlord rents to the tenant a dwelling unit for a tenancy for a
19 fixed term or a periodic tenancy subject to the terms and conditions set forth therein. A lease
20 includes all rules adopted by the landlord that were disclosed to the tenant pursuant to Section
21 108(a)(4) and rules adopted after the commencement of the lease in accordance with Section
22 305(b).

23 (2122) “Normal wear and tear” means deterioration that results from the intended use of a

1 dwelling unit, including breakage or malfunction due to age or deteriorated condition. The term
2 does not include deterioration that results from negligence, carelessness, accident, or abuse of the
3 unit, fixtures, equipment, or chattels by the tenant, an immediate family member, or another
4 person invited on the premises by the tenant ~~[and under the tenant's control]~~, ~~other individual on~~
5 ~~the premises with the tenant's consent~~, other than the landlord or the landlord's agent.

6 (2223) "Owner" means a person vested with all or part of:

7 (A) ~~all or part of~~ the legal title to the premises; or

8 (B) ~~all or part of~~ the beneficial ownership and a right to present use and
9 enjoyment of the premises.

10 (2324) "Periodic rent" means the amount of rent payable each month under a tenancy for
11 a fixed term or a periodic tenancy for month to month or payable each week under a periodic
12 tenancy for week to week. If rent is payable annually, periodic rent is the amount of the annual
13 rent divided by 12.

14 (2425) "Periodic tenancy" means a tenancy created under a lease or arising by operation
15 of law for either month to month or week to week.

16 (2526) "Perpetrator" means an individual who commits an act of domestic violence on a
17 tenant or an immediate family member.

18 (2627) "Person" means an individual, estate, business or nonprofit entity, public
19 corporation, government or governmental subdivision, agency, or instrumentality, or other legal
20 entity.

21 (2728) "Premises" means a dwelling unit and the structure of which it is a part. The term
22 includes all areas associated with the structure, whether exterior or interior to it, including the
23 fixtures, facilities, and appurtenances thereto, which are held out for the use of tenants generally

1 but are excluded from the definition of dwelling unit.

2 ~~(2829)~~ “Prepaid rent” means rent paid to a landlord before the first day of the rental
3 period to which it is to be applied.

4 ~~(2930)~~ “Record” means information that is inscribed on a tangible medium or that is
5 stored in an electronic or other medium and is retrievable in perceivable form.

6 ~~(3031)~~ “Rent” means a payment to be made to or for the benefit of the landlord for the
7 use and occupation of a dwelling unit. The term does not include a security deposit or fees.

8 ~~(32)~~ “Repairs” includes remediations.

9 ~~(3133)~~ “Security deposit” means funds provided to a landlord to secure payment or
10 performance of a tenant’s obligations under a lease or this [act] and the identifiable proceeds of
11 the funds, regardless of how the funds are denominated. The term does not include rent or fees.

12 ~~(3234)~~ “Security interest” means an interest in personal property that secures payment or
13 performance of a tenant’s obligations under a lease or this [act].

14 ~~(3335)~~ “Sexual assault” means [sexual assault] as defined in [insert reference to
15 definition in other state law].

16 ~~(3436)~~ “Sign” means, with present intent to authenticate or adopt a record:

17 (A) to execute or adopt a tangible symbol; or

18 (B) to attach to or logically associate with the record an electronic symbol,
19 electronic-mail address, or other identifying header, sound, or process.

20 ~~(3537)~~ “Stalking” means [stalking] as defined in [insert reference to definition in other
21 state law].

22 ~~(3638)~~ “State” means a state of the United States, the District of Columbia, Puerto Rico,
23 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction

1 of the United States.

2 (3739) “Tenancy for a fixed term” means a tenancy under a lease for a fixed or
3 computable period, regardless of the length of the period.

4 (3840) “Tenant” means:

5 (A) a person entitled to possession of a dwelling unit under a lease; and

6 (B) a sublessee who enters into possession of the dwelling unit with the landlord’s
7 consent, an assignee, and. ~~The term includes an assignee, sublessee, and,~~ if the
8 tenant is not an individual, an individual, the tenant has authorized to occupy the
9 unit.

10 ~~If the~~ ~~If the~~ tenant is an individual, the term does not include an individual who ~~person that~~ is not
11 a party to the lease or does not pay rent for the use of the dwelling unit but nonetheless occupies
12 the unit with the tenant’s permission.

13 (3941) “Tenant representative” means:

14 (A) ~~the~~ a personal representative of a deceased tenant’s estate; or

15 (B) before the appointment of a personal representative, the contact person, or in
16 the absence of a contact person, a person reasonably known to the ~~landlord to~~ landlord to be an
17 heir of the tenant under the applicable intestate succession law.

18 (4042) “Undisclosed owner” means the owner of a dwelling unit or the building of which
19 it is a part whose identity has not been disclosed to the tenant by the person entering into the
20 lease on the owner’s behalf.

21 (4143) “Unearned rent” means rent, including prepaid rent, that a tenant paid to a
22 landlord for the right to occupy the dwelling unit for any period after the date the lease
23 terminates in accordance with its terms or this [act]. The term does not include any amount,

1 including rent, owed to the landlord for a period before or after the date the lease terminates
2 during which the tenant is in actual possession of the premises.

3 (4244) “Victim advocate” means an individual, whether paid or serving as a volunteer,
4 who provides services to victims of domestic violence under the auspices or supervision of a
5 victim-service provider, a court, or law enforcement or prosecution agency.

6 (4345) “Victim-services provider” means a person that assists victims of domestic
7 violence. The term includes a rape crisis center, domestic violence shelter, faith-based
8 organization, or other organization with a documented history of work concerning domestic
9 violence.

10 (4446) “Willfully” or “willful” means the intentional performance of an act prohibited
11 under this [act] or by a lease, an intentional failure to perform an act required under this [act] or
12 by a lease, or an indifference to whether the performance or failure to perform violates this [act]
13 or a lease.

14 **Legislative Note:** *If an enacting jurisdiction does not legislate with respect to dating violence, it*
15 *may either retain the concept of dating violence in this act and draft its own definition of dating*
16 *violence or, alternatively, delete dating violence as one of the types of domestic violence under*
17 *this act. A jurisdiction that does not use the phrase “domestic violence,” “dating violence,”*
18 *“stalking,” or “sexual assault,” should substitute the phrase used in this act with the phrase*
19 *used in the jurisdiction which captures the concept of the phrase.*

20

21

Comment

22

23 The definition of “abandonment” is broadly written to include any situation in which the
24 tenant relinquishes the right to possession with intent to terminate the lease before the end of the
25 term. Section 604(b) identifies specific circumstances in which the court may presume that the
26 tenant has abandoned the lease.

27

28 The definition of “fees” includes nonrefundable payments made by the tenant to the
29 landlord. Common examples include application fees, cleaning fees, short-term lease fees, late-
30 payment fees, dishonored check fees, credit card or other payment processing fees, abandonment
31 fees, special amenities fees, pet fees, or fees assessed for violating pet policies or other rules
32 governing the tenancy.

33

1 The definitions of “rent” and “security deposit” have been included or updated from the
2 1972 act to reflect important distinctions in how these payments are handled under Article 12.

3
4 The definition of “landlord” includes not only the owner of the dwelling unit, but also
5 any person -- such as a management company – that enters into a lease on behalf of an
6 undisclosed owner. Thus, when a dwelling unit is leased by a management company on behalf
7 of an undisclosed owner, both would be landlords under this act. Conversely, if a management
8 company has disclosed the owner, only the owner is the “landlord” and the management
9 company is merely the landlord’s agent for purposes of this act.

10
11 The definition of “owner” includes a mortgagee in possession. It would not include a
12 mortgagee in a title theory state unless the mortgagee became entitled to possession.

13
14 The definition of “tenant” recognizes that some leases are entered into by business
15 entities for their employees or by a trust on behalf of a beneficiary. For example, an LLC might
16 rent an apartment for a member or a manager. Both the LLC and the member or manager are
17 tenants, the latter because the member or manager has been authorized to occupy the dwelling
18 unit by the LLC; the former because it is legally entitled to possession under the lease.

19
20 In addition the definition treats as the tenant any assignee of the tenant and sublessee to
21 whom a sublet was made with the landlord’s consent. By doing so the definition makes clear
22 that landlord’s obligations under the lease run to the assignee and vice versa as they did at
23 common law. By adding assignee to the definition of tenant it is also clear that all of the
24 statutory duties run between them as well. By treating a sublessee as a tenant in cases where the
25 landlord consented to the sublease, the sublessee is also obligated to discharge a tenant’s
26 statutory and lease obligations to the landlord and vice versa.

27
28 The term tenant excludes an individual who resides in the dwelling unit with the tenant’s
29 permission but neither is a party to a lease nor pays rents. For example, if a tenant allows his
30 friend to live in the dwelling unit with him but the friend does not pay rent and is not a party to
31 the lease, the friend is not a tenant. Under other sections of the act, however, if, for example, the
32 friend damages the dwelling unit, the tenant would be liable to the landlord because the damage
33 was done by an individual invited on the premises by the tenant. See, e.g., Sections 501(11) and
34 601.

35
36 Prepaid rent is rent paid before the first day of the rental period to which it is to be
37 applied. For example, if assume on November 1 landlord and tenant agree to the lease of a
38 dwelling unit with the term to begin the following January 1 at a monthly rent of \$500. Tenant
39 gives the landlord a check for \$1,000 to cover the January rent and the security deposit of \$500.
40 From November 1 until January 1, the \$500 for January’s rent is “prepaid rent.” After, January 1
41 it is not prepaid rent.

42
43 The definition of “unearned rent” contemplates two circumstances where a refund will be
44 due a tenant because the lease terminated. The first circumstance is where “rent” (defined in
45 Section 102(3032)) was paid to the landlord on its due date but for any period of time beyond the
46 date the lease terminates. For example, assume a one-year lease with rent payable on the first of

1 each month. The tenant pays rent to the landlord on April 1 for the month of April. However on
2 April 10 the tenant properly terminates the lease. In this case “unearned rent” includes the
3 amount of rent attributable to the period April 11 to April 30. Because rent is apportioned on a
4 daily basis (see Section 201(b)(2)(B)), this means that ~~2/3~~two-thirds of the April 1st payment
5 would be “unearned rent.” The second circumstance is where “prepaid rent” (defined in Section
6 102(~~2830~~)) was paid to the landlord for a rental period beyond the date the lease terminates. For
7 example, suppose before the commencement of the lease a tenant pays the landlord an amount
8 for the last month’s rent. Three months into the lease tenant properly terminates the lease. In this
9 case, “unearned rent” includes the prepaid rent for the last month. In both examples, Section
10 1204 requires amounts treated as unearned rent to be returned by the landlord to the tenant after
11 taking account of any proper charges against the unearned rent as set forth in Section 1204.
12

13 The phrase “unearned rent” does not include rent for any period beyond the lease
14 termination during which the tenant is in actual possession of the premises. For example,
15 suppose tenant signs a fixed term lease to end on December 31. The tenant pays the landlord the
16 last month’s rent (December rent) at the beginning of the lease term. Because of the tenant’s
17 failure to pay rent, the landlord properly terminates the lease on October 1 but the tenant remains
18 in possession until November 5. Unearned rent includes the prepaid rent for December but does
19 not include any rent that might be due the landlord for the first five days of November. Under
20 Section 1204, the landlord is obligated to return the unearned rent (along with any security
21 deposit) to the tenant. However under Section 1204(c), the landlord may reduce the amount
22 returned by amounts of “unfilled obligations” to which the unearned rent was applied and this
23 could include the rent due for the five days in November if not already paid.
24

25 The date on which a lease terminates is determined by the lease or this act. For example,
26 for a fixed term tenancy or a periodic tenancy, the lease terminates on the last day of the term or
27 the period unless the lease or this act allows for an earlier termination date. Under this act, a
28 lease can terminate for any number of reasons. Because termination requires a notice in a record
29 that specifies the termination date, the date of termination is easily determined from the notice.
30 For example, under Section 601(b) (allowing a landlord to terminate the tenancy for a material
31 noncompliance by the tenant, other than the nonpayment of rent) the notice must set forth a
32 specified date for termination not less than [30] days after the giving of the notice. receipt of the
33 notice. If there is any unearned rent due the tenant, it would be for the period following the date
34 of termination in the notice assuming the tenant timely vacated the premises.
35

36 ~~Because unearned rent excludes rent attributable to a period prior to the date the lease~~
37 ~~terminates and because, under Section 201(b)(2)(B) rent is apportioned on a daily basis, the~~
38 ~~tenant is not entitled to any refund for rents apportioned to days when the tenant was entitled to~~
39 ~~possession. For example, suppose tenant pays rent on the first of the month and properly~~
40 ~~terminates the lease on the 20th day of the month. If the tenant is entitled to a return of unearned~~
41 ~~rent, the amount does not include rent paid on the first of the month attributable to the first 20~~
42 ~~days of the month.~~

43 SECTION 103. SCOPE.

44 (a) In this section:
45

1 (1) “transient lodging” means a room or a suite of rooms; and

2 (2) “transient occupancy” means occupancy in a transient lodging that has all of
3 the following characteristics:

4 (A) occupancy is charged on a daily basis;

5 (B) the transient lodging operator provides housekeeping and linen service
6 as part of the regularly charged cost of the occupancy; and

7 (C) the period of occupancy does not exceed [30] days.

8 (b) Except as otherwise provided in subsection (c), this [act] applies to a lease of a
9 dwelling unit in this state.

10 (c) The following arrangements are not governed by this [act]:

11 (1) residence at an institution, public or private, if incidental ~~to~~ to the
12 provision of medical, mental health, geriatric, counseling, educational, religious, disability, or
13 similar service;

14 (2) residence at an institution, public or private, if incidental to detention;

15 (3) occupancy under a contract of sale of a dwelling unit or the building of which
16 it is a part, if the occupant is the purchaser or an individual who has succeeded to the purchaser’s
17 interest;

18 (4) occupancy by a member of a fraternal or social organization in a part of a
19 structure operated for the benefit of the organization;

20 (5) transient occupancy;

21 (6) occupancy by an employee of a landlord when the employee’s right to
22 occupancy is conditioned on employment in or about the premises;

23 (7) occupancy by a holder of a proprietary lease in a cooperative; and

1 (8) occupancy under a lease covering premises used by the occupant for
2 agricultural purposes.

3
4 **Comment**

5
6 This act applies to the lease of a mobile home but does not apply to a mere ground lease
7 of land upon which a mobile home is placed. Thus, if O owns a mobile home park and leases
8 space to T, that ground lease is not subject to this act. However, if T brings a mobile home onto
9 O's land and later leases the home to X, the T-X lease is subject to this act.

10
11 ~~This act applies to roomers and boarders but is not intended to apply to transient~~
12 ~~occupancy. In some jurisdictions, transient hotel operations are subject to special taxes and~~
13 ~~regulations and, where available, determinations made under such authority constitute~~
14 ~~appropriate criteria for identifying transient occupancy.~~

15
16 **SECTION 104. ENFORCEMENT; DUTY TO MITIGATE.**

17 (a) A right or obligation under this [act] is enforceable by an action unless the provision
18 creating the right or obligation provides to the contrary.

19 (b) A party seeking relief under this [act] has a duty to mitigate damages.

20
21 **Comment**

22
23 Under the common law a landlord had no duty to mitigate damages. The no-mitigation
24 rule was abrogated by the 1972 version of this act, and this act is consistent with that policy
25 choice and the conceptualization of the lease as a contract. Unlike the 1972 act, however, this act
26 provides a safe harbor in Section 604 for a landlord who makes reasonable efforts to relet the
27 dwelling unit following a tenant's abandonment.

28
29 ~~SECTION 105. OBLIGATION OF GOOD FAITH. Every duty under a lease or~~
30 ~~this [act] and every act that must be performed as a condition precedent to the exercise of a~~
31 ~~right or remedy under the lease or this [act] impose an obligation of good faith in its~~
32 ~~performance or enforcement.~~

33 SECTION 105. OBLIGATION OF GOOD FAITH. Every duty under a lease, a
34 contract described in Section 303, or this [act] and every act that must be performed as a

1 ~~condition precedent to the exercise of a right or remedy~~ or to the entitlement to a defense
2 ~~under the lease, the contract, or this [act] shall be discharged with the contractual obligation of~~
3 ~~good faith and fair dealing~~ in good faith.;

4 Comment

5 The ability to seek a remedy, exercise a right, or claim a defense under this act requires
6 that the individual seeking the right, remedy, or defense have acted in good faith.. Good faith as
7 defined by Section 102(18) means “honesty in fact and the observance of reasonable commercial
8 standards of fair dealing.” By way of example, a tenant under Section 901 may have the right to
9 complain of a retaliatory termination of a periodic tenancy if the notice to terminate follows on
10 the heels of the tenant’s complaint to a governmental agency. However, the tenant would have
11 no such right if the tenant’s complaint was not in good faith. Similarly, Section 1001 requires a
12 landlord to store a tenant’s personal property under the circumstances set forth in that section. If
13 the landlord complies with that section, the landlord has a defense against another person who
14 claims an interest in that property. But, in light of Section 105, that defense is available only if
15 the landlord acted in good faith.

16

17 **SECTION 106. UNCONSCIONABILITY.**

18 (a) If a court finds a lease or any provision of a lease is unconscionable when made, the
19 court may refuse to enforce the lease, enforce the remainder of the lease without the
20 unconscionable provision, or limit application of the unconscionable provision to avoid an
21 unconscionable result.

22 (b) If a court finds a settlement agreement in which a party waives or agrees to forego a
23 claim or right under this [act] or under a lease was unconscionable when made, the court may
24 refuse to enforce the agreement, enforce the remainder of the agreement without the
25 unconscionable provision, or limit application of the unconscionable provision to avoid an
26 unconscionable result.

27 (c) If a party or the court puts unconscionability of a lease or settlement agreement in
28 issue under subsection (a) or (b), the parties must be afforded a reasonable opportunity to present
29 evidence as to the setting, purpose, and effect of the lease or agreement.

1 **SECTION 107. KNOWLEDGE AND NOTICE.**

2 (a) In this [act], a person knows of a fact if the person has actual knowledge of the fact.

3 (b) In this [act], a person has notice of a fact if the person:

4 (1) knows of the fact;

5 (2) has ~~received notice~~received notice of the fact in accordance with subsection

6 (e); or

7 (3) has reason to know the fact exists from all of the facts known to the person at
8 the time in question.

9 (c) Subject to Section 1001(c), when this [act] specifically requires notice in a record, the
10 notice must be signed by the person giving it and:

11 ~~_____ (1) signed by the person giving it; and~~

12 (2) delivered personally to the landlord or tenant, or

13 (3) properly addressed sent to the landlord or the tenant ~~and deposited by~~
14 depositing it in the mail or delivering it ~~ed~~ for transmission by other usual means of
15 communication~~transmission~~, electronic or otherwise, with any postage or ~~any~~ cost of
16 transmission provided for and, in the case of the landlord, properly addressed to an address
17 specified in Section 108, and in the case of the tenant to an address specified in Section 109, or if
18 there be none, to an address reasonable under the circumstances. ~~to the landlord or the tenant.~~

19 (d) Except as otherwise provided in subsection (c), a person gives notice of a fact to
20 another person by taking steps reasonably calculated to inform the other person, whether or not
21 the other person learns of the fact.

22 (e) In this [act], a person receives notice of a fact:

23 (1) when the fact comes to the person's attention; or

1 (2) in the case of notice in a record, when the notice is:

2 (A) personally delivered under subsection (c)(~~21~~); or

3 (B) sent in accordance with subsection (c)(~~32~~).

4 **Comment**

5 A number of sections in this act require either a landlord or a tenant to ~~send~~give the other
6 notice in a record. When notice in a record is required, it must be given in accordance with
7 subsection (c).

8
9 Under subsection (e)(1), a person receives notice when the fact comes to the person's
10 attention. A fact might come to the person's attention as the result of face-to-face conversation,
11 the telephone, or by a receipt of a record.

12
13 **SECTION 108. REQUIRED DISCLOSURES BY LANDLORD.**

14 (a) Before accepting any funds to be applied towards a security deposit, prepaid rent, or
15 fees, or before entering into a lease, a prospective landlord shall disclose to the prospective
16 tenant in a record the following information:

17 (1) any condition of the premises which would breach a duty owed to a tenant
18 under Section ~~302-302~~ and would materially interfere with prospective tenant use and enjoyment
19 of the premises and of which the prospective landlord knows or should have known on a
20 reasonable inspection of the premises;

21 (2) whether the premises are in foreclosure; ~~and~~

22 (3) in the case of prepaid rent, the month or other period of the lease to which the
23 prepaid rent is to be applied; and

24 (4) all rules concerning the tenant's use and occupation of the premises.:-

25 (b) At or before the commencement of the term of the lease, the landlord shall give the
26 tenant a notice in a record specifying:

27 (1) the name of:

1 (A) the landlord;
2 (B) any other person authorized to manage the premises; and
3 (C) the owner of the premises or ~~a~~the person authorized to act for the
4 owner for the purpose of service of process and receiving a notice or demand;

5 (2) the mailing address and any address used for the receipt of electronic
6 communications by the landlord or a person designated by the landlord to which a notice or
7 demand must be sent; and

8 (3) the address or place to which the tenant must ~~send~~send rent.

9 (c) A landlord shall keep current the information required to be given by subsection

10 ~~(b)(1) and (b)(2)~~;

11 (d) If a landlord fails to comply with subsection (b) or (c), any person that enters into a
12 lease on behalf of the landlord, other than an undisclosed owner, becomes the landlord for
13 purposes of:

14 (1) service of process and receiving and receipting for a notice or demand; and

15 (2) performing the obligations of the landlord under the lease or this [act].

16 (e) If the premises were in foreclosure before a landlord and a tenant entered into a lease
17 and the disclosure required by subsection (a)(2) was not made, the tenant may recover actual
18 damages resulting from the foreclosure.

19 **Comment**

20
21 Subsection (a) imposes upon the landlord a duty to inform a prospective tenant of any
22 conditions that would make the premises uninhabitable or present an unreasonable risk of harm.
23 These conditions would include the standards for uninhabitability enumerated in Section 302 as
24 well as additional hazards.

25
26 The purpose of subsection (b) is to enable the tenant to proceed with the appropriate legal
27 proceeding, to know to whom complaints must be addressed and, failing satisfaction, against
28 whom the appropriate legal proceedings may be instituted.

1
2 If the landlord failed to make the “foreclosure” disclosure required by subsection (a)(2),
3 subsection (e) would not apply unless ~~the tenant’s~~ the tenant’s use and enjoyment of the premises
4 had been interfered with as a result of the foreclosure. For example, such damages might occur if
5 the premises were sold and the tenant was required to vacate the premises.
6

7 No specific remedies are provided for the failure to provide the information required by
8 subsections (b) and (c). If a ~~tenant fails to provide an address to the landlord, however, the tenant~~
9 ~~might not receive a refund of a security deposit, and, if a~~ landlord fails to provide an address to
10 the tenant, however, the landlord might not receive the rent in a timely manner.
11

12 Under subsection (d), if an agent of a landlord, other than an undisclosed owner, fails to
13 provide the information required by subsections (b) or (c), the agent is a person upon whom
14 service of process and notices may be made and also is obligated to perform the landlord’s duties
15 under this [act]. Thus this subsection incentivizes an agent for a disclosed landlord to make the
16 disclosures under subsections (b) and (c) to avoid the consequences in subsection (d). ~~By virtue~~
17 ~~of the definition of landlord, an agent for an undisclosed owner is the landlord and this~~
18 ~~subsection does not apply. Subsection (d) need not apply to a person acting on behalf of an~~
19 ~~undisclosed owner because that person is treated as the landlord. See Section 102(21).~~
20

21 SECTION 109. REQUIRED DISCLOSURES BY TENANT.

22 (a) At or before the commencement of the term of ~~the a~~ lease, ~~a the~~ tenant shall give ~~a the~~
23 landlord a notice in a record specifying the tenant’s mailing address and any address used by the
24 tenant for the receipt of electronic communications.

25 (b) At ~~the a~~ landlord’s request, ~~a the~~ tenant shall designate a contact person to act for the
26 tenant on the tenant’s death by giving to the landlord a notice in a record specifying the name of
27 the contact person, and if known, the mailing address, ~~,-~~ any address used for the receipt of
28 electronic communications, and telephone number of the contact person. Absent a request by the
29 landlord, a tenant may voluntarily designate a contact person in the same manner.

30 (c) A tenant shall keep current the information required in subsections (a) and (b). On
31 termination of a lease, the tenant shall provide the landlord with a forwarding address to which
32 the landlord may send the tenant’s security deposit or other communications.
33

Comment

1 No specific remedies are provided for the failure to provide the information required by
2 subsections (a) and (b). If a tenant fails to provide an address to the landlord, however, the
3 tenant might not receive a refund of a security deposit.
4

5 **SECTION 110. COMMON LAW AND PRINCIPLES OF EQUITY.** Unless
6 displaced by this [act], the principles of law and equity supplement this [act].

7 **Comment**
8

9 In light of this section, contract principles generally apply to the construction and
10 interpretation of leases, including provisions relating to mutuality or dependency of lease
11 covenants. By construing leases as contracts, for example, performance of promises the landlord
12 and tenant make to each other are dependent upon one another. Thus, the tenant's promise to pay
13 rent is conditioned upon (dependent upon) the landlord's ~~provision of essential services and~~
14 ~~compliance with Section 302. However, the landlord's obligation to maintain the dwelling unit~~
15 ~~as provided in Section 302 is not conditioned upon the tenant's payment of rent.~~
16

17 **ARTICLE 2**

18 **GENERAL PROVISIONS APPLICABLE TO LEASE**

19 **SECTION 201. TERMS AND CONDITIONS OF LEASE.**

20 (a) A lease may include terms and conditions not prohibited by this [act] or law of this
21 state other than this [act].

22 (b) Unless a lease or law of this state other than this [act] otherwise provides:

23 (1) the tenant shall pay rent for the dwelling unit for the term of the lease in an
24 amount comparable to the rent paid for other dwelling units of similar size and condition in the
25 same or a comparable location, determined at the commencement of the lease;

26 (2) rent is:

27 (A) payable without demand or notice:

28 (i) at the address or place the landlord designates under Section
29 108(b)(3) or, if no designation is made, at the landlord's place of business at the time the lease
30 was made; and

1 (ii) on the first day of each month or at the beginning of the term if
2 the term is less than one month; and

3 (B) uniformly apportioned from day to day; and

4 (3) the rental period is determined on a monthly basis beginning with the first day
5 of the month for a tenancy for a fixed term of more than one month or for a periodic tenancy of
6 month to month, and for all other tenancies the rental period begins on the first day rent is paid.

7 (c) Except as otherwise provided in Section 202, unless the lease creates a tenancy for a
8 fixed term, the tenancy is a periodic tenancy for week to week if a tenant pays rent weekly and
9 otherwise is a periodic tenancy for month to month.

10 **Comment**

11
12 Under subsection (c), tenancies at will are effectively abolished; the only recognized
13 tenancies, other than a tenancy for a fixed term, ~~is~~are a periodic tenancy for month to month or
14 the less common periodic tenancy for week to week.

15
16 Subsection (b) applies when the lease inadvertently fails to fix the amount of rent as
17 might be the case for oral leases.

18
19 **SECTION 202. EFFECT OF UNSIGNED, UNDELIVERED LEASE; IMPLIED**
20 **LEASE.**

21 (a) Subject to subsection (b):

22 (1) if a lease signed by the tenant is delivered to the landlord and the landlord fails
23 to sign the lease and return it to the tenant, acceptance of rent by the landlord without reservation
24 of rights gives the lease the same effect as if the lease had been signed and returned to the tenant
25 by the landlord; and

26 (2) if a lease signed by the landlord is delivered to the tenant and the tenant fails
27 to sign the lease and return it to the landlord, acceptance of possession and payment of rent
28 without reservation of rights gives the lease the same effect as if the lease had been signed and

1 returned to the landlord by the tenant.

2 (b) If a lease given effect under subsection (a) provides for a tenancy for a fixed term
3 longer than one year, the lease is effective for one year.

4 (c) In the absence of a lease signed by the landlord or tenant which is delivered to the
5 other, if the tenant accepts possession and pays rent to the landlord without reservation of rights
6 and the landlord accepts rent from the tenant without reservation of rights, the tenancy created is
7 a periodic tenancy for week to week in the case of a tenant that pays rent weekly and in all other
8 cases a periodic tenancy for month to month.

9 **SECTION 203. PROHIBITED PROVISIONS IN LEASE.**

10 (a) A lease may not require the tenant to:

11 (1) waive or forego a right or remedy under this [act];

12 (2) authorize a person to confess judgment on a claim arising out of the lease or
13 this [act];

14 (3) perform a duty imposed on the landlord by Section 302 ~~except as permitted~~
15 ~~by Section 303~~;

16 (4) agree to pay attorney's fees and costs of the landlord other than those provided
17 by this [act] or law of this state other than this [act]; or

18 (5) agree to exculpate or limit a liability of the landlord arising under this [act] or
19 law of this state other than this [act] or to indemnify the landlord for the liability and the costs
20 connected with the liability.

21 (b) A provision in a lease prohibited by subsection (a) or by law of this state other than
22 this [act] is unenforceable. ~~If a landlord willfully includes in a lease a provision that violates~~
23 ~~subsection (a), the court, in addition to awarding the tenant actual damages, may award the~~

1 ~~tenant an amount up to [three] months' periodic rent. If~~ If a landlord willfully includes in a lease
2 a provision that violates subsection (a), the tenant is entitled to actual damages and the court may
3 award the tenant an amount up to [three] months' periodic rent.

4 **Comment**

5 While subsection (a)(3) prohibits a lease from imposing the landlord's Section 302 duties
6 on the tenant, Section 303 permits the landlord and tenant to agree that the tenant ~~to will~~ perform
7 one or more of the landlord's duties under Section 302 if that agreement is in *a contract separate*
8 *from the lease* and the tenant's failure to perform under the contract does not discharge the
9 landlord's duties under Section 302. Furthermore, if the tenant fails to perform the duties the
10 tenant contractually agreed to provide, the landlord could collect actual damages from the tenant.
11 See Section 303(d). Damages are available because of tenant's breach of a contract separate
12 from the lease and thus are not inconsistent with subsection (a)(5).

13
14 The duty to mitigate is one of the rights and remedies that may not be waived under
15 subsection (a).
16

17 **SECTION 204. SEPARATION OF RENT FROM DUTY TO MAINTAIN**

18 **PREMISES.** ~~Notwithstanding any other law of this state, [Except as otherwise provided by~~
19 ~~law of this state other than this [act] provided by the Uniform Assignment of Rents Act],~~ a lease,
20 assignment, sublease, conveyance, trust deed, or security instrument may not permit a person to
21 receive the payment of rent without assuming the landlord's duties as provided in the lease or
22 Section 302.

23 **Comment**

24
25 The mere assignment of rent as security does not subject the assignee to the landlord's
26 obligations to maintain the premises. However, if the assignee actually receives the rent, then
27 that obligation would arise. Section 204 is inconsistent with Section 13 of the Uniform
28 Assignment of Rents Act. Because that section is more appropriately applied to commercial
29 rather than residential leases, Section 204 expressly provides that it supersedes other law,
30 including other statutes and prior case law of the state that would have allowed a person, such as
31 a mortgagee, to collect rents free of the obligation to maintain the premises.

32 33 **SECTION 205. ATTORNEY'S FEES [AND COSTS].**

34 (a) In this section, "prevailing party" means a party that:

1 (1) ~~a party that~~ initiated the enforcement of a right or remedy under a lease or this
2 [act] and substantially prevailed on the right or remedy asserted; ~~and or~~

3 (2) ~~a party that~~ substantially prevailed in defending against the right or remedy
4 asserted by the other party.

5 (b) Except as otherwise provided in subsection (c), in an action ~~between a landlord and a~~
6 ~~tenant~~ to enforce a right or remedy arising under the lease or this [act], the court may award the
7 prevailing party reasonable attorney's fees [and] costs ~~and] reasonable attorney's fees~~ if the court
8 determines that the other party did not [act in good faith,] ~~[comply with Section 104],~~ willfully
9 performed an act prohibited by the lease or this [act], or willfully refrained from performing an
10 act required by the lease or this [act].

11 (c) A landlord may not be awarded attorney's fees [or costs] ~~or attorney's fees~~ in an
12 uncontested action to recover possession of a dwelling unit.

13 (d) If there is no prevailing party in an action, ~~then~~ no party is entitled to recover
14 attorney's fees [and costs].

15 *Note for committee: Should we bracket costs in 205(b), (c) and (d).*

16 ARTICLE 3

17 LANDLORD'S DUTIES

18 **SECTION 301. DELIVERY OF POSSESSION OF DWELLING UNIT TO**
19 **TENANT.** A landlord shall deliver actual possession of the dwelling unit to the tenant at the
20 commencement of the term of the lease.

21 Comment

22 This section, like the 1972 act before it, adopts the position that actual possession, as
23 distinguished from a mere legal right to possession, must be delivered to the tenant at the
24 commencement of the term of the lease. The term of the lease commences on the date the tenant
25 is first entitled to possession. Thus, if a lease is signed on July 1 for a term to begin on August 1,

1 the commencement date is August 1. The landlord's obligation to deliver actual possession,
2 therefore, begins on August 1.

3

4 **SECTION 302. LANDLORD'S DUTY TO MAINTAIN PREMISES.**

5 (a) A landlord has a duty to maintain the premises in a habitable condition, including
6 making all necessary repairs. At a minimum, the duty to maintain requires the landlord to ensure
7 that the premises:

8 (1) comply with all obligations imposed on the landlord by any applicable
9 building, housing, fire, or health code, or other law;

10 (2) have effective waterproofing and weather protection of the roof and exterior
11 walls, including windows and doors;

12 (3) have plumbing facilities that conform to applicable law ~~which and~~ are
13 maintained in good working order;

14 (4) have access to a water supply approved under applicable law ~~which that~~ is
15 capable of producing hot and cold running water;

16 (5) have adequate ventilation and heating facilities that conform to applicable law
17 and are maintained in good working order;

18 (6) have electrical lighting with wiring and electrical equipment that conform to
19 applicable law and are maintained in good working order;

20 (7) have reasonable measures in place to control the presence ~~of rodents of~~
21 rodents, bedbugs, other vermin, and mold or the exposure to radon, lead paint, asbestos, and
22 other hazardous substances;

23 (8) to the extent the premises include common areas and other areas under the
24 landlord's control, have ~~those the~~ areas safe for normal and reasonably foreseeable uses
25 consistent with the lease and in good repair, ~~and~~ have ~~those the~~ areas clean and sanitary, and

1 have reasonable measures in place to control the presence of debris, filth, rubbish, garbage, and
2 the items listed in ~~subsection (a) paragraph~~ (7) in ~~those the~~ areas;

3 (9) have an adequate number of appropriate receptacles in clean condition for
4 garbage, rubbish, and, if recycling services are provided ~~or required by law, recyclable,~~
5 recyclable material;

6 (10) have floors, doors, windows, walls, ceilings, stairways, and railings, in good
7 repair;

8 (11) have other facilities and appliances supplied or required to be supplied by the
9 landlord in good repair;

10 (12) have in good working order locks or other security devices on all exterior
11 doors and windows that open and close, including those of the dwelling unit and other parts of
12 the premises; and

13 (13) have safety equipment required by applicable law that are maintained in good
14 working order.

15 ~~(b)~~(b) Unless the lease otherwise provides, a landlord shall provide essential services to
16 the tenant.

17 ~~(bc)~~ If a sublessor is a landlord for purposes of this [act], the sublessor shall have the duty
18 to comply with subsection (a) except for duties that would require the sublessor to access
19 portions of a dwelling unit or the premises beyond the sublessor's control.

20 **Comment**

21 Consistent with the practice of nearly every state, Section 302 recognizes that modern
22 conditions require the proper maintenance and operation of rental housing. This section imposes
23 certain minimum duties of repair and maintenance upon landlords consistent with prevailing
24 public standards. Section ~~401~~501 imposes corresponding duties of cleanliness and proper use
25 within the dwelling unit upon the tenant. This section sets forth only minimum standards.
26 Because many jurisdictions do not have building, housing, or health codes applicable to rental

1 housing, it is appropriate that this statute incorporate minimum standards of maintenance. A
2 lease could impose other maintenance obligations on the landlord. It could also impose other
3 maintenance obligations on the tenant so long as those obligations do not absolve the landlord of
4 the landlord's obligations under this section. See Section 203(a)(3).

5
6 If a tenant subleases a dwelling unit with the landlord's consent then the sublessor is not a
7 landlord under this act. See Section 103(2+10+9). If the tenant subleases the dwelling unit
8 without the landlord's consent, the sublessor is a landlord under this act. As a landlord, the
9 sublessor is obligated to comply with provisions of this act, including this section. However, ~~in~~
10 ~~light of~~ under subsection (b), the sublessor is not required to perform duties imposed on a
11 landlord by this section if performance of the duties would require the sublessor to access parts
12 of the dwelling unit or premises which are beyond the ~~sublessor's~~ sublessor's control. For
13 example, if a subtenant's furnace ceased working but repairs would require access to a furnace
14 outside of the dwelling unit, the sublessor would not be required to repair the furnace.

15
16 This subsection does not mandate that the cost of compliance must be borne by the
17 landlord. Landlords incurring costs under this section are likely to have those costs reflected in
18 the amount of rent payable by tenants.

19
20 Under subsection (a), the landlord has a duty to maintain facilities on the premises
21 necessary for the provision of essential services, typically heat, water, plumbing and electricity.
22 Under subsection (b), the landlord has the duty to provide essential services unless the lease
23 otherwise provides. Although the landlord may have the duty to provide an essential service, this
24 section does not require the landlord to pay for the servicesm. The the costs of these services
25 could be shifted to the tenant.

26 27 **SECTION 303. DUTIES OF LANDLORD PERFORMED BY TENANT.**

28 (a) A landlord and tenant may agree, in a record signed by the landlord and tenant that is
29 ~~separate from the lease~~ not part of the lease, that the tenant will perform one or more of the
30 duties imposed on the landlord by Section 302.

31 (b) The failure of a tenant to perform adequately the duties as agreed in subsection (a)
32 does not:

33 (1) discharge the landlord from the performance of the duties imposed on the
34 landlord by Section 302;

35 (2) constitute a waiver of the tenant's rights under this [act]; or

36 (3) diminish or affect the obligations of the landlord under this [act] to the tenant

1 or to other tenants in the premises.

2 (c) This section does not abrogate, limit, or otherwise affect the obligation of a tenant to
3 pay for a utility service in accordance with the lease.

4 (d) A landlord is entitled to recover actual damages for tenant's breach of any agreement
5 entered pursuant to this section.

6

7 **Note to Committee: Choice necessary in subsection (a)**~~Comment~~

8

9

COMMENT

10 This section permits the landlord and tenant ~~to agree,~~ by separate contract that is not
11 part of the lease, to agree that the tenant may perform repairs or maintenance. ~~provided that the~~
12 ~~e~~Consideration for the contract ~~is not~~may not be tied to the tenant's rent and the tenant's failure
13 to perform under the contract does not discharge the landlord's duties under Section 302.

14

15 ~~However, t~~The tenant's failure to perform duties under the contract could entitle to the
16 landlord to damages for breach of contract, and these damages might offset any damages to
17 which the tenant is entitled because of the landlord's failure to comply with Section 302.

18

1 **SECTION 304. LIMITATIONS ON LANDLORD’S LIABILITY.**

2 (a) Except to the extent a landlord and tenant otherwise agree in a record signed by the
3 landlord and tenant, if the landlord conveys in a good-faith sale to a bona fide purchaser
4 premises that include a dwelling unit subject to the lease, the following rules apply:

5 (1) Except as otherwise provided in paragraph (2), the landlord is relieved of
6 liability under the lease and this [act] as to events occurring after the later of the conveyance to
7 the purchaser or the landlord’s notice in a record to the tenant of the conveyance.

8 (2) Except as otherwise provided in Section 1205, the landlord remains liable to
9 the tenant for the amount of any security deposit and unearned rent.

10 (b) A person that enters into a lease on behalf of an undisclosed owner is relieved of
11 liability under the lease and this [act] as to events occurring after giving to the tenant a notice in
12 a record specifying:

13 (1) the name and mailing address and any address used for the receipt of
14 electronic communications by the owner or any person designated by the owner to which a
15 notice or demand must be sent;

16 (2) if different from the current address to which rent is sent, ~~the~~, the address or
17 place to which the tenant must send rent; and

18 (3) the date of termination of the person’s authority to act on behalf of the owner.

1 **Comment**

2
3 The effect of subsection (a), which first appeared in the 1972 act, is to sever both privity
4 of contract and privity of estate between the assigning landlord and the tenant.
5

6 The landlord’s release from liability occurs with respect to events occurring after the later
7 of the notice to the tenant of the conveyance or the conveyance to the purchaser. If an event
8 occurred prior to that time, the landlord could be liable. For example, suppose a landlord installs
9 a defective smoke alarm and later sells the building to a bona fide purchaser. Thereafter a fire on
10 the premises injures a tenant. The evidence establishes that the tenant would not have been
11 injured if the smoke alarm had not been defective. This section would not relieve the landlord
12 from potential liability as the smoke alarm was installed prior to the sale of the building to a third
13 party.

14 Under subsection (a)(2), the landlord remains liable for the tenant’s security deposit and
15 unearned rent unless the landlord complies with Section 1205 to transfer the funds to the
16 successor landlord or return them to the tenant.
17

18 Subsection (b) applies to a manager that enters into a lease on behalf of an undisclosed
19 owner. In that situation, the manager qualifies as a “landlord” under Section 102(19210) and has
20 all of the rights and responsibilities of a landlord under the act. Subsection (b) provides the
21 procedures for a person in that situation to be relieved of liability under the act. Conversely,
22 when the owner of the leased premises has been disclosed to the tenant, a manager’s only
23 liability is as the agent of the owner. In that case, general principles of agency law under law of
24 this state other than this act will apply.
25

26 **SECTION 305. RULES OF LANDLORD.**

27 ~~———— (a) A landlord may adopt a rule concerning the tenant’s use and occupancy of the~~
28 ~~premises.~~

29 ~~———— (b) A rule adopted under subsection (a) is not enforceable against the tenant unless:~~

30 ~~———— (1) its purpose is to promote the convenience, safety, or welfare of tenants in the~~
31 ~~premises, preserve the landlord’s property from abusive use, or make a fair distribution of~~
32 ~~services and facilities held out for tenants generally;~~

33 ~~———— (2) it is reasonably related to the purpose for which it is adopted;~~

34 ~~———— (3) it applies to all tenants in the premises in a fair and impartial manner;~~

35 ~~———— (4) it is sufficiently explicit in its prohibition, direction, or limitation to inform the~~
36 ~~tenant reasonably of what the tenant must or must not do to comply;~~

~~_____ (5) its purpose is not to evade an obligation of the landlord under the lease or this [act]; and~~

~~_____ (6) the tenant receives notice of it before the tenant enters into the lease or, subject to subsection (c), promptly after it is adopted.~~

~~_____ (e)(a) A landlord may not enforce any rule in existence at the time the lease commenced that was not required by law other than this [act] or disclosed to the tenant pursuant to Section 108.~~

~~_____ (b) After the commencement of a lease, a landlord may adopt or modify a rule concerning a tenant's use and occupancy of the premises, but if the rule or modification substantially modifies the tenant's bargain and is not required by law other than this [act], it is not enforceable against the tenant unless the tenant consents to it in a record signed by the tenant.~~

Comment

Rules as commonly understood apply to the manner in which the tenant may use the premises such as rules relating to noise, the presence of animals, and the disposal of garbage. A rule would not include agreements with respect to the length of a tenancy or the amount of rent payable by a tenant.

ARTICLE 4

TENANT REMEDIES

SECTION 401. NOTICE AND OPPORTUNITY TO REPAIR.

Subject to Section 407, if there is noncompliance by a landlord with the lease or Section 302, the tenant has the remedies under Section 402 if the tenant gives the landlord:

(1) notice in a record of the noncompliance; and

(2) an opportunity to remedy the noncompliance within the following periods:

(A) subject to paragraph (B), the landlord shall remedy the noncompliance

1 not later than [14] days after the tenant gives the landlord the notice; and

2 _____ (B) if the noncompliance by the landlord involves failure to provide an
3 essential service which the landlord is obligated provide or poses an actual and imminent threat
4 to the health or safety of the tenant or an immediate family member, the landlord shall remedy
5 the noncompliance promptly, [but not later than [five] days after the tenant gives the landlord the
6 notice.]

7 **SECTION 402. NONCOMPLIANCE BY LANDLORD; IN GENERAL**

8 (a) Subject to subsection (b) and Section 407, if a landlord's noncompliance with the
9 lease or Section 302 materially interferes with the use and enjoyment of the premises by the
10 tenant and is not remedied during the applicable period in Section 401, the tenant may:

11 (1) terminate the lease by giving the landlord notice in a record of the tenant's
12 intent to terminate the lease immediately or on a later date specified in the notice, in which case:

13 _____ (A) the tenant may recover actual damages for the period beginning the
14 date the tenant gave the landlord the notice under Section 401 and ending on the date of
15 termination specified in the notice, including damages based on the diminution in value of the
16 dwelling unit as determined by the court based on evidence that need not include expert
17 testimony; and

18 _____ (B) the landlord shall return to the tenant the amount of any security
19 deposit and unearned rent to which the tenant is entitled under Section 1204; or

20 (2) continue the lease and, without any additional notice, elect one of the
21 following remedies:

22 _____ (A) subject to Section 406, withhold the rent for the period of
23 noncompliance beginning on the date the tenant gave the landlord the notice under Section 401;

1 (B) recover actual damages for the period beginning on the date the tenant
2 gave the landlord the notice under Section 401, including damages based on the diminution in
3 value of the dwelling unit as determined by the court based on evidence that need not include
4 expert testimony;

5 (C) seek injunctive relief, specific performance, or other equitable relief;

6 (D) subject to Section 404, make repairs and deduct the cost from the rent;

7 or

8 (E) subject to Section 405, secure an essential service which the landlord
9 is obligated to provide or comparable substitute housing during the period of noncompliance.

10 (b) If a landlord’s noncompliance with the lease or Section 302 materially interferes with
11 the use and enjoyment of the premises by the tenant and the landlord is unable to remedy the
12 noncompliance within the applicable period in Section 401 because of circumstances beyond the
13 landlord’s control, including the unavailability of materials, labor, or utilities, fire or other
14 casualty, a natural disaster, [or] force majeure [, or the death of the landlord]:

15 (1) the tenant may terminate the lease; and

16 (2) after the tenant vacates the premises, the landlord must return to the tenant the
17 amount of any security deposit and unearned rent to which the tenant is entitled under Section
18 1204.

19 (c) If a landlord’s noncompliance with the lease or Section 302 does not materially
20 interfere with the tenant’s use and enjoyment of the premises, the tenant may obtain the remedies
21 provided in subsections (a)(2)(B), (C), and (D).

22 (d) A tenant may not seek a remedy under this section to the extent:

23 (1) the landlord’s noncompliance was caused by the act or omission of the tenant,

1 an immediate family member, or another person invited on the premises by the tenant, other than
2 the landlord or the landlord's agent; or

3 (2) the tenant prevented the landlord from having access to the dwelling unit to
4 make repairs or provide a remedy to the acts or omissions described in the tenant's notice under
5 Section 401.

6 **Note to Committee: Choices in (b).**

7 **Comment**

8 This section has been modified from the 1972 act to clarify the remedies available to a
9 tenant for a landlord's noncompliance with the warranty provisions in Section 302 or under the
10 lease. If there is a material noncompliance by the landlord with the lease or Section 302(a),
11 Section 402 allows the tenant to elect from among six remedies. However, the tenant's ability to
12 secure essential services which the landlord is obligated to provide or substitute housing under
13 Section 404 is only available for the landlord's material noncompliance in providing those
14 essential services. Not all services or obligations of the landlord described in Section 302(a) are
15 "essential services." See Section 102(16). See also Section 302(b) which provides that the lease
16 may absolve the landlord of the obligation to provide essential services.

17
18 This section also clarifies the measurement of damages when a tenant has occupied a
19 dwelling unit in a noncompliant condition. The 1972 Act permitted recovery of the "diminution
20 in the fair rental value" of the dwelling unit. That terminology is modified in this act to permit
21 recovery of damages based upon the "diminution in value of the dwelling unit," which is defined
22 in Section 102(11) as "a reduction from the rent provided in a lease in an amount that reflects the
23 extent to which a noncompliant condition of the premises impairs the tenant's use and enjoyment
24 of the dwelling unit." The intent is to permit a court to consider such factors as the nature and
25 duration of the defect, the proportion of the dwelling unit that is affected, the value of services to
26 which the tenant was deprived, the degree of discomfort imposed by the defect, and the
27 effectiveness of the landlord's remediation efforts. For example, if, as a result of noncompliance,
28 the tenant is deprived only of the use of office space, the diminution in value should be less than
29 if the noncompliance results in the loss of bath and kitchen facilities in the entire dwelling unit.

30
31 Remedies available to the tenant pursuant to Section 401 are not exclusive (see Section
32 110).

33
34 A duty to mitigate damages exists under Section 104(b).

35
36 If the dwelling unit or premises are substantially damaged or destroyed as the result of a
37 fire or other casualty to which Section 406 would apply, then the remedies in Section 406 rather
38 than this section apply.

1 Subsection (d) recognizes that circumstances beyond the landlord’s control may make it
2 difficult or impossible for a landlord to make the repairs within the time limits set forth in this
3 section. In such cases, the tenant’s remedy is limited to termination.

4 **SECTION 401. NONCOMPLIANCE BY LANDLORD; IN GENERAL.**

5 ~~(a) Subject to Section 406, if there is noncompliance by a landlord with the lease or~~
6 ~~Section 302, the tenant has the remedies under subsection (b) if the tenant gives the~~
7 ~~landlord:~~

8 ~~(1) notice in a record of the noncompliance; and~~

9 ~~(2) an opportunity to remedy the noncompliance within the following~~
10 ~~periods:~~

11 ~~(A) Subject to paragraph (B), the landlord shall remedy the~~
12 ~~noncompliance not later than [14] days after the tenant gives the landlord the notice~~
13 ~~notice; and~~

14 ~~(B) If the noncompliance by the landlord involves failure to provide~~
15 ~~an essential service which the landlord is obligated provide or poses an actual and~~
16 ~~imminent threat to the health or safety of the tenant or an immediate family member, the~~
17 ~~landlord shall remedy the noncompliance promptly, but not later than [five] days after the~~
18 ~~tenant the tenant gives the landlord the notice.~~

19 ~~(b) Subject to subsection (d), if a landlord’s noncompliance with the lease or Section 302~~
20 ~~materially interferes with the use and enjoyment of the premises by the tenant and is not~~
21 ~~remedied during the applicable period in subsection (a), the tenant may:~~

22 ~~(1) terminate the lease by giving the landlord notice in a record of the tenant’s intent to~~
23 ~~terminate the lease immediately or on a later date specified in the notice, in which case:~~

24 ~~(A) the tenant may recover actual damages for the period beginning the date the~~
25 ~~tenant gave the landlord the notice under subsection (a) and ending on the date of~~

1 termination specified in the notice, including damages based on the diminution in value of
2 the dwelling unit as determined by the court based on evidence that need not include expert
3 testimony; and

4 —— (B) the landlord shall return to the tenant the amount of any security deposit and
5 unearned rent to which the tenant is entitled under Section 1204; or

6 (2) continue the lease and, without any additional notice, elect one of the following
7 remedies:

8 —— (A) subject to Section 405, withhold the rent for the period of noncompliance of
9 noncompliance beginning on the date the tenant gave the landlord the notice under
10 subsection (a);

11 —— (B) recover actual damages for the period beginning on the date the tenant gave the
12 landlord the notice under subsection (a), including damages based on the diminution in
13 value of the dwelling unit as determined by the court based on evidence that need not
14 include expert testimony;

15 —— (C) seek injunctive relief, specific performance, or other equitable relief;

16 —— (D) subject to Section 403, make repairs and deduct the cost from the rent; or

17 —— (E) subject to Section 404, secure an essential service which the landlord is obligated
18 to provide or comparable substitute housing during the period of noncompliance.

19 —— (c) If a landlord's noncompliance with the lease or Section 302 does not materially
20 interfere with the tenant's use and enjoyment of the premises, the tenant may obtain the
21 remedies provided in subsections (b)(2)(B), (C), and (D):

22 —— (d) If a landlord's noncompliance with the lease or Section 302 was caused by
23 circumstances beyond the landlord's control, including the unavailability of materials,

1 ~~labor, or utilities, a natural disaster, [or] force majeure[, or the death of the~~

2 ~~landlord]~~subsection:

3 ~~_____ (1) the tenant may terminate the lease; and~~

4 ~~_____ (2) after the tenant vacates the premises, the landlord must return to the~~

5 ~~tenant the amount of any security deposit and unearned rent to which the tenant is entitled~~

6 ~~under Section 1204.~~

7 ~~_____ (e) A tenant may not seek a remedy under this section to the extent:~~

8 ~~_____ (1) the landlord's noncompliance was caused by the act or omission of the~~

9 ~~tenant, an immediate family member, or another person invited on the premises by the~~

10 ~~tenant [and under the tenant's control], other than the landlord or the landlord's agent; or~~

11 ~~_____ (2) the tenant prevented the landlord from having access to the dwelling unit~~

12 ~~to make repairs or provide a remedy to the acts or omissions described in the tenant's~~

13 ~~notice under subsection (a).~~

14 ~~_____ Note to Committee: Choices in (d).~~

15 Comment

16 ~~This section has been modified from the 1972 act to clarify the remedies available to a~~

17 ~~tenant for a landlord's noncompliance with the warranty provisions in Section 302 or~~

18 ~~under the lease. If there is a material noncompliance by the landlord with the lease or~~

19 ~~Section 302(a), Section 401 allows the tenant to elect from among six remedies. However,~~

20 ~~the tenant's ability to secure essential services which the landlord is obligated to provide or~~

21 ~~substitute housing under Section 404 is only available for the landlord's material~~

22 ~~noncompliance in providing those essential services. Not all services or obligations of the~~

23 ~~landlord described in Section 302(a) are "essential services." See Section 102(146). See also~~

1 Section 302(b) which provides that the lease may absolve the landlord of the obligation to
2 provide essential services.

3
4 This section also clarifies the measurement of damages when a tenant has occupied a
5 dwelling unit in a noncompliant condition. The 1972 Act permitted recovery of the
6 “diminution in the fair rental value” of the dwelling unit. That terminology is modified in
7 this act to permit recovery of damages based upon the “diminution in value of the dwelling
8 unit,” which is defined in Section 102(11) as “a reduction from the rent provided in a lease
9 in an amount that reflects the extent to which a noncompliant condition of the premises
10 impairs the tenant’s use and enjoyment of the dwelling unit.” The intent is to permit a
11 court to consider such factors as the nature and duration of the defect, the proportion of
12 the dwelling unit that is affected, the value of services to which the tenant was deprived, the
13 degree of discomfort imposed by the defect, and the effectiveness of the landlord’s
14 remediation efforts. For example, if, as a result of noncompliance, the tenant is deprived
15 only of the use of office space, the diminution in value should be less than if the
16 noncompliance results in the loss of bath and kitchen facilities in the entire dwelling unit.

17
18 Remedies available to the tenant pursuant to Section 401 are not exclusive (see Section
19 110). Thus, to the extent permitted by state law, tort remedies also may be available.

20
21 A duty to mitigate damages exists under Section 104(b).

22
23 If the dwelling unit or premises are substantially damaged or destroyed as the result of a

1 ~~fire or other casualty to which Section 406 would apply, then the remedies in Section 406~~
2 ~~rather than this section apply.~~

3
4 ~~Subsection (d) recognizes that circumstances beyond the landlord's control may make it~~
5 ~~difficult or impossible for a landlord to make the repairs within the time limits set forth in~~
6 ~~this section. In such cases, the tenant's remedy is limited to termination.~~

7
8 **SECTION 4023. LANDLORD'S FAILURE TO DELIVER POSSESSION TO**
9 **TENANT.**

10 ~~(a) Except as otherwise provided in subsection (d), if a landlord does not deliver actual~~
11 ~~possession of the dwelling unit to the tenant as provided in Section 301, the tenant is not required~~
12 ~~to pay rent until possession is delivered, and may:~~

13 ~~_____ (1) terminate the lease by a notice in a record given to the landlord at any time~~
14 ~~before the landlord delivers possession of the unit to the tenant; ~~or~~; or~~

15 ~~_____ (2) demand performance of the lease by the landlord and, if the tenant elects,~~
16 ~~recover actual damages and obtain possession of the unit from the landlord or any person~~
17 ~~wrongfully in possession by any lawful means that could have been used by the landlord.~~

18 ~~(b) If a tenant terminates the lease under subsection (a)(1), the landlord shall return to the~~
19 ~~tenant any security deposit and unearned rent to which the tenant is entitled under Section 1204.~~

20 ~~The landlord also shall return to the tenant any fees received from the tenant.~~

21 ~~{(c) In addition to the rights provided to a tenant in subsections (a) and (b), if a landlord's~~
22 ~~failure to deliver possession to the tenant pursuant to Section 301 is willful, the court shall award~~
23 ~~the tenant the tenant is entitled to an amount equal to [three] months' periodic rent or [triple] the~~

1 ~~actual damages, damages, -whichever is greater.]~~

2 ~~[(e) In addition to the rights provided to a tenant in subsections (a) and (b), if a landlord's~~
3 ~~failure to deliver possession to the tenant pursuant to Section 301 is willful, the tenant is entitled~~
4 ~~to an amount equal to [three] months' periodic rent or [triple] the actual damages, whichever is~~
5 ~~greater.]~~

6 ~~_____ (d) If a tenant elects under subsection (a)(2) to obtain possession from a person that is~~
7 ~~wrongfully in possession, the tenant is liable to the landlord for rent and may recover from the~~
8 ~~person wrongfully in possession the damages provided in Section 802.~~

9 Comment

10 ~~_____ Under subsection (a)(2), a tenant may elect to file an action for possession directly~~
11 ~~against a holdover tenant or other person in wrongful possession of the dwelling unit. This right~~
12 ~~parallels, and would take priority over, the landlord's right to file an action for possession against~~
13 ~~the holdover tenant under Section 802.~~

14 ~~_____~~
15 ~~_____ If the tenant elects to sue the holdover tenant for possession, the tenant effectively elects~~
16 ~~to continue the lease with the landlord and thus, under subsection (d) is liable to the landlord for~~
17 ~~rent for the period beginning with the commencement of the term of the lease.~~

18 SECTION 40~~3~~4. SELF-HELP.

19 ~~_____ (a) Except as otherwise provided in this [act], if a landlord fails to comply with the lease~~
20 ~~or Section 302, the tenant may give notice to the landlord pursuant to Section 401(a) specifying~~
21 ~~the failure and, if the landlord fails to comply within the period specified in Section 401(a) and~~
22 ~~the reasonable cost of compliance is less than does not exceed one month's rent, the tenant may~~
23 ~~repair the condition at the landlord's expense.~~

24 ~~_____ (b) Subject to subsection (d), a tenant, after submitting to the landlord an itemized~~
25 ~~statement, including receipts for purchased items and services, may deduct from the rent the~~
26 ~~actual and reasonable cost incurred or the fair and reasonable value of the work performed to~~
27 ~~repair the condition, not exceeding one month's rent, unless the tenant otherwise has been~~
28 ~~_____~~

1 reimbursed by the landlord.

2 (c) A repair by a tenant under subsection (a) must be made in a professional manner and
3 in compliance with applicable law.

4 (d) A tenant may not repair a condition at the landlord's expense under subsection (a) to
5 the extent:

6 (1) the condition was caused by an act or omission of the tenant, an immediate
7 family member, or another person invited on the premises by the tenant ~~and under the tenant's~~
8 control, other than the landlord or the landlord's agent; or

9 (2) the landlord was unable to remedy the condition within the period in Section
10 401(a) because the tenant denied the landlord access to the dwelling unit.

11 (e) A tenant's use of the remedy under this section is limited to one month's rent during
12 any 12-month period.

13 Comment

14 Under subsection (b) if a tenant hires another person to perform a repair the landlord
15 should have made, the tenant recovers the actual and reasonable cost incurred by the tenant to
16 have the repair made. If the tenant is able to personally do the repair, the tenant is entitled to
17 recover the fair and reasonable value of the work performed to repair.

18 Under subsection (d), the tenant may not repair at a landlord's expense to the extent the
19 damage that was repaired was caused by the tenant, an immediate family member, or another
20 person invited on the premises by the tenant ~~and under the tenant's control~~, other than the
21 landlord or the landlord's agent. For example, if the tenant breaks the door lock, the tenant
22 cannot deduct the cost of the repair from the rent, even if the repair was undertaken by the tenant.
23 Subsection (d) would not preclude the tenant from making the repair, but would preclude the
24 deduction of the costs from the rent.

25 Subsection (e) is intended to assure the landlord that over any given 12-month period the
26 landlord's costs arising as the result of the tenant's election of this self-help remedy do not
27 exceed one month's rent. The 12-month look back period begins to run 12 months immediately
28 before the completion of the immediate repair for which the tenant has exercised the tenant's
29 rights under this section. For example, suppose the tenant paying monthly rent of \$500 properly
30 contracts for a plumber to make a repair that costs \$300. The repair is completed on November
31 10. The tenant is entitled to be reimbursed the entire \$300 if over the last 12 months, beginning
32 10. The tenant is entitled to be reimbursed the entire \$300 if over the last 12 months, beginning
33

1 with November 10 of the preceding year, the tenant never used this remedy. If over that period
2 the tenant has previously used the remedy to the extent of \$400, the tenant would be able to
3 recoup only \$100 of the cost of the current \$300 repair.

4 **SECTION 4045. LANDLORD’S WRONGFUL FAILURE TO PROVIDE**
5 **ESSENTIAL SERVICE.**

6 (a) If, contrary to the terms of a lease or Section 302, the landlord willfully or negligently
7 fails to provide an essential service, the tenant may give notice to the landlord pursuant to
8 Section 401(a) specifying the failure and, if the landlord fails to comply within the period
9 specified in Section 401(a), the tenant may:

10 (1) take appropriate measures to secure the essential service during the period of
11 the landlord’s noncompliance and deduct the reasonable cost from the rent; or

12 (2) procure comparable substitute housing at the landlord’s expense during the
13 period of the landlord’s noncompliance.

14 (b) In addition to the remedy provided in subsection (a)(2), ~~the court shall award the~~
15 ~~tenant actual damages.~~ ~~if the tenant is entitled to actual damages.~~

16 (c) Rights of a tenant under this section do not arise if the condition was caused by the act
17 or omission of the tenant, an immediate family member, or another person invited on the
18 premises by the tenant ~~and under the tenant’s control~~, other than the landlord or the landlord’s
19 agent.

20 **Comment**

21 _____
22 This section would not apply if the landlord was absolved from providing essential
23 services. See Section 302(b).

24 _____
25 Under subsection (b), a tenant’s actual damages could include the difference between the
26 rent provided in the lease and the actual and reasonable cost of substitute housing as well as
27 moving expenses.

28 _____
29 **SECTION 4056. LANDLORD’S NONCOMPLIANCE AS DEFENSE TO ACTION**

1 **FOR NONPAYMENT OF RENT.**

2 (a) A tenant may defend an action by the landlord based on nonpayment of rent, whether
3 for possession or for the unpaid rent, on the ground that no rent was due and [counterclaim] for
4 any amount the tenant may recover under the lease or this [act].

5 (b) If a tenant is in possession of the dwelling unit when an action based on nonpayment
6 of rent is filed by the landlord, either party may seek a court order directing the tenant to pay all
7 or part of the unpaid rent and all additional rent as it accrues into an escrow account with the
8 court or a bank or other entity authorized by the court to hold funds in escrow.

9 (c) If the court orders a tenant to deposit funds in an escrow account outside the court
10 pursuant to subsection (b), the bank or entity authorized by the court to hold the funds in escrow
11 shall provide the landlord and tenant with a monthly statement for the funds unless the court
12 otherwise provides.

13 (d) If a tenant fails to pay the rent into escrow as ordered by the court under subsection
14 (b), the court may enter a judgment of possession in favor of the landlord.

15 (e) If rent has been paid into escrow under subsection (b) and:

16 (1) the court determines that the landlord fully complied with the lease and
17 Section 302, the court shall order the immediate release to the landlord of rent held in escrow and
18 direct the tenant to pay the landlord any remaining rent owed; or

19 (2) the court determines that the landlord's noncompliance with the lease or
20 Section 302 materially interferes with the tenant's use and enjoyment of the premises, the court
21 may order one or more of the following remedies:

22 (A) release to the landlord all or part of the rent held in escrow to be used
23 only to bring the premises into compliance with the lease or Section 302;

1 (B) refund to the tenant all or part of the rent held in escrow in
2 compensation for:
3 (i) a repair made by the tenant in compliance with Section 4034;
4 (ii) damages based on the diminution in value of the dwelling unit
5 as determined by the court based on evidence that need not include expert testimony; or
6 (iii) other actual damages;
7 (C) ~~that the tenant continue to pay~~ the tenant's continued payment of rent
8 into escrow as rent becomes due or ~~abate~~ abatement of future rent until the landlord brings the
9 premises into compliance with the lease or Section 302; or
10 (D) payment to the landlord ~~of any~~ of any rent held in escrow not
11 otherwise payable to the tenant and any other amount the court determines the tenant owes the
12 landlord.

13 Comment

14
15 Under subsection (b), if either party seeks a court order for the escrow of rent, the court,
16 in its discretion, will determine whether to order an escrow of rent. If the court orders rent to be
17 escrowed, it shall also specify the amount to be escrowed. ~~This amount could be all of the rent or~~
18 ~~merely some portion thereof.~~

19
20 Under subsection (c), a court might decide that monthly statements need not be provided
21 to a tenant because the escrow arrangement has been established for so many tenants in the same
22 building that providing statements to all tenants is too costly or administratively inconvenient.

23 SECTION 407. FIRE OR OTHER CASUALTY DAMAGE.

24 (a) Subject to subsection (b), if a dwelling unit or premises are substantially damaged or
25 destroyed by fire or other casualty:

26 (1) the tenant may vacate the unit immediately and not later than [14] days after
27 vacating the unit give the landlord notice in a record of the tenant's intention to terminate the
28 lease, in which case the lease terminates as of the date the tenant vacates the unit; or

1 (2) if a portion of the premises is rendered uninhabitable or unusable as a result of
2 the fire or other casualty but continued occupancy of the unit is lawful, the tenant can continue
3 the lease and is entitled to the remedies provided in Section 402(a)(2)(A), (B), (C), and (D) after
4 complying with the provisions of Section 401.

5 (b) If a dwelling unit or premises are substantially damaged or destroyed by fire or other
6 casualty and the repairs can only be made if the tenant vacates the dwelling unit, the landlord
7 may give the tenant [5] days' notice in a record of the landlord's intent to terminate the lease, in
8 which case the lease terminates as of the expiration of the [5] days or any later date set forth in
9 the notice..

10 (c) If a lease is terminated pursuant to subsection (a)(1) or (b), the landlord shall return to
11 the tenant the amount of any security deposit and unearned rent to which the tenant is entitled
12 under Section 1204. In calculating the unearned rent, termination of the lease is deemed to occur
13 on the date of the fire or other casualty.

14 (d) This section does not preclude a landlord from seeking actual damages from the
15 tenant under law of this state other than this [act] for damages to the premises caused by the
16 tenant, an immediate family member, or another person invited on the premises by the tenant,
17 other than the landlord or the landlord's agent.

18
19 ~~**SECTION 406. FIRE OR OTHER CASUALTY DAMAGE.**~~

20 ~~**(a) If a dwelling unit or premises are substantially damaged or destroyed by fire or**~~
21 ~~**other casualty to the extent that the unit or premises require repairs that can be made only**~~
22 ~~**if the tenant vacates all or a part of the unit:**~~

23 ~~**(1) the tenant may vacate the unit immediately and not later than [14] days**~~
24 ~~**after vacating the unit give the landlord notice in a record of the tenant's intention to**~~

1 ~~terminate the lease, in which case the lease terminates as of the date the tenant vacates the~~
2 ~~unit;~~

3 ~~_____ (2) if continued occupancy of the unit is lawful, the tenant may vacate any~~
4 ~~part of the unit rendered unusable by the fire or other casualty, in which case the tenant's~~
5 ~~liability for rent is reduced as of the date of the fire or other casualty by the diminution in~~
6 ~~value of the unit, as determined by the court based on evidence that need not include expert~~
7 ~~testimony; or~~

8 ~~_____ (3) the landlord may give the tenant [30] days' notice in a record~~
9 ~~of the landlord's intent to terminate the lease, in which case the lease terminates as of the~~
10 ~~expiration of the [30] days.~~

11 ~~_____ (b) If a lease is terminated pursuant to subsection (a)(1) or (3), the landlord shall~~
12 ~~return to the tenant the amount of any security deposit and unearned rent to which the~~
13 ~~tenant is entitled under Section 1204. In calculating the unearned rent, termination of the~~
14 ~~lease is deemed to occur on the date of the fire or other casualty.~~

15 ~~_____ (c) This section does not preclude a landlord from seeking actual damages from the~~
16 ~~tenant under law of this state other than this [act] for damages to the premises caused by~~
17 ~~the tenant, an immediate family member, or another person invited on the premises by the~~
18 ~~tenant [and under the tenant's control], other than the landlord or the landlord's agent.~~

19 ~~**SECTION 4078. UNLAWFUL REMOVAL, EXCLUSION, OR DIMINUTION OF**~~
20 ~~**ESSENTIAL SERVICE.** If a landlord unlawfully removes or excludes the tenant from the~~
21 ~~premises or willfully interrupts or causes the interruption of an essential service which the~~
22 ~~landlord is obligated to provide to the tenant:~~

23 ~~(a) the tenant may recover possession or terminate the lease and, in either case, [the court~~

1 ~~shall award the tenant [three] months periodic rent or [triple] the actual damages, whichever is~~
2 ~~greater.] [the tenant is entitled to [three] months' periodic rent or [triple] damages, whichever is~~
3 ~~greater; and~~

4 ~~(b) if the lease terminates, the landlord shall return to the tenant the amount of any~~
5 ~~security deposit and unearned rent to which the tenant is entitled under Section 1204.~~

6 Comment

7 _____
8 This section would not apply if the landlord was absolved from providing essential
9 services. See Section 302(b).
10

11
12 **ARTICLE 45**

13 **TENANT'S DUTIES**

14
15 **SECTION 401501. TENANT'S DUTIES.** A tenant:

16 (1) shall comply with all obligations imposed on the tenant by the lease and this [act],
17 including the obligation to pay rent;

18 (2) shall comply with all obligations imposed on a tenant by any applicable building,
19 housing, or health code;

20 (3) except with respect to duties imposed on the landlord by the ~~lease-lease, or~~ this [act],
21 or by law of this state other than this [act], shall keep the dwelling unit as safe and sanitary as the
22 conditions of the unit permit;

23 (4) shall remove all garbage, rubbish, and other debris from the dwelling unit in a clean
24 and safe manner;

25 (5) shall keep all plumbing fixtures in the dwelling unit or used by the tenant [as] clean
26 ~~[as their condition permits];~~

1 (6) shall use in a reasonable manner all electrical, plumbing, heating, ventilating, and air-
2 conditioning systems, and other facilities and appliances, including elevators, on the premises;

3 (7) in the absence of the landlord's consent, may not intentionally or negligently:

4 (A) destroy, deface, damage, impair, or remove any part of the premises;

5 (B) destroy, deface, damage, impair, remove, or render inoperative any safety
6 equipment on the premises, such as smoke alarms, carbon monoxide detectors, and fire
7 extinguishers; or

8 (C) permit an immediate family member, or another person invited on the
9 premises by the tenant [and under the tenant's control], invitee, or other person [acting under the
10 tenant's control] to do the same;

11 (8) may not disturb or allow a person invited on the premises by the ~~with the~~ tenant's
12 ~~consent~~ [and under the tenant's control], other than the landlord or the landlord's agent, to
13 disturb the use and enjoyment of the premises by another tenant or permit an immediate family
14 member, or another person invited on the premises by the tenant [and under the tenant's control]
15 to do the same;

16 (9) may not engage in any criminal activity on the premises;

17 (10) shall notify the landlord within a reasonable time of any condition of the premises
18 that requires repair or remediation by the landlord under the lease or Section 302;

19 (11) shall return the dwelling unit to the landlord at the termination of the lease in the
20 same condition as it was at the commencement of the term of the lease, with the premises free of
21 any damage caused by the tenant, an immediate family member, or another person invited on the
22 premises by the tenant [and under the tenant's control], other person invited on the premises by
23 the tenant, other than the landlord or the landlord's agent, except for:

1 (A) normal wear and tear;

2 (B) damage resulting from a cause beyond the control of the tenant, an immediate
3 family member, or another person invited on the premises by the tenant; and

4 (C) additions and improvements installed on the premises with the landlord's
5 consent; and

6 (12) unless the landlord and tenant otherwise agree, may use the dwelling unit only for
7 residential ~~purposes~~ purposes only.

8 **Comment**

9
10 Under paragraph (3) the tenant is obligated to keep the dwelling unit in a safe or sanitary
11 condition unless the duty to do so is imposed on another, such as the landlord. For example,
12 because Section 302 imposes a duty on the landlord to conform plumbing fixtures to applicable
13 law, that duty is not shifted to the tenant by this section.

14
15 Paragraph (12) leaves to judicial determination whether the incidental use of a dwelling
16 unit for business, professional, or other purposes would constitute a use for other than residential
17 purposes. See 1 A.L.R. 6th 135 (2005)(collecting and analyzing cases). The provision
18 contemplates, however, that a landlord and tenant may agree that the tenant can use the dwelling
19 unit for both residential and commercial purposes. If the parties so agree, the tenant's actual
20 damages for a landlord's noncompliance with the lease or this act may include foreseeable
21 damages attributable to the commercial use.

22
23 Section 601(b) allows the landlord to terminate a lease for tenant's material
24 noncompliance with Section 401501. If tenant's noncompliance is not material, landlord cannot
25 terminate the lease under Section 601 but could resort to other remedies under the act. For
26 example, if tenant's minor child draws on the rented apartment walls, the landlord could apply
27 the security deposit to the cost of repainting the wall.

28 **ARTICLE 5**

29 **TENANT REMEDIES**

30 ~~SECTION 501. NONCOMPLIANCE BY LANDLORD; IN GENERAL.~~

31 ~~(a) Subject to Section 506, if there is noncompliance by a landlord with the lease or~~
32 ~~Section 302, the tenant has the remedies under subsection (b) if the tenant gives the landlord:~~

33 ~~(1) notice in a record of the noncompliance; and~~
34

1 ~~_____ (2) an opportunity to remedy the noncompliance within the following periods:~~

2 ~~_____ (A) Subject to paragraph (B), the landlord shall remedy the~~
3 ~~noncompliance not later than [14] days after the tenant gives the landlord the date of the receipt~~
4 ~~of the notice; and~~

5 ~~_____ (B) If the noncompliance by the landlord involves failure to provide an~~
6 ~~essential service or poses a serious and imminent threat to the health or safety of the tenant or an~~
7 ~~immediate family member, the landlord shall remedy the noncompliance promptly, but not later~~
8 ~~than [five] days after the landlord received the date of the receipt of the notice tenant gave the~~
9 ~~landlord the notice.~~

10 ~~(b) Subject to subsection (d), if a landlord's noncompliance with the lease or Section 302~~
11 ~~materially interferes with the use and enjoyment of the premises by the tenant and is not~~
12 ~~remedied during the applicable period in subsection (a), the tenant may:~~

13 ~~(1) terminate the lease by giving the landlord notice in a record of the tenant's~~
14 ~~intent to terminate the lease immediately or on a later date specified in the notice, in which case:~~

15 ~~_____ (A) the tenant may recover actual damages for the period beginning the~~
16 ~~date the tenant gave the landlord the notice under subsection (a) and ending on the date of~~
17 ~~termination specified in the notice, including damages based on the diminution in value of the~~
18 ~~dwelling unit as determined by the court based on evidence that need not include expert~~
19 ~~testimony; and~~

20 ~~_____ (B) the landlord shall return to the tenant the amount of any security~~
21 ~~deposit and unearned rent to which the tenant is entitled under Section 1204; or~~

22 ~~(2) continue the lease and, without any additional notice, elect one of the~~
23 ~~following remedies:~~

1 ~~————(A) subject to Section 505, withhold the rent for the period of~~
2 ~~noncompliance beginning on the date the tenant gave the landlord the notice under subsection~~
3 ~~(a);~~

4 ~~————(B) recover actual damages for the period beginning on the date the tenant~~
5 ~~gave the landlord the notice under subsection (a), including damages based on the diminution in~~
6 ~~value of the dwelling unit as determined by the court based on evidence that need not include~~
7 ~~expert testimony;~~

8 ~~————(C) seek injunctive relief, or specific performance, or other equitable~~
9 ~~relief;~~

10 ~~————(D) subject to Section 503, make repairs and deduct the cost from the rent;~~
11 ~~or~~

12 ~~————(E) subject to Section 504, secure essential service or comparable~~
13 ~~substitute housing during the period of noncompliance.~~

14 ~~————(c) If a landlord's noncompliance with the lease or Section 302 does not materially~~
15 ~~interfere with the tenant's use and enjoyment of the premises, the tenant may obtain the remedies~~
16 ~~provided in subsection subsections (b)(2)(B), (C), and (D).~~

17 ~~————(d) If a landlord's noncompliance with the lease or Section 302 was caused by~~
18 ~~circumstances beyond the landlord's control, including the unavailability of materials, labor, or~~
19 ~~utilities, a natural disaster, [or] force majeure[, or the death of the landlord]:~~

20 ~~————(1) the tenant may terminate the lease; and~~

21 ~~————(2) after the tenant vacates the premises, the landlord must return to the tenant the~~
22 ~~amount of any security deposit and unearned rent to which the tenant is entitled under Section~~
23 ~~1204.~~

~~(e) A tenant may not seek a remedy under this section to the extent:~~

~~(1) the landlord's noncompliance was caused by the act or omission of the tenant, an immediate family member, or a person on the premises with the tenant's consent, other than the landlord or the landlord's agent; or~~

~~(2) the tenant prevented the landlord from having access to the dwelling unit to make repairs or provide a remedy to the acts or omissions described in the tenant's notice under subsection (a).~~

Comment

~~This section has been modified from the 1972 act to clarify the remedies available to a tenant for a landlord's noncompliance with the warranty provisions in Section 302 or under the lease. If there is a material noncompliance by the landlord with the lease or Section 302(a), Section 501 allows the tenant to elect from among six remedies. However, the tenant's ability to secure essential services or substitute housing under Section 504 is only available for the landlord's material noncompliance in providing essential services. Not all services or obligations of the landlord described in Section 302(a) are "essential services." See Section 102(14).~~

~~This section also clarifies the measurement of damages when a tenant has occupied a dwelling unit in a noncompliant condition. The 1972 Act permitted recovery of the "diminution in the fair rental value" of the dwelling unit. That terminology is modified in this act to permit recovery of damages based upon the "diminution in value of the dwelling unit," which is defined in Section 102(10) as "a reduction from the rent provided in a lease in an amount that reflects the extent to which a noncompliant condition of the premises impairs the tenant's use and enjoyment of the dwelling unit." The intent is to permit a court to consider such factors as the nature and duration of the defect, the proportion of the dwelling unit that is affected, the value of services to which the tenant was deprived, the degree of discomfort imposed by the defect, and the effectiveness of the landlord's remediation efforts. For example, if, as a result of noncompliance, the tenant is deprived only of the use of office space, the diminution in value should be less than if the noncompliance results in the loss of bath and kitchen facilities in the entire dwelling unit.~~

~~Remedies available to the tenant pursuant to Section 501 are not exclusive (see Section 110). Thus, to the extent permitted by state law, tort remedies also may be available.~~

~~A duty to mitigate damages exists under Section 104.~~

~~If the dwelling unit or premises are substantially damaged or destroyed as the result of a fire or other casualty to which Section 506 would apply, then the remedies in Section 506 rather than this section apply.~~

1 ~~Subsection (d) recognizes that circumstances beyond the landlord's control may make it~~
2 ~~difficult or impossible for a landlord to make the repairs within the time limits set forth in this~~
3 ~~section. In such cases, the tenant's remedy is limited to termination.~~

4
5 **~~SECTION 502. LANDLORD'S FAILURE TO DELIVER POSSESSION TO~~**
6 **~~TENANT.~~**

7 ~~(a) Except as otherwise provided in subsection (d), if a landlord does not deliver actual~~
8 ~~possession of the dwelling unit to the tenant as provided in Section 301, the tenant is not required~~
9 ~~to pay rent until possession is delivered, and may:~~

10 ~~——(1) terminate the lease by a notice in a record given to the landlord at any time~~
11 ~~before the landlord delivers possession of the unit to the tenant; or~~

12 ~~——(2) demand performance of the lease by the landlord and, if the tenant elects,~~
13 ~~recover actual damages and obtain possession of the unit from the landlord or any person~~
14 ~~wrongfully in possession by any lawful means that could have been used by the landlord.~~

15 ~~(b) If a tenant terminates the lease under subsection (a)(1), the landlord shall return to the~~
16 ~~tenant any security deposit and unearned rent to which the tenant is entitled under Section 1204.~~
17 ~~The landlord also shall return to the tenant any fees received from the tenant.~~

18 ~~[(c) In addition to the rights provided to a tenant in subsections (a) and (b), if a landlord's~~
19 ~~failure to deliver possession to the tenant pursuant to Section 301 is willful, the court shall award~~
20 ~~the tenant an amount equal to [three] months' periodic rent or [triple] the actual damages,~~
21 ~~whichever is greater.]~~

22 ~~[(c) In addition to the rights provided to a tenant in subsections (a) and (b), if a landlord's~~
23 ~~failure to deliver possession to the tenant pursuant to Section 301 is willful, the tenant is entitled~~
24 ~~to an amount equal to [three] months' periodic rent or [triple] the actual damages, whichever is~~
25 ~~greater.]~~

1 ~~—— (d) If a tenant elects under subsection (a)(2) to obtain possession from a person that is~~
2 ~~wrongfully in possession, the tenant is liable to the landlord for rent and may recover from the~~
3 ~~person wrongfully in possession the damages provided in Section 803802.~~

4 **Comment**

5 ~~—— Under subsection (a)(2), a tenant may elect to file an action for possession directly~~
6 ~~against a holdover tenant or other person in wrongful possession of the dwelling unit. This right~~
7 ~~parallels, and would take priority over, the landlord's right to file an action for possession against~~
8 ~~the holdover tenant under Section 803.~~

9 ~~——~~
10 ~~—— If the tenant elects to sue the holdover tenant for possession, the tenant effectively elects~~
11 ~~to continue the lease with the landlord and thus, under subsection (d), is liable to the landlord for~~
12 ~~rent for the period beginning with the commencement of the term of the lease.~~

13
14 **~~SECTION 503. SELF-HELP.~~**

15 ~~—— (a) Except as otherwise provided in this [act], if a landlord fails to comply with the lease~~
16 ~~or Section 302, the tenant may give notice to the landlord pursuant to Section 501(a) specifying~~
17 ~~the failure, and, if the landlord fails to comply within the period specified in Section 501(a) and~~
18 ~~the reasonable cost of compliance is less than one month's rent, the tenant may repair the~~
19 ~~condition at the landlord's expense.~~

20 ~~—— (b) Subject to subsection (d), a tenant, after submitting to the landlord an itemized~~
21 ~~statement, including receipts for purchased items and services, may deduct from the rent the~~
22 ~~actual and reasonable cost incurred or the fair and reasonable value of the work performed to~~
23 ~~repair the condition, not exceeding one month's rent, unless the tenant otherwise has been~~
24 ~~reimbursed by the landlord.~~

25 ~~—— (c) A repair by a tenant under subsection (a) must be made in a professional manner and~~
26 ~~in compliance with applicable law.~~

27 ~~—— (d) A tenant may not repair a condition at the landlord's expense under subsection (a) to~~
28 ~~the extent:~~

1 ~~———(1) the condition was caused by an act or omission of the tenant, an immediate~~
2 ~~family member, or other person on the premises with the tenant’s consent, other than the~~
3 ~~landlord or the landlord’s agent; or~~

4 ~~———(2) the landlord was unable to remedy the condition within the period in Section~~
5 ~~501(a) because the tenant denied the landlord access to the dwelling unit.~~

6 ~~(e) A tenant’s use of the remedy under this section is limited to one month’s rent during~~
7 ~~any 12-month period.~~

8 **Comment**

9 ~~———Under subsection (b) if a tenant hires another person to perform a repair the landlord~~
10 ~~should have made, the tenant recovers the actual and reasonable cost incurred by the tenant to~~
11 ~~have the repair made. If the tenant is able to personally do the repair, the tenant is entitled to~~
12 ~~recover the fair and reasonable value of the work performed to repair.~~

13
14 ~~———Under subsection (d), the tenant may not repair at a landlord’s expense to the extent the~~
15 ~~damage that was repaired was caused by the tenant, an immediate family member, or another~~
16 ~~person, other than the landlord, on the premises with the tenant’s consent. For example, if the~~
17 ~~tenant breaks the door lock, the tenant cannot deduct the cost of the repair from the rent, even if~~
18 ~~the repair was undertaken by the tenant. Subsection (d) would not preclude the tenant from~~
19 ~~making the repair, but would preclude the deduction of the costs from the rent.~~

20
21 ~~———Subsection (e) is intended to assure the landlord that over any given 12-month period the~~
22 ~~landlord’s costs arising as the result of the tenant’s election of this self-help remedy do not~~
23 ~~exceed one month’s rent. The 12-month look back period begins to run 12 months immediately~~
24 ~~before the completion of the immediate repair for which the tenant has exercised the tenant’s~~
25 ~~rights under this section. For example, suppose the tenant paying monthly rent of \$500 properly~~
26 ~~contracts for a plumber to make a repair that costs \$300. The repair is completed on November~~
27 ~~10. The tenant is entitled to be reimbursed the entire \$300 if over the last 12 months, beginning~~
28 ~~with November 10 of the preceding year, the tenant never used this remedy. If over that period~~
29 ~~the tenant has previously used the remedy to the extent of \$400, the tenant would be able to~~
30 ~~recoup only \$100 of the cost of the current \$300 repair.~~

~~SECTION 504. LANDLORD'S WRONGFUL FAILURE TO PROVIDE
ESSENTIAL SERVICE.~~

~~(a) If, contrary to the terms of a lease or Section 302, the landlord willfully or negligently fails to supply provide an essential service, the tenant may give notice to the landlord pursuant to Section 501(a) specifying the failure and, if the landlord fails to comply within the period specified in Section 501(a), the tenant may:~~

~~(1) take appropriate measures to secure the essential service during the period of the landlord's noncompliance and deduct the reasonable cost from the rent; or~~

~~(2) procure substitute housing during the period of the landlord's noncompliance.~~

~~(b) In addition to the remedy provided in subsection (a)(2), [the court shall award the tenant actual damages. the tenant is entitled to actual damages.]~~

~~(c) Rights of a tenant under this section do not arise if the condition was caused by the act or omission of the tenant, an immediate family member, or other person on the premises with the tenant's consent, other than the landlord or the landlord's agent.~~

Comment

~~Under subsection (b), a tenant's actual damages could include the difference between the rent provided in the lease and the actual and reasonable cost of substitute housing as well as moving expenses.~~

~~SECTION 505. LANDLORD'S NONCOMPLIANCE AS DEFENSE TO ACTION
FOR NONPAYMENT OF RENT.~~

~~(a) A tenant may defend an action by the landlord based on nonpayment of rent, whether for possession or for the unpaid rent, on the ground that no rent was due and [counterclaim] for any amount the tenant may recover under the lease or this [act].~~

~~(b) If a tenant is in possession of the dwelling unit when an action based on nonpayment~~

1 of rent is filed by the landlord, either party may seek a court order directing the tenant to pay all
2 or part of the unpaid rent and all additional rent as it accrues into an escrow account with the
3 court or a bank or other entity authorized by the court to hold funds in escrow.

4 ~~———(c) If the court orders a tenant to deposit funds in an escrow account outside the court
5 pursuant to subsection (b), the bank or entity authorized by the court to hold the funds in escrow
6 shall provide the landlord and tenant with a monthly statement for the funds.~~

7 ~~———(d) If a tenant fails to pay the rent into escrow as ordered by the court under subsection
8 (b), the court may enter a judgment of possession in favor of the landlord.~~

9 ~~———(e) If rent has been paid into escrow under subsection (b) and:~~

10 ~~———(1) the court determines that the landlord fully complied with the lease and
11 Section 302, the court shall order the immediate release to the landlord of rent held in escrow
12 and direct the tenant to pay the landlord any remaining rent owed; or~~

13 ~~———(2) the court determines that the landlord's noncompliance with the lease or
14 Section 302 materially interferes with the tenant's use and enjoyment of the premises, the court
15 may order one or more of the following remedies:~~

16 ~~———(A) release to the landlord all or part of the rent held in escrow to be used
17 only to bring the premises into compliance with the lease or Section 302;—~~

18 ~~———(B) refund to the tenant all or part of the rent held in escrow in
19 compensation for:~~

20 ~~———(i) a repair made by the tenant in compliance with Section 503;~~

21 ~~———(ii) damages based on the diminution in value of the dwelling unit
22 as determined by the court based on evidence that need not include expert testimony; or~~

23 ~~———(iii) other actual damages;~~

1 ~~_____ (C) that the tenant continue to pay rent into escrow as rent becomes due or~~
2 ~~abate future rent until the landlord brings the premises into compliance with the lease or Section~~
3 ~~302; or~~

4 ~~_____ (D) payment to the landlord of any rent held in escrow not otherwise~~
5 ~~payable to the tenant and any other amount the court determines the tenant owes the landlord.~~

6 **Comment**

7 ~~_____~~
8 ~~_____ Under subsection (b), if either party seeks a court order for the escrow of rent, the court,~~
9 ~~in its discretion, will determine whether to order an escrow of rent. If the court orders rent to be~~
10 ~~escrowed, it shall also specify the amount to be escrowed. This amount could be all of the rent or~~
11 ~~merely some portion thereof.~~

12 ~~_____~~
13 ~~**SECTION 506. FIRE OR OTHER CASUALTY DAMAGE.**~~

14 ~~_____ (a) If a dwelling unit or premises are substantially damaged or destroyed by fire or other~~
15 ~~casualty to the extent that the unit or premises require repairs that can be made only if the tenant~~
16 ~~vacates all or a part of the unit:~~

17 ~~_____ (1) the tenant may vacate the unit immediately and not later than [14] days after~~
18 ~~vacating the unit give the landlord notice in a record of the tenant's intention to terminate the~~
19 ~~lease, in which case the lease terminates as of the date the tenant vacates the unit;~~

20 ~~_____ (2) if continued occupancy of the unit is lawful, the tenant may vacate any part of~~
21 ~~the unit rendered unusable by the fire or other casualty, in which case the tenant's liability for~~
22 ~~rent is reduced as of the date of the fire or other casualty by the diminution in value of the unit,~~
23 ~~as determined by the court based on evidence that need not include expert testimony; or~~

24 ~~_____ (3) the landlord may give the tenant [30] days notice in a record of the landlord's~~
25 ~~intent to terminate the lease, in which case the lease terminates as of the expiration of the [30]~~
26 ~~days.~~

27 ~~_____ (b) If a lease is terminated pursuant to subsection (a)(1) or (3), the landlord shall return to~~

1 ~~the tenant the amount of any security deposit and unearned rent to which the tenant is entitled~~
2 ~~under Section 1204. In calculating the unearned rent, termination of the lease is deemed to occur~~
3 ~~on the date of the fire or other casualty.~~

4 ~~———(e) This section does not preclude a landlord from seeking actual damages from the~~
5 ~~tenant under law of this state other than this [act] for damages to the premises caused by the~~
6 ~~tenant, an immediate family member, or other person on the premises with the tenant's consent,~~
7 ~~other than the landlord or the landlord's agent.~~

8 ~~———SECTION 507. UNLAWFUL REMOVAL, EXCLUSION, OR DIMINUTION OF~~
9 ~~ESSENTIAL SERVICE. If a landlord unlawfully removes or excludes the tenant from the~~
10 ~~premises or willfully interrupts or causes the interruption of an essential service to the tenant, the~~
11 ~~tenant may recover possession or terminate the lease and, in either case, [the court shall award~~
12 ~~the tenant [three] months periodic rent or [triple] the actual damages, whichever is greater.] [the~~
13 ~~tenant is entitled to [three] months periodic rent or [triple] damages, whichever is greater.] If the~~
14 ~~lease terminates, the landlord shall return to the tenant the amount of any security deposit and~~
15 ~~unearned rent to which the tenant is entitled under Section 1204.~~

16 ARTICLE 6

17 LANDLORD REMEDIES

18 SECTION 601. TENANT'S FAILURE TO PAY RENT; OTHER 19 NONCOMPLIANCE WITH LEASE.

20 ~~———[Note to Committee of the Whole: In subsection (c)(1), the Drafting Committee seeks~~
21 ~~your guidance in how to limit the criminal acts that could warrant a landlord's immediate~~
22 ~~termination of a lease.]~~
23

24 (a) Except as otherwise provided in this [act] or by law of this state other than this [act], a
25 landlord may terminate a lease for nonpayment of rent if the rent is unpaid when due and the

1 tenant fails to pay the rent not later than [14] days after the landlord gives the tenant notice in a
2 record of the landlord's intent to terminate the lease at the end of the [14]-day period if the rent is
3 not paid within that period.

4 (b) Except as otherwise provided in this [act] or by law of this state other than this [act],
5 if there is a material noncompliance with a lease or this [act] by the tenant, other than the
6 nonpayment of rent, the landlord may give the tenant notice in a record specifying the act and
7 omission constituting the noncompliance and that the lease will terminate on a specified date not
8 less than [30] days after ~~receipt of the~~ landlord gives the tenant the notice if the noncompliance is
9 not remedied not later than [14] days after ~~receipt of the notice~~ the landlord gave the notice. If
10 the tenant does not remedy the noncompliance adequately during the [14]-day remediation
11 period, the landlord may terminate the lease.

12 (c) Unless otherwise provided in the lease, a landlord may terminate a lease without
13 giving the tenant an opportunity to remedy a noncompliance:

14 (1) ÷

15 ~~by giving the tenant a notice in a record that the lease will terminate~~
16 immediately on a day set forth in the notice if the landlord reasonably believes:

17 (A) if ~~the tenant commits a criminal act~~ the landlord reasonably believes

18 the tenant, an immediate family member, or another person invited on the

19 premises by the tenant ~~and under the tenant's control~~ has committed a criminal

20 act on the premises, or

21 by giving the tenant notice in a record that the lease will terminate immediately on

22 the receipt of the ~~day the landlord gave the notice or on another date set forth i n the~~

23 notice;

1 ~~_____ [(1) if the tenant, an immediate family member, or another person invited on the~~
2 ~~premises by the tenant [and under the tenant's control], has committed a criminal act on the~~
3 ~~premises, by giving the tenant notice in a record that the lease will terminate immediately on the~~
4 ~~day the landlord gave the notice or on another date set forth in the notice;]n the notice;_____~~

5 ~~_____ (B) the tenant's noncompliance poses an actual and imminent threat to the health and~~
6 ~~safety of other tenants on the premises o~~

7 ~~or~~

8 (22) by giving the tenant notice in a record that the lease will terminate on a
9 specified date not less than [14] days after ~~receipt of the~~ landlord gave the notice ~~notice~~ if the
10 noncompliance:

11 (A) is for nonpayment of rent and the tenant failed to pay rent in a timely
12 manner on at least [two] occasions within any consecutive [four]-month period;

13 ~~_____ (B) poses an actualn serious _and imminent threat to theto the health and~~
14 ~~safety of other tenants on the premises; or~~

15 (CB) is substantially the same act or omission ~~that constitutedthat~~
16 constituted a prior noncompliance for which notice under subsection (b) had been ~~sent-given~~
17 within six months preceding the latest noncompliance.

18 (d) Except as otherwise provided in this [act], if a tenant's noncompliance with Section
19 401501 materially affects health or safety of other tenants on the premises or is a material
20 noncompliance with the lease, the landlord may:

21 (1) obtain injunctive relief or specific performance; or

22 (2) regardless of whether the lease terminates as a result of the tenant's
23 noncompliance, recover actual damages [or liquidated damages as provided by the lease].

1 **Legislative Note:** *If the state allows for liquidated damages in a lease the bracketed language*
2 *should be included; if not, the language should be excluded.*

3
4 **Note to Committee: Choice necessary in (c)(1); is the 14 day period appropriate)**

5
6
7 **Comment**

8
9 Section 601 gives a landlord the right to terminate a lease for tenant's nonpayment of rent
10 and other noncompliance with the lease or this act. The section should be read in conjunction
11 with Section 801, which gives a landlord the unconditional right to terminate a periodic tenancy
12 upon compliance with the notice provisions in that section.

13
14 If any of the provisions of subsection (c) applies, the tenant has no right to cure the
15 noncompliance to avoid termination of the lease.

16
17 While not required by this act, good practice would suggest that a landlord taking
18 advantage of subsection (c)(2) would include in the notice a statement of the noncompliance that
19 had previously occurred with the time periods set forth in that subsection.

20
21 **SECTION 602. WAIVER OF LANDLORD'S RIGHT TO TERMINATE.**

22 Acceptance of rent for two or more ~~†~~successive rental periods by a landlord with knowledge of
23 noncompliance by the tenant with the lease or this [act] or acceptance by the landlord of the
24 tenant's performance that varies from the terms of the lease or this [act] constitutes a waiver of
25 the landlord's right to terminate the lease for that noncompliance, unless the landlord and tenant
26 otherwise agree after the noncompliance occurs.

27 **Note to Committee: Do we need this section?**

28 **SECTION 603. DISTRAINT FOR RENT; LIENS.**

29 (a) Distraint for rent is abolished.

30 (b) A landlord may not create, perfect, or enforce a lien or security interest on a tenant's
31 tangible personal property to the extent the lien or security interest secures the tenant's
32 performance under the lease or this [act]. This subsection ~~shall~~ does not apply to a lien or
33 security interest that was created or perfected before the effective date of this [act].

1 **Comment**

2
3 This section prohibits the landlord from seizing the tenant’s tangible personal property to
4 satisfy the landlord’s claims against the tenant or filing a lien against the tenant’s tangible
5 personal property to secure the tenant’s obligations under the lease. It also prohibits a landlord
6 from taking a security interest in any of the tenant’s tangible personal property to secure the
7 tenant’s performance. On the other hand, it would not preclude a landlord taking a lien or
8 security interest to secure performance of a tenant’s contractual promises unrelated to the lease.
9 For example, ~~if suppose~~ the landlord also owned an appliance store from which tenant purchased
10 an appliance under a monthly payment plan. ~~“on time time?”~~ A, a landlord’s lien on the appliance
11 to secure tenant’s payment of the debt incurred in purchasing the appliance is not prohibited by
12 this act.

13
14 **SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION.**

15 (a) In this section, “reasonable efforts” means steps a landlord would take ~~in good faith~~
16 to rent a dwelling unit if the unit is vacated at the end of a term, ~~such as~~ including showing the
17 unit to prospective tenants or advertising the availability of the unit.

18 (b) A tenant abandons a dwelling unit if:

19 (1) the tenant delivers possession of the unit to the landlord by returning the keys
20 or otherwise ~~notifying~~ notifies the landlord the unit has been vacated; or

21 (2) the tenant fails to pay rent ~~is unpaid~~ for at least [five] days and ~~the tenant~~ has:

22 (A) vacated the unit by removing substantially all of the tenant’s personal
23 property from the unit and the premises; and

24 (B) ~~voluntarily terminated~~ caused the termination of utility services or
25 otherwise indicated by words or conduct that the tenant has no intention of returning to the unit.

26 (c) If a tenant abandons the dwelling unit before the end of the term, the landlord may
27 elect to:

28 (1) accept the tenant’s abandonment of the unit by notice in a record given to the
29 tenant accepting the abandonment, in which case:

30 (A) the lease terminates as of the date of the abandonment;

1 (B) the landlord and tenant are liable to each other under the lease only for
2 breaches occurring before ~~acceptance of the abandonment~~the lease terminates; and

3 (C) the landlord shall return to the tenant the amount of any security
4 deposit and unearned rent to which the tenant is entitled under Section 1204; or

5 (2) treat the abandonment as wrongful.

6 (d) If a landlord treats an abandonment of a dwelling unit as wrongful under subsection
7 (c), the tenant remains liable under the lease and the landlord has a duty to mitigate by making
8 reasonable efforts to rent the unit, subject to the following rules:

9 (1) The landlord's duty to mitigate does not take priority over the landlord's right
10 to lease first any of the landlord's other dwelling units that are available to lease.

11 (2) If a landlord leases the abandoning tenant's unit to another tenant for a term
12 beginning before the expiration of the abandoning tenant's lease, the abandoning tenant's lease
13 terminates as of the date of the new tenancy and the landlord may recover actual damages from
14 the abandoning tenant.

15 (3) If the landlord uses reasonable efforts to lease the dwelling unit but is unable
16 to lease it or is able to lease it only for an amount less than the rent payable by the abandoning
17 tenant, the landlord may recover actual damages from the abandoning tenant.

18 (4) If the landlord fails to use reasonable efforts to lease the abandoning tenant's
19 unit, the lease terminates as of the date of the abandonment and the landlord and tenant are liable
20 to each other under the lease only for breaches occurring before the date of the abandonment.

21 (5) After deducting the landlord's actual damages, the landlord shall return to the
22 tenant the amount of any security deposit and unearned rent to which the tenant is entitled under
23 Section 1204.

1 (e) If a tenant wrongfully terminates the lease, the landlord ~~has a claim for~~ is entitled to
2 possession. The landlord also has a claim for past due rent and, unless the landlord accepts
3 abandonment or fails to mitigate, a separate claim for actual damages for breach of the lease.

4 **Comment**

5
6 Under subsection (a) the reasonable steps include advertising the unit and showing the
7 unit to any prospective tenants. Advertising can be by a variety of means including sending
8 emails to prospective tenants, hiring a real estate agent to locate prospective tenants, posting for
9 rent signs on the premises, and advertising the unit for rent in newspapers or other media.

10
11 Under subsection (b)(2)(B), the tenant might cause termination of utility services by
12 cancelling the services or merely not paying the bill.

13
14 In light of subsection (c), a landlord who wishes to hold ~~an~~ abandoning tenant liable for
15 breaches of the lease after the tenant abandons the premises should not accept the abandonment
16 but should treat the abandonment as wrongful. Thus, if tenant abandons the premises on the date
17 rent would otherwise be due, rather than accepting the abandonment which would result in the
18 tenant owing no rent, the landlord should treat the abandonment as wrongful under subsection
19 (c)(2).

20
21 In light of subsection (d)(1), when at the time the landlord is fulfilling the duty to
22 mitigate the landlord has other vacant units to rent, the landlord can show and lease the other
23 units to prospective tenants before showing the abandoned unit to prospective tenants.

24
25 If a tenant abandons the dwelling unit, the landlord may choose to accept the
26 abandonment, thus agreeing to a termination of the lease. If, at the time of the abandonment, the
27 tenant is in arrears on rent, the landlord would still have a cause of action to recover the past due
28 rent. However, by accepting the abandonment the landlord would not have a cause of action for
29 actual damages resulting from the abandonment.

30
31 Conversely, if ~~a tenant abandons the dwelling unit and~~ the landlord does not accept the
32 abandonment, the landlord can seek to recover damages from the tenant for anticipatory breach
33 or actual damages as provided in subsection (d)(3).

34 **SECTION 605. RECOVERY OF POSSESSION LIMITED; INTERRUPTION OF** 35 **ESSENTIAL SERVICE.**

36
37 (a) Except as permitted by this [act], a landlord may not recover or take possession of a
38 dwelling unit by an action or self-help.

39 (b) Except in a case of abandonment of a dwelling unit, a landlord may not willfully

1 interrupt or cause the interruption of an essential service to the unit.

2 **ARTICLE 7**

3 **ACCESS TO THE DWELLING UNIT**

4 **SECTION 701. LANDLORD'S ACCESS TO DWELLING UNIT.**

5 (a) A tenant may not unreasonably withhold consent to the landlord or the landlord's
6 agent to enter the dwelling unit to inspect it; make a necessary or agreed-to repair, alteration, or
7 improvement; supply a necessary or agreed-to service; or exhibit the unit to a prospective or
8 actual purchaser, mortgagee, tenant, worker, ~~or~~ contractor, or a public official responsible for
9 enforcement of a building, housing, fire, or health code.

10 (b) In an emergency, a landlord or the landlord's agent may enter a dwelling unit without
11 the tenant's consent. In all other cases, the landlord or the agent may enter the unit only at
12 reasonable times with the tenant's consent and shall provide advance notice to the tenant of the
13 ~~landlord's~~ intent to enter as follows:

14 (1) Except as otherwise provided in paragraph (2), the landlord or the agent shall
15 give the tenant at least [one day's] notice of the ~~landlord's~~ intent to enter the unit. The notice
16 must include the intended purpose for the entry and the date and a reasonable time frame in
17 which the landlord or the agent anticipates making the entry.

18 (2) In an emergency, when maintenance or repairs are being made at the tenant's
19 request, or when it is otherwise impracticable to give [one day's] notice, the landlord or the agent
20 shall give notice that is reasonable under the circumstances. If the landlord or the agent has
21 entered when the tenant is not present and prior notice has not been given, the landlord or the
22 agent shall ~~[place a notice of the entry in a conspicuous place in the unit.] [give the tenant notice~~
23 ~~not later than [24 hours] after entry]~~ indicating the fact of entry, the date and time of entry, and

1 the nature of the emergency.

2 (c) A landlord or the landlord's agent may not abuse the right to enter a tenant's dwelling
3 unit or use that right to harass the tenant.

4 (d) Except as otherwise provided in this section, a landlord and a landlord's agent has no
5 other right to enter a dwelling unit unless:

6 (1) permitted by the lease or the tenant otherwise agrees;

7 (2) pursuant to a court order; or

8 (3) the tenant has abandoned the unit.

9 **Comment**

10

11 If a landlord performs routine maintenance and pest control pursuant to a fixed schedule
12 of entry dates, the landlord will be in compliance with the advance notice requirement of
13 subsection (b)(1) if the landlord delivers that schedule to the tenant at the commencement of the
14 term of the lease and includes a reasonable time frame in which the maintenance or pest control
15 will be performed on the dates indicated in the schedule.

16

17 **SECTION 702. REMEDIES FOR ABUSE OF ACCESS.**

18 (a) If a tenant unreasonably refuses to allow the landlord or the landlord's agent access to
19 a dwelling unit, the court may compel the tenant to grant the landlord or the agent access or may
20 terminate the lease. In either case, ~~the court shall award the landlord actual damages.~~
21 landlord is entitled to actual damages.

22 (b) If a landlord or a landlord's agent makes an unlawful entry of a tenant's dwelling unit,
23 ~~or~~ a lawful entry in an unreasonable manner, or ~~makes~~ repeated demands for entry otherwise
24 lawful but which have the effect of harassing the tenant, the tenant is entitled to seek from a
25 court injunctive relief to prevent the recurrence of the conduct or termination of the lease. ~~the~~
26 ~~court may award injunctive relief to prevent the recurrence of the conduct or may terminate the~~
27 ~~lease.~~ If the court awards injunctive relief or terminates the lease, the court shall award the

1 tenant is entitled to actual damages or an amount equal to [one] month's rent, whichever is
2 greater.

3 ARTICLE 8

4 PERIODIC AND HOLDOVER TENANCIES; DEATH 5 OF TENANT

6 SECTION 801. TERMINATION OF PERIODIC TENANCY.

7 (a) A periodic tenancy continues until the landlord or tenant sends-gives the other the
8 notice described in subsection (b).

9 (b) Except as otherwise provided in this [act], a periodic tenancy may be terminated as
10 follows:

11 (1) ~~The the~~ landlord or tenant may terminate a periodic tenancy for week to week
12 by giving the other at least [five days'] notice in a record of the party's intent to terminate the
13 lease on the date specified in the notice specified in the notice; and -

14 ~~_____ (2) Thethe~~ landlord or the tenant may terminate a periodic tenancy for month to
15 month by giving the other at least [one month's] notice in a record of the party's intent to
16 terminate the lease at the end of the monthly period.

17 Comment

18
19 Under subsection (b)(1), a month to month tenancy can be terminated by giving one
20 month's notice. The termination date in the notice must coincide with the normal end of the
21 monthly period. Thus, if the tenancy begins on the first of the month, the termination date in the
22 notice must be on the last day of at least the next month or it could be on the last date of any
23 month at least one month after the notice is given. If the month-to-month tenancy begins on the
24 15th of the month, the one-month notice must have a termination date no earlier than the 14th of
25 the next month but could have a termination date on the 14th for subsequent months. Consistent
26 with common law, this [act] would not require the notice to include a reason for the termination.
27

1 term or a periodic tenancy, the tenant's surviving spouse~~f~~, [partner in a civil union~~g~~],~~h~~ [or
2 domestic partner] who resides in the dwelling unit may assume the lease by giving the landlord
3 notice in a record not later than [20] days after the tenant's death expressing the spouse's [or
4 partner's] intent to assume the lease. Upon assuming the lease, the surviving spouse [~~-or partner~~
5 ~~in a civil union,], [or domestic partner], becomes the tenant under the lease.~~

6 (b) Except as otherwise provided ~~in subsection~~in subsection (a) or (c) or law of this state
7 other than this [act], the landlord or a tenant representative may terminate the lease of a deceased
8 tenant who was the only party to the lease by giving the other notice in a record of the intent of
9 the person signing the notice to terminate the lease on a specified date at least [30] days after the
10 giving of receipt of the notice in the case of a tenancy for a fixed term or a specified date
11 consistent with Section 801(b)~~-f~~g in the case of a periodic tenancy.

12 (c) If a deceased tenant was the only party to the lease and the landlord is unable to
13 contact a tenant representative for purposes of termination under subsection (~~eb~~), the landlord
14 may terminate the lease without notice if rent that was due was not paid for at least [25] days.

15 Comment

16 Any notice in a record given under this section must comply with Section 107(c).

17 Under subsection (a) the surviving spouse [partner in a civil union, or domestic partner]
18 may assume the lease. Upon such assumption, the spouse becomes the tenant upon the lease.
19 An assumption does not require the landlord's consent.

20
21 If a tenant dies during the term of a lease, either the landlord or tenant representative (as
22 defined in Section 102(~~3942~~)) can elect to terminate the lease under subsection (b) unless
23 subsection (a) or other law would prohibit the termination.
24

25 If the tenant was the ~~sole occupant of the dwelling unit~~only party to the lease, the
26 landlord may unilaterally terminate the lease if subsection (c) applies. To illustrate the operation
27 of subsection (c), suppose the tenant of a fixed term tenancy to end on December 31 and who is
28 the sole occupant of the dwelling unit dies on March 5 having paid rent on March 1. The
29 landlord learns of the tenant's death on March 10. Because rent was paid for March, the landlord
30 will not be able to terminate this lease in March. If no rent was paid on April 1, however, and the

1 landlord is unable to contact a tenant representative, the landlord would be free to unilaterally
2 terminate the lease on or after April 25. If the landlord has contact with a tenant representative,
3 the landlord could not terminate under subsection (c), but may terminate the lease under
4 subsection (b).

5
6 **ARTICLE 9**

7 **RETALIATION**

8 **SECTION 901. RETALIATION PROHIBITED.**

9 (a) A landlord may not engage in conduct described in subsection (b) if the landlord's
10 dominant purpose is to retaliate against a tenant that:

11 (1) complained ~~in good faith~~ to a governmental agency responsible for the
12 enforcement of:

13 (A) a building, housing, or health code violation applicable to the premises
14 materially affecting the health or safety of the tenant or an immediate family member; or

15 (B) laws or regulations prohibiting discrimination in rental housing;

16 (2) complained ~~in good faith~~ to the landlord of a violation under the lease or
17 Section 302;

18 (3) organized or became a member of a tenant's union or similar organization;

19 (4) exercised or attempted to exercise ~~in good faith~~ a legal right or remedy under
20 a lease, this [act] or law of this state other than this [act]; ~~or~~

21 (5) pursued ~~in good faith~~ an action or sought an administrative remedy against
22 the landlord or testified ~~in good faith~~ against the landlord in court or in an administrative
23 proceeding.

24 (b) Conduct that ~~is~~ may be retaliatory under ~~Section-subsection~~ 901(a) includes taking or
25 threatening to take any of the following actions:

26 (1) increasing the rent;

1 (2) decreasing services, increasing the tenant's obligations, imposing different
2 rules on or selectively enforcing the landlord's rules against the tenant or an immediate family
3 member, or otherwise materially altering the terms of the lease;

4 (3) bringing an action for possession on grounds other than ~~that~~ except for
5 nonpayment of rent;

6 (4) refusing to renew a tenancy for a fixed term created under the lease
7 with containing a renewal option for any period after the lease would otherwise terminate;

8 (5) terminating a periodic tenancy ~~by giving the tenant the notice described in~~
9 ~~Section 801(b)~~; or

10 (6) conduct prohibited under [the criminal code].

11 (c) A landlord is not liable for retaliation if:

12 (1) the violation of which the tenant complained in subsection (a)(1) or ~~(a)~~(2) was
13 caused primarily by the tenant, an immediate family member, or another person invited on the
14 premises by the tenant ~~[and under the tenant's control]~~ ~~another person on the premises with the~~
15 ~~tenant's consent~~, other than the landlord or the landlord's agent;

16 (2) the tenant's ~~conduct described~~ conduct described in subsection (a) ~~was in~~ was
17 in an unreasonable manner or at an unreasonable time, or was repeated in a manner having the
18 effect of harassing the landlord;

19 (3) the tenant was in default in the payment of rent at the time the notice of the
20 action for possession described in subsection (b)(3) was sent;

21 (4) the tenant, an immediate family member, or another person invited on the
22 premises by the tenant ~~[and under the tenant's control]~~ ~~another person on the premises with the~~
23 ~~tenant's consent~~, other than the landlord or the landlord's agent, engaged in conduct that

1 presented a threat to the health or safety of another tenant on the premises;

2 (5) the tenant, an immediate family member, or another person invited on the
3 premises by the tenant [and under the tenant's control], another person on the premises with the
4 tenant's consent, other than the landlord or the landlord's agent, ~~used the premises for an illegal~~
5 ~~purpose~~engages in a criminal act;

6 (6) the landlord is seeking to recover possession based on a notice to terminate the
7 lease and the notice was given to the tenant before the tenant engaged in conduct described in
8 subsection (a); or

9 (7) compliance with a building, housing, or health code requires alteration,
10 remodeling, or demolition that effectively would deprive the tenant of the use of the premises.

11 **Comment**

12 Subsection (a)(4) includes the tenant's use of any defenses arising under this act to an
13 action for possession or unpaid rent.

14 **SECTION 902. TENANT REMEDIES FOR RETALIATORY CONDUCT.**

15 (a) If a landlord's dominant purpose for engaging in conduct described in Section 901(b)
16 is to retaliate against the tenant for conduct described in Section 901(a):

17 (1) the tenant has a defense against an action for possession, may recover
18 possession, or may terminate the lease; and

19 (2) ~~[the court shall award the tenant [three] months' periodic rent or [triple] the~~
20 ~~actual damages, whichever is greater.] [the tenant is entitled to [three] months' periodic rent or~~
21 ~~[triple] the actual damages, whichever is greater.]~~

22 (b) If the lease terminates under subsection (a), the landlord shall return to the tenant the
23 amount of any security deposit and unearned rent to which the tenant is entitled under Section

24 1204

1 (c) A tenant's exercise of a right under this section does not release the landlord from
2 liability under Section ~~501~~401.

3 **SECTION 903. PRESUMPTION OF RETALIATORY CONDUCT.**

4 (a) Except as otherwise provided in subsection (b), evidence that a tenant has engaged in
5 conduct described in Section 901(a) within [six months] before the landlord's alleged retaliatory
6 conduct creates a presumption that the dominant purpose of the landlord's conduct was
7 retaliation.

8 (b) A presumption does not arise under subsection (a) if the tenant engaged in conduct
9 described in Section 901(a) after the landlord gave notice to the tenant of the landlord's intent to
10 take one of the actions described in Section 901(b)(1), (2), (3), or (4).

11 (c) If a presumption arises under subsection (a), the landlord may rebut the presumption
12 by a preponderance of evidence showing a nonretaliatory purpose arising at or a short time
13 before the landlord's conduct described in Section 901(b).

14 **~~Comment~~**

15 ~~———— If the landlord presents any evidence rebutting the presumption of retaliation, the tenant~~
16 ~~has the burden to prove the landlord's dominant purpose was retaliatory.~~

17
18 **ARTICLE 10**

19 **DISPOSITION OF TENANT'S PERSONAL PROPERTY**

20 **SECTION 1001. DISPOSITION OF TENANT'S RIGHT TO RETRIEVE**
21 **PERSONAL PROPERTY ON THE PREMISES; IN GENERAL.**

22 (a) For purposes of this [article], possession of a dwelling unit is relinquished to the
23 landlord when:

24 (1) the tenant vacates the unit at the termination of the tenancy;

25 (2) the landlord regains actual possession ~~pursuant~~under to a court order; or

1 (3) the tenant abandons the unit ~~pursuant under to~~ Section 604.

2 (b) If personal property remains on the premises after possession of a dwelling unit has
3 been relinquished to the landlord, the landlord shall:

4 (1) subject to subsection (c), give the tenant notice in a record advising the tenant
5 of the tenant's right to retrieve the personal property; and

6 (2) store or leave the property in the unit or other place of safekeeping and
7 exercise reasonable care in moving or storing the property.

8 (c) The notice required under subsection (b)(1) must be posted at the dwelling unit and:

9 (1) ~~be posted at the dwelling unit and~~ sent to either any forwarding address the
10 tenant provided to the landlord or ~~the an~~ address provided by the tenant to the landlord pursuant
11 to Section 109~~(e)~~, or, if neither, to the address of the unit;

12 (2) inform the tenant of the right to contact the landlord to claim the property
13 within the period specified in subsection (d), subject to the payment of the landlord's moving and
14 storage costs; and

15 (3) provide a telephone number, electronic mail address, or mailing address at
16 which the landlord may be contacted.

17 (d) If a tenant contacts the landlord not later than [eight] days after the landlord gives the
18 notice to the tenant under subsection (b), the landlord shall permit the tenant to retrieve the
19 personal property not later than [15] days after the date of contact or within a longer time period
20 to which the parties agree.

21 (e) The landlord may require the tenant to pay the reasonable moving or storage costs
22 before retrieving the personal property.

23 (f) This section does not prohibit the landlord from immediately disposing of perishable

1 food, hazardous materials, and garbage, or turning over animals to an animal control officer,
2 humane society, or other individual or organization willing to care for the animals.

3 (g) Unless a landlord and tenant otherwise agree, if the tenant fails to contact the landlord
4 as provided in subsection (d) or to retrieve personal property as provided in subsection (e), the
5 personal property shall be deemed abandoned and:

6 (1) if the landlord estimates ~~in good faith~~ the fair market value of the personal
7 property to be no more than \$[1,000], the landlord may dispose of the property in any manner the
8 landlord considers appropriate; or

9 (2) if the landlord estimates ~~in good faith~~ the fair market value of the personal
10 property to be greater than \$[1,000], the landlord shall sell it ~~in a commercially reasonable~~
11 ~~manner~~ and treat the net proceeds, after deducting the reasonable costs of moving, storing and
12 disposing of the property, as a part of the tenant's security deposit.

13 (h) A landlord that complies with this section ~~in good faith~~ is not liable to another
14 person that has a claim or interest in the personal property removed from the premises or the
15 security deposit or unearned rent.

16 Comment

17
18 This section applies, for example, if a lease terminates early as the result of an act of
19 domestic violence. However, if there are co-tenants to the lease such that the lease does not
20 terminate then this section does not apply. In the latter case, control of the dwelling unit remains
21 with the other tenants; it does not belong to the landlord. Thus, if the tenant whose interest in the
22 lease is released leaves personal property at the dwelling unit, that tenant would need to contact
23 the remaining tenants to retrieve that property.

24
25

26 SECTION 1002. DISPOSITION OF PERSONAL PROPERTY ON TENANT'S 27 DEATH.

28 (a) Except as otherwise provided in this section, if a tenant who is the sole occupant of a

1 dwelling unit dies leaving personal property in the dwelling unit, the deceased tenant’s rights and
2 responsibilities under Section 1001 apply to a tenant representative.

3 (b) If a landlord has terminated the lease pursuant to Section ~~802803~~(c) because the
4 landlord has been unable to contact a tenant representative, the landlord:

5 (1) shall mail a notice to the deceased tenant at the deceased tenant’s last known
6 address or other address of the deceased tenant known to the landlord stating:

7 (A) the name of the deceased tenant and address of the dwelling unit;

8 (B) the [approximate] date of the deceased tenant’s death;

9 (C) that the premises contained personal property that is subject to
10 disposal by the landlord if unclaimed by a personal representative, contact person, or heir of the
11 deceased tenant not later than [60] days after the notice was sent; and

12 (D) the landlord’s name, telephone number, and mail or electronic mail
13 address at which the landlord may be contacted to claim the personal property; and

14 (2) with the exercise of reasonable care, may inventory the personal property,
15 remove it from the dwelling unit, and store it in another place for safekeeping.

16 (c) A tenant representative may retrieve the deceased tenant’s personal property from the
17 landlord not later than [60] days after the landlord ~~sent~~gave the notice in subsection (b). Before
18 retrieving the property, the tenant representative must pay the landlord’s reasonable costs of
19 inventorying, moving, and storing the property.

20 (d) If a deceased tenant’s personal property is not retrieved within the time period in
21 subsection (c), the landlord may dispose of the personal property in compliance with Section
22 1001(g).

23 **Comment**
24

1 Subsection (a) permits a tenant's representative to exercise a deceased tenant's rights and
2 responsibilities regarding removal of the deceased tenant's personal property from the premises.
3 When a tenant who is the sole occupant of the dwelling unit dies, the tenant's representative or
4 the landlord may elect to terminate the lease pursuant to Section ~~802~~803. If that election is made
5 and the dwelling unit is vacated, possession of the dwelling unit is relinquished to the landlord
6 pursuant to Section 1001(a), triggering the provisions of that section governing the disposition of
7 the deceased tenant's personal property. The tenant representative typically will be the personal
8 representative of the deceased tenant's estate, but if no personal representative has been
9 appointed, the tenant representative will be the contact person under Section 109 or, in the
10 absence of a contact person, an heir of the deceased tenant under the state's intestate succession
11 laws. See Section 102(~~394~~2). In the latter case, the landlord has no obligation to identify all of
12 the deceased tenant's heirs and may give possession to *any* individual the landlord knows to be
13 an heir of the deceased tenant.

14
15 Subsections (b) through (d) provide a process through which the landlord may dispose of
16 the personal property if no tenant representative is identified. Although the procedures in
17 subsections (b)-(d) generally parallel the provisions regarding disposition of the deceased
18 tenant's personal property in Section 1001, some variation is required in the type of notice that
19 must be given and the time period for a tenant representative to retrieve the property.

20
21 Sections 1001 and 1002 do not govern the ultimate disposition of the personal property
22 removed from the property by a tenant representative; those rights are determined under the
23 state's law governing decedents' estates. Thus, the tenant representative takes possession of the
24 personal property subject to those other laws.

25 26 SECTION 1003. EXERCISE OF RIGHTS BY CONTACT PERSON.

27 (a) ~~When-If~~ a landlord learns of the death of a tenant who was the sole tenant-occupant
28 under the lease at the time of death and has the tenant had designated a contact person under
29 Section 109(b), ~~and is the sole tenant under a lease at the time of death,~~ and the landlord, on
30 reasonable inquiry, has no knowledge that a personal representative has been appointed for the
31 deceased tenant's estate, the landlord:

32 (1) shall notify the contact person of the tenant's death;

33 (2) shall give the contact person access to the premises at a reasonable time ~~f~~and
34 in the presence of the landlord~~]~~ for the purpose of removing any personal property from the
35 dwelling unit and other personal property of the tenant elsewhere on the premises;

36 (3) may require the contact person or any person ~~who-that~~ removes personal

1 property from the premises to prepare and sign an inventory of the property being removed; and

2 (4) shall return to the contact person the deceased tenant's security deposit and
3 unearned rent to which the tenant would otherwise have been entitled ~~under Section~~under
4 Section 1204.

5 (b) A person accepts appointment as a contact person by exercising authority pursuant to
6 this [act] or by any other assertion or conduct indicating acceptance.

7 (c) Once a contact person or the landlord knows of the appointment of a personal
8 representative for the deceased tenant's estate, the contact person's authority to act under this
9 [act] terminates.

10 (d) A landlord that complies with this section ~~in good faith~~is is not liable to another
11 person that has a claim or interest in the personal property removed from the premises or the
12 security deposit or unearned rent.

13 (e) A landlord that willfully violates subsection (a) is liable to the estate of the deceased
14 tenant for actual damages.

15 **Comment**

16
17 The purpose of this section is to authorize a contact person to remove the tenant's
18 personal property and receive the return of the security deposit and unearned rent. Whether the
19 contact person is entitled to keep any of the tenant's personal property or security deposit will
20 depend on law other than this act.

21 **ARTICLE 11**

22 **EFFECT OF DOMESTIC VIOLENCE**

23 **SECTION 1101. EARLY RELEASE OR TERMINATION OF LEASE BECAUSE** 24 **OF ACT OF DOMESTIC VIOLENCE.**

25 (a) Subject to subsection (e), if a victim of an act of domestic violence is a tenant or
26 immediate family member and has a reasonable fear of a further act of domestic violence by
27

1 continued residence in the dwelling unit, the tenant shall be released from the lease, without the
2 necessity of the landlord's consent, by giving the landlord a notice that complies with subsection
3 (b) and one of the following:

4 (1) a copy of an outstanding court order ~~which that~~ restrains a perpetrator from
5 contact with the tenant or an immediate family member;

6 (2) evidence of the conviction of a perpetrator for an act of domestic violence
7 against the tenant or an immediate family member; or

8 (3) verification in a record signed by the tenant and attesting third party which
9 complies with Section 1103.

10 (b) In order to be released from a lease under subsection (a), the tenant shall give the
11 landlord notice in a record that:

12 (1) states the tenant's intent to be released from the lease on a date no earlier than
13 [30] days from the date of the notice or, if the perpetrator is a co-tenant of the dwelling unit, any
14 earlier date;

15 (2) states facts giving rise to the fear of an act of further domestic violence by
16 continued residence in the dwelling unit; and

17 (3) is given to the landlord

18 (A) not later than [90] days after an act of domestic violence; ~~or~~

19 _____

20 (B) at any time while there is an outstanding court order preventing
21 contact with the tenant because of an act of domestic violence committed by the perpetrator ~~for~~

22 not later than [90] days after the expiration of the order];; or

23 _____ ~~or~~

1 (3) any other tenant under the lease may recover from the perpetrator actual
2 damages resulting from the termination; and

3 (4) the landlord is not required to return to the released tenant or a remaining
4 tenant any security deposit or unearned prepaid rent to which the tenant is otherwise entitled
5 under Section 1204 until the lease terminates with respect to all tenants.

6 (e) This section does not apply if the tenant seeking the release is a perpetrator.

7 **Comment**

8 Section 1101 is self-executing. Upon filing the appropriate documentation the tenant is
9 released from the lease; no additional action is required or expected on the part of the landlord as
10 would be the case when a tenant abandons the dwelling unit and an issue arises regarding the
11 landlord's acceptance of the tenant's surrender.

12
13 Under subsection (a)(1) and (b)(3), the court order could be issued by a state or federal
14 court, a tribal court order, or a court of a foreign jurisdiction.

15
16 Under subsection (d)(2), a tenant who is released from the lease is not liable to the
17 landlord or another person for rent or actual damages. Thus, if T and T-1 are co-tenants but T is
18 released from the lease as a result of an act of domestic violence committed by P, T would not be
19 liable for rent to the landlord for the period after the release. Furthermore, T would not be liable
20 to T-1 when, following T's release from the lease, T-1 is liable to the landlord for all of the rent
21 accruing after T's release. Under subsection (d)(3), however, T-1 ~~might~~could make have-a-a
22 claim against the perpetrator for the additional rent T-1 owes.

23
24 **SECTION 1102. LANDLORD'S OBLIGATIONS IN EVENT OF EARLY**

25 **RELEASE OR TERMINATION.** If a tenant is released from a lease under Section 1101, the
26 landlord:

27 (a~~1~~) except as otherwise provided in Section 1101(d)~~(4)~~, shall return to the tenant the
28 amount of any security deposit and unearned rent to which the tenant is entitled ~~tenant~~-under
29 Section 1204 after the tenant vacates the dwelling unit;

30 (b~~2~~) may not assess a fee or other penalty against the tenant for exercising a right granted
31 under ~~this section~~Section 1101; and

1 (e3) may not disclose information required to be reported to the landlord under Section
2 1101 unless:

3 (4A) the tenant provides specific, time-limited, and contemporaneous
4 consent to the disclosure in a record signed by the tenant; or

5 (2B) the information is required to be disclosed by a court order or law of
6 this state other than this [act].

7 **SECTION 1103. VERIFICATION.**

8 (a) A verification provided by a tenant under Section 1101(a)(3) must include the
9 following:

10 (1) from the tenant:

11 (A) the tenant's name and the address of the dwelling unit;

12 (B) the approximate dates during which an act of domestic violence
13 occurred;

14 (C) the approximate date of the most recent act of domestic violence;

15 (D) a statement that because of an act of domestic violence, the tenant or
16 an immediate family member has a reasonable fear that the tenant or the immediate family
17 member will suffer a further act of domestic violence by continued residence in the dwelling
18 unit;

19 (E) the date for the termination of the lease or the tenant's release from the
20 lease; and

21 (F) a statement that the tenant understands that the statements could be
22 used in court and that the tenant could be liable for perjury as well as the damages provided in
23 subsection (b) for making a verification that contains a representation of a material fact known

1 by the tenant to be false; and

2 (2) from an attesting third party:

3 (A) the name, business address, and business telephone number of the
4 attesting third party;

5 (B) the capacity in which the attesting third party received the information
6 regarding the act of domestic violence;

7 (C) a statement that the attesting third party has read the tenant's
8 verification and has been advised by the tenant that the tenant or an immediate family member is
9 the victim of an act of domestic violence and has a reasonable fear that the tenant or the
10 immediate family member will suffer a further act of domestic violence by continued residence
11 in the dwelling unit; and

12 (D) a statement that the attesting third party, based on the tenant's
13 verification, believes the tenant and understands that the verification may be used as the ground
14 for releasing the tenant from a lease or terminating the tenant's interest under the lease.

15 (b) If a tenant submits to the landlord a verification that contains a representation of a
16 material fact known by the tenant to be false, ~~the court may award~~ the landlord is entitled to an
17 amount up to [three] months' periodic rent or [triple] actual damages, whichever is greater.

18 **Comment**

19
20 The following is an example of a verification that would comply with this section.

21 **Verification**

22
23 I, _____ [insert name of tenant], state that:

24 (a) I am a tenant of a dwelling unit located at
25 _____ [insert address of dwelling unit];

26 (b) I or an immediate family member has been a victim of an act of domestic violence
27 occurring to the best of my knowledge on or over a period
28 _____ [insert time period over which acts of one

1 or more act of domestic violence occurred] which acts have created a reasonable fear that I or an
2 immediate family member will suffer a further act of domestic violence by continued residence
3 in the dwelling unit;

4 (c) The most recent act of domestic ~~violence occurred~~violence occurred on or about
5 _____ [insert date]; and

6 (d) The date in the notice accompanying this verification that I have specified as the date
7 on which I am released from the lease is less than 90 days after the date of the most recent act of
8 domestic violence.

9 I declare that the above statement is true and accurate to the best of my knowledge and
10 belief and that I understand it could be used as evidence in court¹¹. I further understand that if I
11 submit to the landlord a verification that contains a representation of material fact known by me
12 to be false, I could be subject to a penalty for perjury and the landlord may recover from me the
13 greater of three months' rent or three times the landlord's actual damages.²²

14
15 _____
[Tenant's signature]

16
17 I, _____, [insert name of attesting third party] state that:

18 (a) I am a _____ ~~+~~ [insert whichever is applicable: law
19 enforcement official, a licensed health care professional, a victim's advocate, or a victim-
20 services provider];

21 (b) My business address and phone number is: _____;

22 (c) The individual who signed the preceding statement has informed me that the
23 individual or an immediate family member is a victim of an act of domestic violence based upon
24 the acts listed in the preceding statement which acts have created a reasonable fear that the tenant
25 or an immediate family member will suffer a further act of domestic violence by continued
26 residence in the dwelling unit described in the preceding statement; and

27 (d) I have read and reasonably believe the preceding statement recounting an act of
28 domestic violence and understand that the tenant who made the statement may use this document
29 as a ground for terminating the tenant's lease for the dwelling unit described in the preceding
30 statement.

31
32 _____
[Attesting third party's signature]

33
34 **SECTION 1104. PERPETRATOR'S LIABILITY FOR DAMAGES.**

35 (a) A landlord may recover from a perpetrator actual damages resulting from a tenant's
36 exercise of a right under Section 1101 and, if the perpetrator is a party to the lease who remains
37 in possession of the dwelling unit, hold the perpetrator liable on the lease for all obligations
38 under the lease or this [act].

39 (b) A perpetrator is not entitled to actual damages resulting from ~~[a good faith]~~[the]
40 exercise of a right by a tenant under Section 1101 or by a landlord under this section.

1 locks only if a court has expressly ordered the perpetrator to vacate the residence.

2
3 This section is designed to allow a tenant who is the victim of domestic violence to
4 change the locks or other security devices without first giving the landlord an opportunity to
5 change them, thus allowing the victim to make the change as quickly as possible. Nothing in this
6 section would prohibit the landlord on the landlord's own initiative to change the locks or other
7 security devices on behalf of the tenant at the tenant's expense or for the tenant to contact the
8 landlord for the change.

9
10 **SECTION 1106. EFFECT OF COURT ORDER TO VACATE.**

11 (a) On issuance of a court order requiring a perpetrator to vacate a dwelling unit, other
12 than an ex parte order, neither the landlord nor tenant has a duty to:

13 (1) allow the perpetrator access to the unit unless accompanied by a law
14 enforcement officer; or

15 (2) provide the perpetrator with ~~a key~~any means of access to access to the unit.

16 (b) If a perpetrator is a party to the lease, then upon issuance of a court order requiring
17 the perpetrator to vacate the dwelling unit, other than an ex parte order, the perpetrator's interest
18 under the lease terminates and the landlord and any remaining tenants are entitled to any actual
19 damages from the perpetrator as a result of the termination.

20 (c) Termination of a perpetrator's interest under a lease under this section does not
21 terminate the interest of any other tenant under the lease or alter the obligations of any other
22 tenant under the lease.

23 (d) A landlord is not required to return to the perpetrator whose interest under the lease
24 terminates under this section or to any remaining tenant any security deposit or unearned rent
25 until the lease terminates with respect to all tenants.

26 **Comment**

27 Because of subsection (c), the landlord cannot increase the tenant-victim's rent or other
28 obligation because the perpetrator who might also have been a tenant on the lease has been
29 ordered to vacate the dwelling unit. For example, suppose V and P are co-tenants on a lease

1 providing monthly rent in the amount of \$500. V is the victim of domestic violence committed
2 by P; P has been ordered to vacate the apartment. V continues to be liable for the monthly rent of
3 \$500, and the landlord cannot increase that rent to take account of the fact that P is no longer a
4 tenant. The landlord also may not increase the tenant's security deposit or require additional
5 prepaid rent even if the landlord believes that the remaining tenant might lack the financial
6 ability to comply with lease because the perpetrator is no longer a party to the lease.

7
8 **SECTION 1107. TERMINATION OF PERPETRATOR'S INTEREST UNDER**
9 **LEASE WITHOUT COURT ORDER.**

10 (a) A landlord may terminate the interest of a perpetrator who is a tenant under a lease by
11 giving the perpetrator notice in a record of the landlord's intent to terminate the perpetrator's
12 interest immediately or on a later date specified in the notice and specifying the act of domestic
13 violence ~~for which the landlord is terminating~~ motivating the landlord to terminate the
14 perpetrator's interest under the lease.

15 (b) If a perpetrator's interest under a lease is terminated by the landlord under this
16 section, any other tenant under the lease may recover actual damages from the perpetrator
17 resulting from the termination.

18 (c) Termination of a perpetrator's interest under a lease under this section does not
19 terminate the interest of ~~another~~ any other tenant under the lease or alter the obligations of any
20 other ~~another~~ tenant under the lease.

21 (d) A landlord is not required to return to the perpetrator whose interest under a lease
22 terminated or to any other tenant under the lease any security deposit or unearned rent until the
23 lease terminates with respect to all tenants.

24 (e) In an action between a landlord and a perpetrator involving the right of the landlord to
25 terminate the perpetrator's interest under this section, the burden is on the landlord to prove by a
26 preponderance of the evidence that the perpetrator committed an act of domestic violence.

27 *Questions to Committee: Does the landlord meet the burden of proof if the landlord*

1 received and relied upon a verification or court order prior to terminating the tenancy of the
2 perpetrator? What if there two competing orders of protection?
3

4 **Comment**

5 Under this section, the landlord, upon being advised that a tenant is the perpetrator of an
6 act of domestic violence, could terminate the perpetrator’s interest under the lease but not
7 terminate the victim’s interest under the lease. The landlord’s decision to terminate is wholly
8 discretionary. If the landlord chooses to terminate the perpetrator’s interest under the lease, the
9 landlord may not alter the obligations of another tenant under the lease. For example, the
10 landlord could not increase the rent of the remaining tenant. If the lease, however, had treated
11 the perpetrator and the remaining tenant as jointly liable for the rent, the remaining tenant would
12 be liable for all of the remaining rent. In this case, the remaining tenant would have a cause of
13 action for damages against the perpetrator.
14

15 Under this section the landlord could terminate the perpetrator’s interest as a tenant even
16 though there is no judicial determination that the perpetrator committed an act of domestic
17 violence. This is entirely consistent with the right of a landlord to terminate the interest of any
18 tenant who engages in other types of criminal activity on the premises in violation of Section [501](#)
19 ~~and Section 601~~, even though the tenant has not been found guilty of a crime. [See Section 601.](#)
20 In either case, of course, if the tenant refuses to surrender possession of the premises to the
21 landlord upon termination of the lease and the landlord sues for possession, the defendant
22 (tenant) could claim a wrongful termination claiming the tenant did not commit the acts as
23 claimed by the landlord. In this case, the landlord would have the burden to prove by a
24 preponderance of the evidence that the landlord had the right to terminate the tenancy. This
25 means the landlord has the burden to prove the defendant was a perpetrator or otherwise
26 committed a criminal act ~~is~~ entitling the landlord to terminate the lease.
27

28 [Note: Comment needs revision if Committee adopts new proposed language on](#)
29 [reasonably belief in Section 601.](#)
30

31 **SECTION 1108. LIMITATIONS ON LANDLORD’S CONDUCT WITH**
32 **RESPECT TO VICTIMS OF AN ACT OF DOMESTIC VIOLENCE.**

33 (a) In this section, “tenant” includes an applicant seeking to enter into a lease with a
34 landlord.

35 (b) Except as [otherwise](#) provided in subsection (d), a landlord may not engage in conduct
36 described in subsection (c) when the landlord’s dominant purpose for engaging in the conduct is
37 because:

38 (1) the tenant or an immediate family member is or has been the victim of an act

1 of domestic violence;

2 (2) an act of domestic violence against a tenant or an immediate family member
3 resulted in a violation of the lease or this [act] by the tenant; or

4 (3) a ~~[good faith]~~ complaint of activities relating to an act of domestic violence
5 against the tenant or an immediate family ~~member resulted~~member resulted in a police or
6 emergency response.

7 (c) The following conduct is prohibited under subsection (b):

8 (1) taking or threatening to take any of the actions in Section 901(b); or

9 (2) refusing or threatening to refuse to let a dwelling unit.

10 (d) A landlord may terminate the lease of a tenant if the landlord gave the tenant prior
11 notice in a record regarding a perpetrator's commission of an act of domestic violence against
12 the tenant or an immediate family member, and subsequently:

13 (1) the tenant invites the perpetrator onto the premises or, without the landlord's
14 permission, allows the perpetrator to occupy the dwelling unit; and

15 [(2) the landlord can demonstrate ~~that~~:

16 _____ (A) ~~that~~ an [actual or imminent] threat [is likely to][could occur] to [other
17 tenants on the premises, ~~the landlord, or employees~~ or ~~landlord's~~ agents ~~of the landlord~~
18 providing services on the premises] [other individuals on the premises] if the lease is not
19 terminated, ~~or~~

20 _____ (B) the perpetrator has damaged [or is likely to damage] the premises.]

21 _____ [(2) the perpetrator damaged the premises or otherwise disturbed the use and
22 enjoyment of the premises by other tenants.]-

23 (e) If a landlord willfully violates subsection (b):

1 (1) the tenant may:

2 (A) terminate the lease; ~~or~~

3 (B) defend an action for possession on the ground that the landlord
4 willfully has violated this section; or

5 (C) obtain appropriate injunctive relief; and

6 (2) ~~[the court shall award the tenant an amount equal to [three] months periodic~~
7
8 ~~rent or [triple] damages, whichever is greater.]~~ [the tenant is entitled to an amount equal to
9
10 [three] months' periodic rent or [triple] damages, whichever is greater.]

11
12
13 **ARTICLE 12**

14 **SECURITY DEPOSITS, FEES, AND UNEARNED RENT**

15 **SECTION 1201. PAYMENTS REQUIRED AT THE COMMENCEMENT OF**
16 **LEASE.**

17 (a) Except as otherwise provided in subsections (b) and (c), a landlord may not require
18 the tenant to pay, at or before the commencement of the lease, more than [two] months of
19 periodic rent, including, in any combination, prepaid rent and a security deposit.

20 (b) Subsection (a) does not apply to the first month's rent, application fees, surety bonds,
21 insurance premiums, cleaning fees, or pet fees. other than for a service animal.

22 (c) If a lease is for a furnished dwelling unit or the tenant keeps pets in the premises or is
23 permitted by the lease to make alterations to the premises, the landlord may require the tenant to
24 pay an additional security deposit in an amount commensurate with the additional risk of damage

1 to the premises.

2 (d) A landlord may not charge a pet fee or additional security deposit for service animals.

3 _____
4 **€Comment**

5
6 With a few exceptions, the provisions in Article 12, in common with the rest of this act,
7 establish rules that may not be varied by agreement of the parties. In the few cases in which a
8 provision is intended to be a “default” rule – to apply when the parties’ agreement is silent on an
9 issue – the rule indicates that fact by stating: “Unless a landlord and tenant otherwise agree”

10
11 _____ The intent of subsection (a) is to limit the payments that a landlord may require a tenant
12 to make at the beginning of the lease to the equivalent of the first and last month’s rent plus a
13 one-month security deposit. The number of months is bracketed, however, to give legislatures
14 the option to choose a number appropriate for market conditions within their own states.

15
16 Nothing in this section prohibits a tenant from voluntarily making other payments. Thus a
17 tenant may prepay rent for several more months in advance – or even the full term – if the tenant
18 is in the financial position to do so.

19
20 ~~_____ The provisions set forth in Article 12, in common with the rest of this act, are not “default~~
21 ~~rules” that give way to a contrary intent unless the provision setting for the rule expressly~~
22 ~~provides that it may be varied by other law or by agreement of parties.~~

23
24 **SECTION 1202. LANDLORD, TENANT, AND THIRD PARTY INTERESTS IN**
25 **SECURITY DEPOSIT.**

26 (a) The following rules apply to a landlord’s interest in a security deposit:

27 (1) The landlord’s interest in a tenant’s security deposit is limited to a security
28 interest.

29 (2) Notwithstanding law other than this [act], a landlord’s security interest in a
30 tenant’s security deposit is effective against and has priority over each creditor and transferee of
31 the tenant.

32 (3) Subject to subsection (d), a creditor and transferee of the landlord can acquire
33 no greater interest in a security deposit than the interest of the landlord.

1 (b) The following rules apply to a tenant's interest in a security deposit:

2 (1) The tenant's interest in a security deposit held in a bank account has priority
3 over any right of set-off that the bank in which the account is maintained may have for
4 obligations owed to the bank by the landlord other than charges normally associated with the
5 bank's maintenance of the account.

6 (2) The tenant's interest is not ~~destroyed~~ adversely affected if the security deposit
7 is commingled with the security deposits of other tenants in a bank account pursuant to Section
8 1203(a)(3).

9 (3) The effect of commingling not permitted by this [act] is determined by law of
10 this state other than this [act].

11 ~~[(c) Unless a landlord and tenant otherwise agree [in a signed record], if a tenant fails to
12 pay rent when due and the landlord applies the whole or any portion of a security deposit toward
13 the payment of rent that is due, a court shall award the landlord an amount equal to the amount of
14 the security deposit applied and may award the landlord an additional amount up to [twice] the
15 periodic rent.]~~

16 [(c) Unless a landlord and tenant otherwise agree, [in a signed record], if a tenant fails to
17 pay rent when due and the landlord applies the whole or any portion of a security deposit toward
18 the payment of rent that is due, the landlord is entitled to an amount equal to the amount of the
19 security deposit applied and ~~the~~ court may award the landlord an additional amount up to
20 [twice] the periodic rent.]

21
22 (d) Nothing in subsection (a)(3) abrogates generally applicable rules of law ~~enabling a
23 person to whom funds have been paid to take the funds free of competing claims to the~~

1 ~~funds relating to the negotiability of money.~~

2 **Comment**

3
4 Subsection (a) intends to clarify the priority of the landlord's interest in security deposits
5 as a security interest if the tenant files for bankruptcy. This prevents creditors of the **landlord**
6 **tenant** from obtaining an interest in the security deposit (and similarly protects the tenant if the
7 landlord goes into bankruptcy). If the tenant is in financial stress, subsection (a) is a useful
8 clarification that can benefit the tenant's creditors whether or not the tenant files a bankruptcy
9 petition because it makes clear that the security deposit is an asset of the tenant.

10 ~~cf. *In re Verus Inv. Mgmt., LLC*, 344 B.R. 536, 546 (Bankr. N.D. Ohio 2006) (landlord's~~
11 ~~assignee was a secured, rather than unsecured, creditor with respect to a perfected security~~
12 ~~interest in a certificate of deposit that served as a security deposit under a commercial lease); cf.~~
13 ~~*In re Coomer*, 375 B.R. 800, 804-06 (Bankr. N.D. Ohio 2007) (applying § 541 of the Bankruptcy~~
14 ~~Code to conclude that bankruptcy trustee was not entitled to a security deposit that landlord was~~
15 ~~holding to secure the debtor tenant's obligations under a residential lease). Designating security~~
16 ~~deposits as a security interest should similarly protect the tenant's interests in the event of the~~
17 ~~landlord's bankruptcy. See *In re Frempong*, 460 B.R. 189, 195 (Bankr. N.D. Ill. 2011) (stating~~
18 ~~that under Chicago municipal ordinance, tenant security deposits "are held 'in trust' by the~~
19 ~~landlord and thus are not part of the Bankruptcy Estate of any landlord in a Bankruptcy filing");~~
20 ~~cf. 6 West's Fed. Admin. Prac. § 7032 (3d ed.) (the bankruptcy estate acquires any security~~
21 ~~interest held by the debtor and the right to enforce that security interest, but not the property~~
22 ~~subject to that security interest).~~

23
24 ~~Subsection (b)(1) recognizes that a bank may impose upon a bank account the bank's~~
25 ~~normal charges for maintenance of an account. The landlord would then have a duty to replenish~~
26 ~~the account for those charges.~~

27
28 ~~Subsection (b)(1) prohibits a bank from setting off any claim it has against the landlord~~
29 ~~other than for charges normally associated with the maintenance of the account. The section is~~
30 ~~mandatory and neither the landlord nor the tenant nor the landlord nor the bank can contract~~
31 ~~otherwise.~~

32
33 ~~If the bank imposes a maintenance fee, the landlord would then have a duty to replenish~~
34 ~~the account for those charges.~~

35 ~~The section is mandatory and neither the landlord nor the tenant nor the landlord nor the~~
36 ~~bank can contract otherwise.~~

37
38 Under subsection (b)(3), the effect of commingling not permitted by this [act], as, for example,
39 when the landlord commingles the landlord's personal funds with the security deposit, is
40 governed by law other than this act.

41
42 Subsection (c) addresses the common misconception of tenants that the security deposit
43 may be used in lieu of paying rent, particularly the last month's rent. The primary purpose of a
44 security deposit is to provide the landlord with funds to reimburse the landlord for the costs
45 incurred in remedying any damages to the dwelling unit by the tenant. If the tenant could

1 withhold rent only to have it charged against the security deposit, the landlord would have no
2 funds to pay for any damages. A tenant that willfully withholds the last month's rent is subject to
3 the penalty imposed by this section.

4
5 Under subsection (d), whether a transferee of funds from a bank account maintained for
6 the purpose of holding security deposits takes the funds free from the tenant's interest is
7 governed by other law.

8
9 **SECTION 1203. SAFEKEEPING OF SECURITY DEPOSIT.**

10 (a) With respect to funds constituting a security deposit, a landlord:

11 (1) shall maintain the ability to identify the funds:

12 (A) by holding the funds in a bank account that is maintained by a bank
13 doing business in this state and is used exclusively for security deposits; and

14 (B) by maintaining records that indicate at all times the amount of the
15 funds attributable to each tenant whose funds are being held in the account; and

16 [(2) shall notify ~~in a signed record~~ the bank that maintains the bank account in a
17 signed record that the account is a special account for the purpose of holding security deposits];

18 and

19 (3) may commingle the funds received from other tenants as security deposits in
20 the same bank account but may not commingle other funds, including the landlord's personal or
21 business funds, in the same bank account.

22 (b) If a landlord willfully fails to comply with subsection (a), ~~the court shall award the~~
23 ~~tenant actual damages or one month's periodic rent, whichever is greater.~~ If, the tenant is entitled
24 to actual damages [or one month's periodic rent, whichever is greater].

25 (dc) A bank holding funds pursuant to subsection (a) has no duty to ensure the proper
26 application of the funds.

27 (de) Unless a lease provides otherwise, a landlord is not required to deposit a security

1 deposit into an interest-bearing account or to pay a tenant any interest thereon.

2 ~~(d) A bank holding funds pursuant to subsection (a) has no duty to ensure the proper~~
3 ~~application of the funds.~~

4 Legislative Note: If an enacting state wishes to require the payment of interest on a
5 security deposit, subsection (e) should be deleted.

6
7 **Comment**
8

9 Section 1203 introduces a new requirement that landlords segregate security deposits
10 from the landlord’s other funds. Imposing the safekeeping requirements ensures that the funds
11 are available for return as required under various provisions in the act.
12

13 The segregation requirement does not apply to prepaid rent. By definition, rent payments
14 made by or on behalf of the tenant for future dates, even if required by the terms of the lease or
15 as a condition of entering into the lease, are not security deposits. Rather, they are payment for
16 those future dates, discharging, to the extent of the payment, the obligation to pay rent for those
17 dates. Accordingly, unlike security deposits, the tenant no longer owns the funds paid as rent.
18 Several provisions of this act require a landlord to return to the tenant the amount of unearned
19 rent. If a landlord fails to comply with such a requirement, the aggrieved tenant would have a
20 right to a money judgment but would have no in rem claim to the unearned rent.
21

22 Subsection (b) does not preclude the landlord or tenant from recovering other damages to
23 which the landlord or tenant may be entitled under this [act].
24

25 **SECTION 1204. RETURN OF SECURITY DEPOSIT AND UNEARNED RENT.**

26 (a) At the termination of a lease, the tenant is entitled to the amount by which the security
27 deposit and any unearned rent exceeds the amount that the landlord is owed for unpaid rent due
28 under the lease and any other amount that the landlord is owed under the lease or this [act].

29 (b) No later than [30] days after a lease terminates and the tenant vacates the premises,
30 the landlord shall make a good-faith determination of the amount to which the tenant is entitled
31 under subsection (a) and shall ~~send~~give that amount to the tenant or to a contact person
32 designated pursuant to Section 109, personally or by _____
33 (A) sending the amount to the tenant or the contact person postage or cost of transmission
34 provided for to ~~to~~ a bank account or an address provided for the tenant or to the contact person

1 ~~postage or cost of transmission provided for, to an address provided~~ by the tenant or contact
2 person or, in the absence of that address, to the address specified in Section 109(b).~~); or~~
3 ~~(B) electronically transferring that amount to an account designated by the tenant or the contact~~
4 ~~person.~~

5 (c) If a landlord ~~sends~~ gives the tenant or a contact person designated pursuant to Section
6 109 less than the entire amount of the security deposit and unearned rent that the landlord
7 received from the tenant, the landlord shall provide the tenant or the contact person with a record
8 specifying the property damage or other unfulfilled obligations of the tenant to which the
9 security deposit or unearned rent was applied and the amount applied to each item.

10 (d) ~~Regardless of whether a landlord complies with subsections (b) and (c)~~ If the tenant
11 disputes the amount of security deposit retained by the landlord, the tenant may file an action to
12 recover the difference between ~~the~~ an amount to which a court determines that the tenant is
13 entitled under subsection (a) and the amount sent to the tenant or a contact person under
14 subsection (b).

15 [(e) If a landlord fails to comply with subsection (b) or (c), the tenant is entitled to an a
16 court may award, as a penalty, an additional [\$250] or ~~[two]~~ timestwice the amount recoverable
17 under subsection (d), whichever is greater, unless the provided the court may not award a penalty
18 under this subsection if the landlord's only noncompliance with subsection (b) or (c) was the is
19 limited to the landlord's failure to pay the cost of postage or transmission or to use the proper
20 address.]

21 (f) Notwithstanding law of this state other than this [act], a security deposit or unearned
22 rent to which the tenant is entitled but is unclaimed by the tenant for more than [180] days after
23 the tenancy has ended, including the amount of any unsuccessful electronic transfers or any

1 check that remains outstanding at the end of the [180]-day period, is ~~treated as~~ unclaimed
2 property under [cite to state unclaimed property act]]. *Comment to Alice: How do I adjust for*
3 *electronic transfer?*

4 (g) If the amount of a security deposit and unearned rent that exceeds the amount that the
5 landlord is owed for unpaid rent under the lease is insufficient to reimburse the landlord for
6 damages from the tenant's noncompliance with the lease, the landlord may recover from the
7 tenant actual damages.

8
9 *Legislative Note: Consideration should be given to appropriate amendments to the*
10 *state's unclaimed property act to implement the provisions of subsection (f), if necessary.*

11
12 **Comment**

13
14 Subsection (e) provides a penalty when the landlord fails to comply with any of the
15 requirements of subsections (b) and (c), including the failure to act within the applicable time
16 period, the failure to provide a record to explain why the security deposit was not returned in
17 full, and the failure to return an amount equal to the landlord's good faith calculation of the sum
18 to which the tenant is entitled. If the landlord has acted in good faith, but merely erred in
19 determining the amount owed, subsection (d) permits the tenant to recover the amount to which
20 the tenant is entitled and subsection (e) would not apply.

21
22 The time frame set forth in subsection (f) may supersede the time limits for other forms
23 of unclaimed property provided in other law of the state.

24
25 **SECTION 1205. DISPOSITION OF SECURITY DEPOSIT AND UNEARNED**
26 **RENT UPON TERMINATION OF LANDLORD'S INTEREST IN PREMISES.**

27 (a) Not later than [30] days after the termination of a landlord's interest in the premises by
28 sale, assignment, appointment of receiver, mortgage foreclosure, or otherwise, ~~or [30] days after~~
29 ~~the appointment of a personal representative when the landlord's interest is terminated by death,~~
30 the landlord ~~or the personal representative of the landlord's estate~~ shall:

31 (1) transfer to the person succeeding the landlord's interest in the premises any

1 security deposit and an amount equal to the unearned rent being held by the landlord and notify
2 the tenant in a record of the amount transferred to the successor and of any claims previously
3 made against the security deposits or unearned rent and of the successor's name and address; or

4 (2) if the lease terminates as a result of the sale, assignment, ~~death~~, appointment
5 of receiver, mortgage foreclosure, or otherwise, return the security deposit and an amount equal
6 to the unearned rent to the tenant pursuant to ~~the terms of~~ Section 1204.

7 (b) If the landlord dies before the termination of the lease, the personal representative of
8 the landlord's estate becomes the landlord until such time as the personal representative
9 distributes~~transfers~~ distributes~~the~~distributes the premises to the successor as determined by the
10 law of this state other than this [act]. ~~Upon distributing~~If the personal representative
11 transfers~~distributes~~ the premises to the successor prior to the termination of the lease, the
12 personal representative shall also distribute to the successor any security deposit and an amount
13 equal to the unearned rent being held by the personal representative and notify the tenant in a
14 record of the amount transferred to the successor and of any claims previously made against the
15 security deposits or unearned rent and of the successor's name and address.

16 ~~(bc)~~ If a landlord or the personal representative of the landlord's estate complies with
17 subsection (a) or (b), as the case may be, the landlord or the landlord's estate is relieved from
18 further liability with respect to the security deposit and unearned rent.

19 ~~(ed)~~ Subject to subsection ~~(de)~~, the person succeeding to the landlord's interest in the
20 premises has all of the rights and obligations of a landlord under this [article] with respect to any
21 security deposits and unearned rent held by the predecessor landlord that has not been returned to
22 the tenant ~~under subsection (a)(2)~~, whether or not the security deposit and unearned rent were
23 sent to the successor.

1 (de) If the landlord's interest is terminated by foreclosure, the successor's liability under
2 subsection (c) is limited to the amount of a security deposit or unearned rent received by the
3 successor.

4 **Comment**

5
6 Section 1205 is a new section that provides for disposition of security deposits and
7 unearned rent after a transfer of the landlord's interest in the premises.
8

9 **ARTICLE 13**

10 **MISCELLANEOUS PROVISIONS**

11 **SECTION 1301. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
12 applying and construing this uniform act, consideration must be given to the need to promote
13 uniformity of the law with respect to its subject matter among states that enact it.

14 **SECTION 1302. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
15 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
16 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,
17 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
18 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
19 U.S.C. Section 7003(b).

20 **SECTION 1303. REPEALS.** The following are repealed:

21 (a)

22 (b)

23 (c)

24 **SECTION 1304. EFFECTIVE DATE.** This [act] takes effect on [insert date].

25 This [act] only applies to leases made after the effective date of this [act].
26