RESEARCH MEMORANDUM

To: **Members of the URLTA Drafting Committee**

From: **Alice Noble-Allgire, Reporter (updating Memorandum by R. Wilson Freyermuth, Executive Director, JEBURPA)**

Date: **February 12, 2012**

Re: **Status of Security and Pet Deposit Legislation**

This memorandum provides background information regarding the characterization and handling of tenant security deposits, which is one of the two main issues that the Joint Editorial Board on Uniform Real Property Acts identified in requesting that a drafting committee be appointed to consider revisions to the Uniform Residential Landlord and Tenant Act. (The other issue is early termination of leases by tenants who are victims of domestic violence, which is addressed in a separate memorandum.) Part I of this memorandum consists of Professor Freyermuth's original analysis of the security deposit issues, with only minor modifications as needed to update the materials and provide clarification of Article 9 requirements. Part II is a new section addressing the issue of pet deposits, as requested by the ULC Study Committee.

I. CHARACTERIZATION AND HANDLING OF TENANT SECURITY DEPOSITS

A. *URLTA's Existing Security Deposit Provision*. URLTA § 2.101 provides as follows:

> (a) A landlord may not demand or receive security, however denominated, in an amount or value in excess of [1] month[s] periodic rent.
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> (b) Upon termination of the tenancy property or money held by the landlord as security may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with Section 3.101 all as itemized by the landlord in a written notice delivered to the tenant together with the amount due [14] days after termination of the tenancy and delivery of possession and demand by the tenant.
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> (c) If the landlord fails to comply with subsection (b) or if he fails to return any prepaid rent required to be paid to the tenants under this Act the tenant may recover the property and money due him together with damages in an amount equal to [twice] the amount wrongfully withheld and reasonable attorney's fees.
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> (d) This section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this Act.
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> (e) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section.

URLTA § 2.101 thus purports to regulate the amount that a landlord may require for a security deposit, the reasons why a landlord can retain some or all of the deposit, and the time period in which landlord has to return the deposit following the conclusion of the tenancy. However, URLTA does not articulate the specific character of the security deposit — in other words, do the deposited funds remain the property of the tenant subject to a possessory Article 9 security interest, or does the deposit merely create a "debt" in the form of an interest-free loan from tenant to landlord? As discussed elsewhere in this memorandum, this has produced unwarranted inconsistency in some states between the law governing tenant security deposits and Article 9. Further, URLTA § 2.101 did not impose minimum requirements on landlords for the handling of deposits and/or the payment of interest on such deposits. Problems with landlord misapplication of deposits and conflicting claims asserted by creditors of landlords have prompted legislatures in more than 20 states to impose handling requirements on landlords.

B. ***Enactment of URLTA and § 2.101.*** At present, residential landlord-tenant acts modeled upon URLTA have been enacted in 21 states: Alabama; Alaska; Arizona; Connecticut; Florida; Hawaii; Iowa; Kansas; Kentucky; Michigan; Mississippi; Montana; Nebraska; New Mexico; Oklahoma; Oregon; Rhode Island; South Carolina; Tennessee; Virginia; and Washington. However, the legislation in these 21 states is in many respects largely nonuniform, both with respect to general landlord-tenant issues and specifically with regard to tenant security deposits. Even within states that have adopted URLTA:

- There is widespread variation in the length of time that a landlord has to refund security deposits (from as short as 14 days in Alaska to 45 days in Mississippi and Virginia).
- While URLTA § 2.101 suggests that time for a landlord to refund tenant security deposits runs from the date tenant makes a demand for payment, some state statutes provide that the time runs from the termination of the tenancy, without the need for written demand by tenant.
- While URLTA § 2.101 does not impose specific restrictions regarding landlord handling of security deposits, eight of the 21 "URLTA" states have adopted escrow requirements or similar handling restrictions to secure tenants' ability to recover the funds vis-a-vis the landlord and the landlord's creditors.
- There is substantial variation with respect to the characterization of the tenant security deposit. Some states, such as Alabama and Arizona, follow the basic language of URLTA § 2.101 while other states (e.g., Connecticut) explicitly treat the security deposit as the creation of a possessory Article 9 security interest in money.

[For a more complete overview of the variations among the states, see Exhibit A – Existing State Security Deposit Statutes.]

The present "nonuniform" state of the law governing tenant security deposits creates an undesirable lack of clarity regarding the proper characterization of tenant security deposits and an unwarranted inconsistency with the language and purpose of UCC Article 9. Thus, the JEBURPA believes that it is appropriate to consider an amendment to URLTA § 2.101 that would help to foster more substantial uniformity in the law governing tenant security deposits.

C. ***Key Issues to be Addressed by URLTA Amendments*****.** Part C identifies and provides a preliminary discussion of ten issues that deserve attention in considering potential revisions to URLTA:

(1) ***What is the proper characterization of a security deposit? During the term, does the deposit remain the property of the tenant (i.e., is the deposit an Article 9 security interest in money?) or does the deposit become the property of the landlord and instead create merely a "debt"?***[1] Traditionally, landlords commingled security deposits with their own funds and used security deposits (and any income earned on such deposits) for their own accounts. In evaluating legal challenges to this practice, courts have articulated three different approaches — characterizing the "security deposit" as creating either a "trust," a "pledge," or a "debt."

A very few courts treated security deposits as presumptively establishing a trust of tenant property, with the landlord's responsibilities relating to the deposit governed by trust law principles. If viewed as a "trust," the landlord's commingling and use of a security deposit for its own account would presumptively violate the tenant's property rights in that deposit. Furthermore, trust law would oblige the landlord/trustee to invest the deposit for the benefit of the tenant, and would hold the landlord/trustee liable for its failure to do so. Because leases typically did not establish an express trust relationship — and given the practical difficulty associated with viewing the landlord-tenant relationship as fiduciary in nature — very few common law decisions (predominantly in New York courts) characterized a security deposit as a trust.[2]

Alternatively, a small number of courts treated the security deposit as a "pledge" of the tenant's property — with the landlord's responsibilities respecting that deposit governed by the common law relating to pledges. Under this view, advanced principally by New Jersey and

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[1]The discussion in the text appears in substantially identical form in R. Wilson Freyermuth, *Are Security Deposits "Security Interests"? The Proper Scope of Article 9 and Statutory Interpretation in Consumer Class Actions,"* 68 Mo. L. Rev. 71 (2003).

[2]*See, e.g.*, Donnelly v. Rosoff, 298 N.Y.S. 946, 948 (Mun. Ct. 1937) ("a deposit so made by a tenant with his landlord constitutes a trust fund, held by the landlord merely to secure the payment of rent and the performance of the covenants of the lease"); *see also* Fore Improvement Corp. v. Selig, 278 F.2d 143 (2d Cir. 1960); Mallory Assocs., Inc. v. Barving Realty Co., 300 N.Y. 297, 90 N.E.2d 468 (1949). The Friedman treatise suggests that these cases in fact misapprehended applicable New York precedents. *See, e.g.*, 2 FRIEDMAN ON LEASES § 20.4, at 1292 (cases deeming security to constitute a trust are "for the most part, New York cases which were of doubtful validity" before New York's legislative landlord-tenant reform). For further background, see Gilbert E. Harris, *A Reveille to Lessees*, 15 S. CAL. L. REV. 412, 421-424 (1942).

A significant number of states (including New York) have now enacted statutes that explicitly obligate a landlord to hold security deposits in "trust" for its tenants' benefit. *See, e.g.*, GA. CODE ANN. § 44-7-31 (1991); N.H. REV. STAT. ANN. § 540-A:6 (1997); N.J. STAT. ANN. § 46:8-19 (Supp. 2002); N.Y. GEN. OBLIG. LAW § 7-103 (2001); S.C. CODE § 27-40-210 (Supp. 2001). Numerous other states have enacted statutes that create a similar relationship without specifically denominating the relationship as a "trust." *See, e.g.*, CONN. GEN. STAT. ANN § 47a-21 (Supp. 2002); DEL. CODE ANN. tit. 25, § 5514(b) (Supp. 2000); MASS. GEN. LAWS ANN. tit. 186, § 15B (Supp. 2002); MD. REAL PROP. CODE ANN. § 8-203 (Supp. 2001); N.D. CENT. CODE § 47-16-07.1 (Supp. 1997).

California decisions,[3] the landlord could legally commingle the deposit with its own operating funds. Further, the landlord as pledgee was under no positive duty to invest the deposit to earn interest on the tenant's behalf. Nevertheless, under the law governing pledges, the landlord could not permanently dispose of the deposit (at least for any reason unrelated to the tenant's obligations under the lease). Further, while the landlord had no positive obligation to invest the deposit on the tenant's behalf, any return that the landlord did earn on the deposit was considered the property of the tenant.[4] Thus, while the pledgor could collect any interest that its pledgee earned from investing the deposit, the pledgor could not collect damages if the pledgee did not invest the deposit (*i.e.*, interest that should have been earned).[5]

Rather than characterize the deposit as a "trust" or a "pledge," the majority of courts characterized the deposit as merely a "debt" — essentially, an interest-free loan from the tenant to the landlord. Under this view, the landlord had no duty to invest the deposit for the tenant, and the landlord could keep any interest actually earned. Title to the deposited funds passed to the landlord as soon as the tenant made the deposit. Under the "debt" characterization, the tenant retained no interest in the money at all; instead, the tenant held merely a contractual claim against the landlord for reimbursement to the extent that the tenant fully performed its lease obligations. This characterization permitted the landlord to commingle the deposit with other funds and to use the deposit however it wished during the lease term, without liability to the tenant for this conduct. In adopting this characterization, courts often relied upon the fact that the typical lease placed no express contractual restraints upon the lessor's conduct with respect to handling the deposit.[6] By characterizing the deposit as a "debt," then, courts vindicated the standard commercial practices of landlords.

As discussed in the next section, some state legislatures have now recognized that a landlord's commingling and use of tenant security deposits for the landlord's own account does violate the reasonable expectations of the typical residential tenant. As a result, some state legislatures have enacted statutory provisions requiring the landlord to hold a tenant's security deposit in trust for the tenant or to segregate it from other funds.[7] A few states have enacted

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[3]Partington v. Miller, 5 A.2d 468, 471 (N.J. Super. 1939); Cummings v. Freehold Trust Co., 191 A. 782, 783 (N.J. Err. & App. 1937); Boteler v. Koulouris, 37 P.2d 136, 137 (Cal. App. 1934). *See also* Harris, *supra* note 2, at 416-421.

[4]Ingram v. Pantages, 86 Cal. App. 41, 44-45, 260 P. 395, 396 (1927).

[5]Most commentators have concluded that U.C.C. § 9-207, which sets forth the rights and responsibilities of a secured party in possession of collateral, essentially codified the normal incidents of the pledgor-pledgee relationship. *See, e.g.*, II GRANT GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 42.1, at 1128 (§ 9-207 reflects "evident intent of codifying the common law [regarding pledgor-pledgee relationship] without substantial change").

[6]*See, e.g.*, Levinson v. Shapiro, 238 A.D. 158, 160, 263 N.Y.S. 585, 588 (1933) ("The nub of the matter is that if the parties had desired to restrict the landlord in the use of the moneys, they would have so provided by appropriate language.").

[7]*See, e.g.*, ALASKA STAT. § 34.03.070(c); COLO. REV. STAT. § 38-12-209(2)(b) (mobile home parks); DEL. CODE ANN. tit. 25, § 5514(b); FLA. STAT. ANN. § 83.49(1); GA. CODE ANN. § 44-7-31; KAN. STAT. ANN. § 58-25,108(b) (mobile home parks); N.H. REV. STAT. ANN. § 540A:6; N.J. STAT. ANN. § 46:8-19); N.M. STAT. ANN. § 47-10-10(B) (mobile home parks); N.Y. GEN. OBLIG. LAW § 7-103(3); N.Y. REAL PROP. LAW § 233(4) (mobile

statutes that stop short of labeling the deposit a "trust" relationship, but that explicitly state that landlord holds the deposit "for" the tenant and that the tenant's claim against the deposit has priority over the claims of the landlord's creditors (which accomplishes a functionally similar result).[8] Statutes in Connecticut, Michigan, and Massachusetts explicitly state that the deposit remains the tenant's property,[9] and the Connecticut statute explicitly states that the landlord has only a security interest in the deposit.[10]

Absent such statutes, however, courts in landlord-tenant cases have continued to characterize the security deposit as a "debt."[11] This position disregards the scope provisions of Uniform Commercial Code Article 9. Following the adoption of Article 9, the common law's pledge/debt dichotomy as articulated in pre-Code landlord-tenant cases should have become irrelevant. If the landlord holds a sum of tenant's money as security for the tenant's obligations under the lease, then the deposit creates an Article 9 "security interest." Article 9 governs if the parties intended to enter into an agreement in which rights in property secure payment or performance of an obligation; whether the parties intend that such an agreement should be governed by Article 9 is irrelevant.[12] The appropriate inquiry is whether the parties entered into a transaction in which they used property to secure payment or performance of an obligation — if so, then Article 9 applies regardless of the parties' subjective intention, unless Article 9 expressly excludes that transaction from its scope.

Both the text of Article 9 and its comments plainly contemplate that parties can create a security interest in money.[13] This suggests that if one party requires another party to deposit money to secure the depositor's payment or performance obligations to the depositee, then a

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home parks); N.C. GEN. STAT. § 42-50; N.D. CENT. CODE § 47-16-07.1; OKLA. STAT. tit. 41, § 115(A); 68 PA. CONSOL. STAT. § 250.511b; TENN. CODE ANN. § 66-28-301(a); WASH. REV. CODE ANN. § 59.18.270; WASH. REV. CODE ANN. § 59.20.170 (mobile home parks).

[8]CAL. CIV. CODE § 1950.5; HAW. REV. STAT. § 521-44; IOWA CODE § 562A.12(2); ME. REV. STAT. ANN. tit. 14 § 6038; MD. REAL PROP. CODE ANN. § 8-203; MINN. STAT. ANN. § 504B.178; MISS. CODE ANN. § 89-8-21; ORE. REV. STAT. § 90.300; TEX. PROP. CODE § 92.103(c).

[9]CONN. GEN. STAT. ANN. § 47a-21; MASS. GEN. LAWS ANN. tit. 186, § 15B; MICH. COMP. LAWS ANN § 554.605.

[10]CONN. GEN. STAT. ANN. § 47a-21.

[11]*See, e.g.*, Korens v. R.W. Zukin Corp., 212 Cal. App. 3d 1054, 1058, 261 Cal. Rptr. 137, 139 (1989) (refusing to create judicial rule "requiring the payment of interest on security deposits when the legislature has declined to do so").

[12]UCC § 9-109, cmt. 2 ("When a security interest is created, this Article applies regardless of the form of the transaction or the name that parties have given to it.").

[13]UCC § 9-313(a) ("a secured party may perfect a security interest in … money … by taking possession of the collateral"); *id.* § 9-332(a) ("A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party."); *id.* § 9-313 cmt. 2 ("[section 9-313] permits a security interest to be perfected by the taking of possession only when the collateral is goods, instruments, negotiable documents, money, or tangible chattel paper"); *id.* § 9-310, cmt. 2 (filing ordinarily [does not] perfect a security interest in … money"); *id.* § 9-315 cmt. 2 ("Section 9-332 enables … most transferees of money to take free of a perfected security interest in the … money.").

security interest in money arises — unless Article 9's scope provisions explicitly exclude that transaction. Article 9's scope provisions contain no express exclusion for security deposits.[14]

In addition, section 303 of the Uniform Consumer Leasing Act (UCLA) — which governs security deposits in consumer leases — strongly reinforces the conclusion that a security deposit is an Article 9 security interest. UCLA § 303(a) provides that "[e]xcept as otherwise provided in subsection (b), a consumer lease … may not provide for the creation of a security interest in personal or real property of the lessee to secure the payment of obligations arising from the lease."[15] UCLA § 303(b) then provides that a consumer lease "may provide for … a security deposit."[16] By treating security deposits as a subset of the broader term "security interest" — and allowing them as an exception to its general prohibition against the lessor's taking of security — UCLA implicitly recognizes that a security deposit in a consumer lease is an Article 9 security interest in money.[17]

In the judgment of the JEBURPA, revision of URLTA's security deposit provision would be useful to reinforce the correct view — firmly established in both the UCC and the UCLA — that a residential tenant security deposit creates an Article 9 security interest.

(2) ***What requirements (if any) should be imposed on landlord with respect to holding deposits?*** As discussed above, the common law traditionally characterized the security deposit as creating only a "debt." Under this view, the landlord had no duty to invest the deposit for the tenant. Title to the deposited funds passed to the landlord as soon as the tenant made the deposit. Under the "debt" characterization, the tenant retained no interest in the money at all; instead, the tenant held merely a contractual claim against the landlord for reimbursement to the extent that the tenant fully performed its lease obligations.[18] This characterization permitted the landlord to commingle the deposit with other funds and to use the deposit however it wished during the lease term, without liability to the tenant for this conduct. In adopting this characterization, courts often relied upon the fact that the typical lease placed no express contractual restraints upon the lessor's conduct with respect to handling the deposit.[19] By

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[14]UCC § 9-109(d). Article 9 does exclude, however, to "the creation or transfer of an interest in or lien on real property, including a lease or *rents* thereunder . . . ." U.C.C. § 9-109(d)(11) (emphasis added). Thus, there is a distinction between security deposits and pre-paid rents, with Article 9 governing the former but not the latter.

[15]UCLA § 303(a). The UCLA defines the term "security interest" to have the identical meaning as the same term under the UCC. *Id.* § 102(b)(9).

[16]*Id.* § 303(b)(1).

[17]Uniform Consumer Credit Code (UCCC) § 3.301(2) provides a comparable provision and thus gives rise to a comparable inference. Likewise, substantially comparable provisions already exist in a number of states that have adopted provisions based upon the UCCC. *See, e.g.*, 815 ILL. COMP. STAT. § 636/30 (1999); IOWA CODE § 537.3301(2) (2001); S.C. CODE § 37-2-407(2) (2002); WIS. STAT. ANN. § 422.417(2) (Supp. 2001); WYO. STAT. ANN. § 40-14-241(b) (2001).

[18]For a summary of cases adopting this view, see Harris, *supra* note 2, at 413-416.

[19]*See, e.g.*, Levinson v. Shapiro, 238 A.D. 158, 160, 263 N.Y.S. 585, 588 (1933) ("The nub of the matter is that if the parties had desired to restrict the landlord in the use of the moneys, they would have so provided by appropriate language.").

characterizing the deposit as a "debt," then, courts vindicated the standard commercial practices of landlords — in a fashion ostensibly consistent with the "presumed" intention of both landlord and tenant.

Over time, however, critics have noted that a landlord's commingling and use of a tenant's security deposit for the landlord's own account does violate the reasonable expectations of the typical residential tenant. Further, residential tenants lack the collective bargaining power needed to negotiate successfully for meaningful constraints upon the landlord's handling of the deposit. Thus, a number of states have adopted provisions that depart from the traditional view.

URLTA § 2.101(b) provides that "[u]pon termination of the tenancy property or money held by the landlord as security may be applied to the payment" of unpaid rent and landlord's damages. A broad reading of this language could imply that the deposited funds were a security interest in money, thus obligating the landlord to comply with the provisions of UCC Article 9 with respect to collateral within the secured party's possession – unless the parties' agreement or some other positive law governs.[20]

URLTA § 2.101 did not impose any specific requirements upon landlords with respect to the handling of tenant security deposits. At least 20 state legislatures, however, have adopted specific requirements for landlord handling of security deposit funds. A summary of the relevant state provisions follows:

- *Alaska*. Deposit "shall be promptly deposited by the landlord, wherever practicable, in a trust account in a bank, savings and loan association, or licensed escrow agent," although landlord may commingle deposits from all tenants in single account. ALASKA STAT. § 34.03.070(c).
- *Connecticut*. Deposit must be immediately placed into "one or more escrow accounts for such tenants in a financial institution," and landlord shall not withdraw the funds except to apply them pursuant to the statute or to refund them. CONN. GEN. STAT. ANN. § 47a-21(h).
- *Delaware*. Deposit "shall be placed by the landlord in an escrow bank account in a federally-insured banking institution" in Delaware. The account "shall be designated as a security deposits account and shall not be used in the operation of any business by the landlord." Landlord must disclose to tenants the location of the security deposit account, which must be held and administered for the benefit of tenants. DEL. CODE tit. 25 § 5514(b).
- *Florida*. Landlord must either (a) hold deposit in a separate interest or non-interest-bearing account in a Florida banking institution, and may not commingle the deposit with the landlord's funds, hypothecate, pledge, or make any use of the deposit until any such

[20]Section 9-207 states that "if a secured party has possession of collateral … fungible collateral may be commingled." U.C.C. § 9-207(b)(3). Thus, Article 9 would permit landlords to commingle security deposits with the landlord's own personal funds. State statutes, however, could effectively pre-empt the potential application of Section 9-207. R. Wilson Freyermuth, *Are Security Deposits "Security Interests"? The Proper Scope of Article 9 and Statutory Interpretation in Consumer Class Actions,* 68 Mo. L. Rev. 71, 73 n.14 (2003).

funds are "actually due the landlord," or (b) post a surety bond with the clerk of the circuit court in the amount of the lesser of all tenant deposits held or $50,000. FLA. STAT. ANN. § 83.49(1).

- *Georgia*. Landlord shall place deposit in "an escrow account established only for that purpose in any bank or lending institution" subject to state or federal regulation, and must hold deposit "in trust" for the tenant. Landlord must inform tenants in writing of the location of the escrow account. GA. CODE ANN. § 44-7-31. In lieu of this escrow requirement, landlord may "post and maintain an effective surety bond with the clerk of the superior court" in the amount of the lesser of all security deposits held or $50,000. GA. CODE. ANN. § 44-7-32(a).
- *Iowa*. Landlord shall hold deposit in a federally-insured bank, savings and loan or credit union, and may not commingle deposit with personal funds of the landlord. Landlord may keep deposits in a common trust account. IOWA CODE § 562A.12(2).
- *Kentucky*. Landlord must place all deposits in an account used only for security deposits in a bank or other lending institution subject to state or federal regulation. Landlord must inform tenants of location of the separate account and the account number. KY. REV. STAT. § 383.580(1).
- *Maine*. Landlord may not commingle deposit with other assets of the landlord. Landlord must hold deposit in account in bank or other financial institution under terms placing deposit beyond the claim of creditors of the landlord. Landlord must disclose location of account and account number on request by tenant. Landlord may use a single escrow account to hold security deposits from all of the tenants. ME. REV. STAT. ANN. tit. 14 § 6038.
- *Maryland.* Landlord shall hold deposits in federally insured financial institutions and at branches located within the state, in interest-bearing accounts devoted exclusively to security deposits, or in insured certificates of deposit or in securities issued by the federal government or the State of Maryland in an amount equal to all security deposits for which the landlord is liable. MD. REAL PROP. CODE § 8-203(d).
- *Massachusetts*. Landlord must hold deposits in a separate, interest-bearing account in a bank located within the commonwealth, under such terms as place deposit beyond the claim of landlord's creditors. Landlord must give tenant a receipt within 30 days after deposit is made indicating the name and location of the bank and the amount and account number. MASS. GEN. LAWS ANN. ch. 186 § 15B(3)(a).
- *Michigan*. Landlord must place deposit in a regulated financial institution. Landlord may use the deposit for any purpose, if Landlord deposits with the secretary of state a cash bond or surety bond to secure all deposits up to $50,000.00 and 25% of any amount exceeding $50,000. Within 14 days, landlord must notify tenant of the name and address of the financial institution holding the deposit or the surety. MICH. COMP. LAWS ANN. §§ 554.603, 554.604(1).

- *New Hampshire*. Landlord shall hold deposit in trust for tenant and shall not commingle deposit with landlord's own funds. Landlord may commingle all security deposits in a single security deposit account at any bank, savings and loan or credit union organized under the laws of the state. N.H. REV. STAT. ANN. § 540-A:6(II)(a), (b). However, Landlord is exempt from these requirements if Landlord posted a bond equal to the total value of security deposits held by Landlord. N.H. REV. STAT. ANN. § 540-A:6(II)(c).
- *New Jersey*. Landlord shall hold deposit in trust for tenant and shall not commingle deposit with landlord's own funds. Landlord may commingle all security deposits in a single interest-bearing insured money market fund or bank account at a federally-insured banking institution. Landlord must notify tenant as to the name, location, and amount of the account and the interest rate within 30 days. N.J. STAT. ANN. § 46:8-19.
- *New York.* Landlord shall hold deposit in trust for tenant and shall not commingle deposit with landlord's own funds. Where lease is for premises containing six or more dwelling units, Landlord must place deposit in an interest-bearing account in a banking organization within the state, and must notify tenant of the name and address of the bank holding the deposit and the amount of such deposit. N.Y. GEN. OBLIG. LAW § 7-103.
- *North Carolina*. Landlord must place deposits in a trust account with a licensed and insured bank or savings institution located in the state. Alternatively, landlord may furnish a bond in the amount of said deposits. Landlord must notify tenant within 30 days of the name and address of the bank where the deposit is located or the name of the insurance company providing the bond. N.C. GEN. STAT. § 42-50.
- *North Dakota*. Landlord must place deposit in a federally insured interest-bearing savings or checking account for the benefit of the tenant. N.D. CENT. CODE § 47-16-07.1(1).
- *Oklahoma.* Landlord must keep deposit "in an escrow account for the tenant, which account shall be maintained in the State of Oklahoma with a federally insured financial institution." OKLA. STAT. ANN. tit. 41 § 115(A).
- *Pennsylvania*. Landlord must place any deposit over $100 in an escrow account in a state or federally regulated banking institution and notify the tenant in writing of the name and address of the banking institution in which the deposit is held and the amount of such deposit. PA. STAT. tit. 68 § 250.511b(a). Alternatively, landlord may avoid escrow requirement by providing a bond guaranteeing repayment of deposited funds, issued by a bonding company authorized to do business in Pennsylvania. PA. STAT. tit. 68 § 250.511c.
- *Tennessee.* Landlord must place deposits in an account used only for that purpose, in any bank or other lending institution subject to state or federal regulation. Landlord must inform tenant as to the location of the account. TENN. CODE ANN. § 66-28-301(a).
- *Washington*. Landlord must place deposits in a trust account maintained for the purpose of holding tenant security deposits, with a financial institution or licensed escrow agent located in the state. Landlord must provide the tenant with a written receipt for the

deposit and provide written notice of the name and address and location of the depository institution. WASH. REV. CODE ANN. § 59.18.270.

Statutes in the remaining states do not appear to place any express statutory obligations upon landlords with respect to handling tenant security deposits.

Consistent with the trend reflected in the states indicated above, the JEB recommends that the ULC consider modifying URLTA § 2.101 to impose an affirmative requirement upon the Landlord to maintain security deposits in a segregated account.

(3) ***Should the landlord be obliged to pay interest accruing on tenant security deposits?*** Because the common law characterized the security deposit as a debt, the common law rule was that landlord had no obligation to pay interest to the tenant on a security deposit unless the lease itself required payment of interest.[21] Under this approach, a landlord had no duty to pay interest on tenant security deposits, even if the deposits were held by the landlord in an interest-bearing account.

Article 9 does not impose an affirmative obligation upon the landlord to place security deposits in an interest-bearing account or to pay the tenants interest on the deposits. It merely requires that if the secured party does receive a monetary return on the collateral, the secured party must either apply this return against the debt or remit it to the debtor.[22] As indicated earlier, however, Article 9's baseline rules may be altered by the parties' express agreement or by other positive law. Thus, "[b]y its express terms, Article 9 would compel the lessor to pay interest on the deposit to the lessee only (a) where the lease expressly provides for it, or (b) where the lessor actually invests the deposit so as to earn 'money or funds' from the deposited amount (and even then only if the lease does not expressly disclaim any obligation to remit these sums to the lessee)."[23]

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[21] *See* Freyermuth, *supra* note 20.

[22] **Error! Main Document Only.**U.C.C. § 9-207(2)(c). As Professor Freyermuth explains:

> The 1972 text provided that "(u)nless otherwise agreed, when collateral is in the secured party's possession . . . the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation." Id. Revised Article 9 rearticulates this same basic standard in slightly modified language: "a secured party having possession of collateral . . . shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor." U.C.C. § R9-207(c)(2) (2000). Section R9-207(c) does not contain the "unless otherwise agreed" language used in the 1972 text to signal that the parties could contract out of these baseline rules. Nevertheless, the comments to Section R9-207(c) make clear that the quoted language merely establishes "rules following common-law precedents which apply unless the parties otherwise agree." U.C.C. § R9-207 cmt. 3 (2000).
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> Because there is no meaningful difference between Section 9-207(2)(c) of the 1972 text and revised Section R9-207(c)(2), the analysis of the issues presented in the security deposit cases would not differ depending upon whether a particular dispute was governed by Revised Article 9 or the 1972 text. For purposes of conciseness, this article generally will refer simply to "Section 9-207" without distinguishing between the 1972 text and Revised Article 9.

Freyermuth, *supra* note 20, at 73 n.12.

[23] Freyermuth, *supra* note 20, at 85.

Residential landlord-tenant statutes in most states have not explicitly imposed any statutory duty on the landlord to pay interest on security deposits.[24] An Oklahoma statute provides that the landlord shall have no duty to pay interest on tenant security deposits,[25] and a Washington statute provides that landlord shall have no duty to pay interest on security deposits unless specifically required by the lease agreement.[26] Vermont does not require the payment of interest on security deposits, but does authorize towns to adopt local ordinances that require payment of interest on deposits.

Nevertheless, a number of states have enacted statutes modifying the common law rules and imposing some duty on the landlord to pay interest on security deposits. These include:

- *Connecticut.* CONN. GEN. STAT. ANN. § 47a-21(i) provides that a landlord must pay interest on tenant security deposits at the average rate on savings deposits by insured commercial banks, as reflected in the Federal Reserve Board Bulletin, but in no event less than 1.5% per year.
- *Florida*. Landlord does not have to pay interest on security deposits if landlord holds the deposits in non-interest-bearing account. However, if the deposits are held in an interest-bearing account, landlord must return to tenant 75% of the interest earned or an amount equal to 5% interest, at landlord's election. FLA. STAT. ANN. § 83.49.
- *Illinois*. Landlord must pay interest on a security deposit if landlord has more than 25 units and holds the deposit for more than six months, at rate equal to that paid the largest commercial bank having its main premises in the state on minimum deposit passbook savings accounts. 765 I.L.C.S. §§ 715/1.

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[24]Statutes in the following states are silent regarding interest on security deposits: Alabama, Alaska, Arkansas, Arizona, California, Colorado, Delaware, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wisconsin.

[25]OKLA. STAT. ANN. tit. 41 § 115(B).

[26]WASH. REV. CODE ANN. § 59.18.270. The current version of the law expressly permits the landlord to acquire the interest paid on the deposits. Interestingly, however, a bill introduced in 2011 would have required the interest on the trust account to be paid to an affordable housing fund (similar to the way that Interest on Lawyer Trust Accounts are used to fund legal assistance organizations):

> The interest accrued on trust account deposits in subsection (1) of this section must be deposited monthly in the affordable housing for all account created under RCW 43.185C.190, for the purpose of funding affordable housing programs that are limited to low-income households as defined in RCW 43.185A.010, by the financial institution or licensed escrow agent, less reasonable deposit processing charges that may only include an items deposited charge, a monthly maintenance fee, a per check item charge, and a per deposit charge.

2011 Washington Senate Bill No. 5050, Washington Sixty-Second Legislature - 2011 First Special Session. The bill was not voted on during the 2011 session and its status in 2012 is unclear.

- *Iowa*. IOWA CODE § 562A.12 provides that interest earned on the deposit during the first 5 years of a lease belongs to the landlord. This suggests that interest earned thereafter belongs to tenant, at least where the tenancy is for a term exceeding 5 years.[27]
- *Maryland*. Landlord must pay 3% simple interest on deposits larger than $50. MD. CODE REAL. PROP. § 8-203(e)(1).
- *Massachusetts*. Landlord must pay interest of 5% per year or the amount of interest earned, whichever is less. MASS. GEN. LAWS ANN. ch. 186, § 15B(3)(b).
- *Minnesota*. Landlord must pay simple interest of 1% per year. MINN. STAT. ANN. § 504B.178(2).
- *New Hampshire*. Landlord must pay interest earned on deposits held for 1 year or longer. N.H. REV. STAT. § 540-A:6(IV)(a).
- *New Jersey*. Landlord must place deposit in an insured money market fund established by an investment company or state or federal banking institution, and interest earned must be paid to tenants. N.J. STAT. ANN. §§ 46:8-19(a)(1).
- *New Mexico*. Landlord must pay interest on deposits if the lease is for one year or more and the deposit amount exceeds one months' rent, at a rate "equal to the passbook interest permitted to savings and loan associations in this state by the federal home loan bank board." N.M. STAT. ANN. § 47-8-18(A)(1).
- *New York*. Landlord must pay interest on deposit if deposit is held in an interest-bearing account, in an amount equal to interest earned less 1% administrative fee. Landlord must place deposit in interest-bearing account if property contains six or more family dwelling units. N.Y. GEN. OBLIG. LAW §§ 7-103(2), (2-a).
- *North Dakota*. Landlord must place deposit in interest-bearing account, and must pay interest earned on deposit to tenant, unless lease is for less than 9 months in duration. N.D. CENT. CODE §§ 47-16-07.1(1), (2c).
- *Ohio*. Landlord must pay interest on deposit at 5% per year, but only if deposit exceeds the greater of $50 or one months' rent and only where lease is six months or longer. OHIO REV. CODE § 5321.16(A).
- *Pennsylvania*. Pennsylvania requires that landlord pay to interest earned on a tenant's security deposit less a 1% administrative fee, but only beginning in the third year of a tenancy (including renewal of prior one-year terms). PA. STAT. tit. 68 §§ 250.511a(c), 250.511b(b), (c).
- *Virginia*. Landlord must pay interest on security deposits held for more than 13 months, at a rate 1% below the Federal Reserve Board discount rate. VA. CODE ANN. §§ 55-248.15:1(B)(1).

[27]The language of the statute is not clear as to whether a succession of six or more one-year leases would constitute one "tenancy" for purposes of this provision.

Amendment to the URLTA regarding the proper approach to payment of interest on tenant security deposits is warranted. In the majority of states in which state statutes are silent on this issue, courts have concluded that the traditional common law rule (no interest on security deposits) is the "gap filler" where the lease is silent. It is not clear that the traditional common law rule is the appropriate "gap-filler." Presumably, the argument in support of the traditional rule is that in any particular lease, the landlord's costs of investment, recordkeeping, and reimbursement would exceed the interest actually earned on the deposit. Certainly, no landlord would voluntarily agree to reimburse its lessee $6 in earned interest if the landlord would incur more than $6 in administrative costs — at least not without the tenant's agreement to pay an additional amount in rent to compensate the landlord for this administrative expense. Moreover, if the administrative expense exceeded the expected interest, the tenant would presumably forgo any claim to interest earned rather than bear the higher rent that the landlord would demand to bear such a duty. Thus, in looking at any isolated landlord-tenant bargain, it seems reasonable to predict that reasonable parties would agree that landlord should have no obligation to pay interest on the tenant's security deposit.

However, while this argument is sensible in the context of an individual landlord-tenant negotiation, it breaks down in the context of the multi-unit residential real estate development. Economies of scale reduce the landlord's administrative costs on a per-lessee basis as the number of tenants increase. The landlord's total costs will often be less — perhaps quite a bit less — than the total interest that landlord can accrue on all aggregated security deposits. In this context, if individual tenants could organize and bargain collectively, a reasonable landlord might be compelled to agree to pay interest on security deposits (or to capitulate to organized tenant demands for rent concessions to offset the forgone interest on the deposit amount). Because tenants negotiate leases individually, not collectively, and no individual tenant has a sufficient financial incentive to negotiate for and obtain the landlord's general commitment to pay interest on all tenant security deposits, tenants can only bargain collectively through the legislature — where the structural barrier to collective bargaining is more easily overcome, and where residential landlords cannot as readily exploit the bargaining power inequalities created by the standardized nature of the residential lease transaction. Thus, legislation obligating landlords to pay interest on security deposits could be seen as accomplishing the bargain that unimpeded collective bargaining between parties of equal bargaining power presumptively would have produced.[28]

The JEB believes that the ULC should revisit URLTA's current silence regarding payment of interest on security deposits, and consider whether to adopt payment of interest as (a) a default rule absent contrary agreement by the parties or (b) as a mandatory and unwaivable rule.

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[28] *See, e.g.*, 765 ILL. COMP. STAT. § 715/1 (landlord with 25 or more units obligated to pay interest on deposits held more than six months); N.J. STAT. ANN. § 46:8-19 (landlord with ten or more units obligated to pay interest on deposits); N.Y. GEN. OBLIG. LAW § 7-103 (landlord with six or more units obligated to pay interest on deposits). This may also explain why some states have provided that the lease may not disclaim the landlord's obligation to pay interest on security deposits. *See, e.g.*, CONN. GEN. STAT. ANN. § 47a-4(a)(4); MD. REAL PROP. CODE ANN. § 8-203(i); N.H. REV. STAT. ANN. § 540-A:8(III).

(4) ***What should be the maximum deposit amount (if any) that a landlord may retain from a tenant?*** URLTA § 2.101(a) provided that "[a] landlord may not demand or receive security, however denominated, in an amount or value in excess of [1] month[s] periodic rent." Most state legislatures, however, have authorized landlords to require a larger deposit amount. A summary of current state legislation follows:

States authorizing deposit of up to one month rent: Alabama,[29] Delaware,[30] Hawaii,[31] Kansas,[32] Massachusetts,[33] Nebraska,[34] New Hampshire (up to but not exceeding $100),[35] New Mexico,[36] North Dakota,[37] Rhode Island.[38]

Up to 1.5 months' rent: Arizona,[39] Michigan,[40] New Jersey.[41]

Up to two months' rent: Alaska,[42] Arkansas,[43] California,[44] Connecticut,[45] Iowa,[46] Maine,[47] Maryland,[48] Missouri,[49] North Carolina,[50] Pennsylvania,[51] Virginia.[52]

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[29]ALA. CODE § 35-9A-201(a).

[30]DEL. CODE tit. 25 §5514(a)(2), but no limit for furnished units, *id.* §5514(a)(4).

[31]HAW. REV. STAT. § 521-44(b).

[32]KAN. STAT. ANN. § 58-2550(a) (up to 1.5 months' rent for furnished units).

[33]MASS. GEN. LAWS ANN. ch. 186 § 15B(1)(b)(iii).

[34]NEB. REV. STAT. ANN. § 76-1416(1).

[35]N.H. REV. STAT. ANN. § 540-A:6(I)(a).

[36]N.M. STAT. ANN. § 47-8-18(A)(1), though landlord can impose a "reasonable" deposit if lease term exceeds 1 year. *Id*. § 47-8-18(A).

[37]N.D. CENT. CODE § 47-16-07.1(1).

[38]R.I. GEN. LAWS § 34-18-19(a).

[39]ARIZ. REV. STAT. § 33-1321(A).

[40]MICH. COMP. LAWS ANN. § 554.602.

[41]N.J. STAT. ANN. § 46:8-21.1.

[42]ALASKA STAT. § 34.03.070(a) (unless rental amount exceeds $2,000 per month).

[43]ARK. CODE ANN. § 18-16-304.

[44]CAL. CIV. CODE § 1950.5(c) (up to three months' rent for furnished units).

[45]CONN. GEN. STAT. ANN. § 47a-21(b)(1), reduced to no more than one month's rent for tenants exceeding 62 years of age, *id.* § 47a-21(b)(2).

[46]IOWA CODE § 562A.12(1).

[47]ME. REV. STAT. ANN. tit. 14 § 6032.

[48]MD. CODE. ANN., REAL PROP. § 8-203(b)(1).

[49]MO. REV. STAT. § 535.300(1).

[50]N.C. GEN. STAT. ANN. § 42-51 (up to two weeks' rent permissible for week-to-week tenancy; up to 1.5 months' rent permissible for month-to-month tenancies).

[51]68 PA. STAT. ANN. § 250.511a(a), but reduced to one months' rent after first year of term, *id*. § 250.511a(b).

Up to three months' rent: Nevada.[53]

States where statute is silent: Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Mississippi, Montana, New York, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia,[54] Wisconsin, Wyoming.[55]

A drafting committee should consider whether there are compelling policy reasons (including the promotion of access to housing) to retain the suggested deposit limit of one month rent as expressed in URLTA § 2.101(a). Further, the committee may wish to consider whether, in establishing deposit limits, to draw any distinctions (a) between leases for furnished and unfurnished apartments or (b) between tenancies for a term and shorter periodic tenancies.

(5) ***How much time should the landlord have to return the security deposit (and should this time run from termination of the lease or post-termination demand by tenant)?*** The original URLTA provided that Landlord should return the balance of the security deposit "[14] days after termination of the tenancy and delivery of possession and demand by the tenant." Under this approach, Landlord could not be held liable for failure to return a security deposit until the tenant made a demand for the return of the deposit. If a tenant failed to make such a demand — or, more plausibly, failed to realize the need to make a formal demand — a landlord could retain the security deposit despite the fact that retention was no longer justified to protect landlord against tenant's failure to perform its lease obligations.

This approach is in contrast to the more consumer-friendly approach reflected by UCC Article 9 in its financing statement termination requirements. A secured party must terminate the effectiveness of a financing statement covering consumer goods within 30 days after the debt is satisfied, whether or not the debtor makes a demand. U.C.C. §§ 9-513(a), (b). Most of the states have adopted a more consumer-friendly requirement that landlord's grace period for refunding the balance of the security deposit is triggered by termination of the tenancy and delivery of possession.[56] A small minority of states still adhere to a demand requirement comparable to URLTA § 2.101(b).[57]

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[52]VA. CODE ANN. § 55-248.15:1(A).

[53]NEV. REV. STAT. ANN. § 118A.242s(1).

[54]West Virginia has no residential landlord-tenant statute.

[55]Wyoming has no residential landlord-tenant statute.

[56]ALA. CODE § 35-9A-201(b); ALASKA STAT. § 34.03.070(b); ARK. CODE ANN. § 18-16-305(a)(1); CAL. CIV. CODE § 1950.5(g)(1); COLO. REV. STAT. ANN. § 38-12-103(1); CONN. GEN. STAT. ANN. § 47a-21(d)(2); DEL. CODE tit. 25 §5514(f); FLA. STAT. ANN. § 83.49(3)(a); GA. CODE ANN. § 44-7-34(a); HAW. REV. STAT. § 521-44(c); IDAHO CODE ANN. § 6-321; 765 ILL. COMP STAT. ANN. § 710/1(1); IND. CODE § 32-31-3-14; KY. REV. STAT. § 383.580(3); ME. REV. STAT. ANN. tit. 14 § 6033(2); MD. CODE. ANN., REAL PROP. § 8-203(e)(1); MASS. GEN. LAWS ANN. ch. 186 § 15B(4); MICH. COMP. LAWS ANN. §§ 554.608(5), 554.609; MO. REV. STAT. § 535.300(2); MONT. CODE ANN. § 70-25-202(1); NEV. REV. STAT. ANN. § 118A.242(2); N.H. REV. STAT. ANN. § 540-A:7(I); N.J. STAT. ANN. § 46:8-21.1; N.M. STAT. ANN. § 47-8-18(C); N.C. GEN. STAT. ANN. § 42-52; N.D. CENT. CODE § 47-16-07.1(2); OHIO REV. CODE ANN. § 5321.16(B); OR. REV. STAT. ANN. § 90.300(10); 68 PA. STAT. ANN. § 250.512(a);

The original URLTA bracketed the fourteen-day return period in recognition that states were likely to adopt nonuniform return periods. A small number of states have adopted the 14 day period suggested by URLTA,[58] and a few other states have adopted a return period of 20 or 21 days.[59] A plurality of states has imposed a requirement of 30 days.[60] A few states have authorized periods as long as 45 days[61] or 60 days.[62]

(6) ***For what types of costs, charges or fees may the landlord apply security deposit funds?*** The original URLTA provided that a security deposit "may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with Section 3.101." URLTA § 2.101(b).[63]

TENN. CODE ANN. § 66-28-301(b); VT. STAT. ANN. tit. 9 § 4461(c); VA. CODE ANN. § 55-248.15:1(A); WASH. REV. CODE ANN. § 59.18.280; WIS. ADMIN. CODE ATCP § 134.06(2).

[57]ARIZ. REV. STAT. § 33-1321(D); IOWA CODE § 562A.12 (receipt of tenant's mailing address or delivery instructions); KAN. STAT. ANN. § 58-2550(b); LA. REV. STAT. ANN. § 9:3252(A) (tenant must make demand before court may impose penalty for landlord's failure to timely refund deposit); MINN. STAT. ANN. § 504B.178(a) (receipt of tenant's mailing address or delivery instructions); MISS. CODE ANN. § 89-8-21(3); NEB. REV. STAT. ANN. § 76-1416(2); OKLA. STAT. ANN. tit. 41 § 115(B); R.I. GEN. LAWS § 34-18-19(b) (receipt of tenant's forwarding address); S.C. CODE ANN. § 27-40-410(a); S.D. CODIFIED LAWS § 43-32-24 (receipt of tenant's mailing address or delivery instructions); TEX. PROP. CODE ANN. § 92.107(a) (delivery of tenant's forwarding address); UTAH CODE ANN. § 57-17-3 (later of 30 days after termination or 15 days after receipt of tenant's mailing address).

[58]ALASKA STAT. § 34.03.070(g) (periodic tenancies only); ARIZ. REV. STAT. § 33-1321(D); HAW. REV. STAT. § 521-44(c); KAN. STAT. ANN. § 58-2550(b) (14 days after determining amount to be withheld); NEB. REV. STAT. ANN. § 76-1416(2); S.D. CODIFIED LAWS § 43-32-24 (2 weeks); TENN. CODE ANN. § 66-28-301(b) (10 business days); VT. STAT. ANN. tit. 9 § 4461(c); WASH. REV. CODE ANN. § 59.18.280.

[59]DEL. CODE tit. 25 §5514(f) (20 days); IDAHO CODE ANN. § 6-321 (21 days if lease is silent; up to 30 days if lease so specifies); MINN. STAT. ANN. § 504B.178(a)(1) (three weeks); R.I. GEN. LAWS § 34-18-19(b) (20 days); WIS. ADMIN. CODE ATCP § 134.06(2) (21 days).

[60]ALA. CODE § 35-9A-201(b) (35 days); ALASKA STAT. § 34.03.070(g) (nonperiodic tenancies); COLO. REV. STAT. ANN. § 38-12-103(1) (one month; lease can specify longer time, not to exceed 60 days); CONN. GEN. STAT. ANN. § 47a-21(d)(2); GA. CODE ANN. § 44-7-34(a);); LA. REV. STAT. § 9:3251(A); ME. REV. STAT. ANN. tit. 14 § 6033(2)(A) (as specified by lease, but not to exceed 30 days); MASS. GEN. LAWS ANN. ch. 186 § 15B(4); MICH. COMP. LAWS ANN. § 554.609; MO. REV. STAT. § 535.300(2); MONT. CODE ANN. §§ 70-25-202(1), (2) (reduced to 10 days if no deduction); NEV. REV. STAT. ANN. § 118A.242(2); N.H. REV. STAT. ANN. § 540-A:7(I); N.J. STAT. ANN. § 46:8-21.1; N.M. STAT. ANN. § 47-8-18(C); N.C. GEN. STAT. ANN. § 42-52; N.D. CENT. CODE § 47-16-07.1(2); OHIO REV. CODE ANN. § 5321.16(B); OKLA. STAT. ANN. tit. 41 § 115(B); OR. REV. STAT. ANN. § 90.300(11) (31 days); 68 PA. STAT. ANN. § 250.512(a); S.C. CODE ANN. § 27-40-410(a); TEX. PROP. CODE ANN. § 92.103(a); UTAH CODE ANN. § 57-17-3.

[61]765 ILL. COMP STAT. ANN. § 710/1(1); IND. CODE § 32-31-3-14; MD. CODE. ANN., REAL PROP. § 8-203(e)(1); MISS. CODE ANN. § 89-8-21(3); VA. CODE ANN. § 55-248.15:1(A).

[62]ARK. CODE ANN. § 18-16-305(a)(1); CAL. CIV. CODE § 1950.5(g)(1).

[63]URLTA Section 3.101 addresses the tenant's obligations with respect to maintenance of the leased premises, and provides that the tenant shall:

> (1) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
>
> (2) keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;

While URLTA's provision addresses most of the potential damages that a landlord might suffer due to tenant default, statutory variations in a number of other states do address a number of other potential deduction items that are not reflected in the current URLTA provisions. These include:

- Unpaid utility charges;[64]
- Late fees;[65]
- Repair work contracted for by tenant but not paid;[66]
- Cleaning work contracted for by tenant but not paid;[67]
- Costs of repossession;[68]
- Costs of storage or disposal of unclaimed property;[69]
- Tax increases for which tenant is obligated.[70]

An amendment might also provide useful clarification about the extent to which landlord might impose an ostensibly nonrefundable "cleaning fee" in lieu of a security deposit.

(7) ***What form of itemization/disclosure must landlord make when retaining any portion of a security deposit, and what is the effect of that itemization/disclosure if tenant does not object?*** URLTA § 2.101(b) requires that if the landlord retains any of the security deposit, landlord must explain such retention "as itemized … in a written notice delivered to the tenant together with the amount due." URLTA does not provide any guidance regarding the nature of

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(3) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(4) keep all plumbing fixtures in the dwelling unit or used by the tenant as clear as their condition permits;

(5) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators in the premises;

(6) not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so; and

(7) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises.

[64]COLO. REV. STAT. ANN. § 38-12-103(1); GA. CODE ANN. § 44-7-34(a); IND. CODE § 32-31-3-13(4); ME. REV. STAT. ANN. tit. 14 § 6033(2); MICH. COMP. LAWS ANN. § 554.607(b); MONT. CODE ANN. § 70-25-201(1); N.C. GEN. STAT. ANN. § 42-51; VT. STAT. ANN. tit. 9 § 4461(b)(3); WIS. ADMIN. CODE ATCP §§ 134.06(3)(a)(3), (4)

[65]GA. CODE ANN. § 44-7-34(a); MONT. CODE ANN. § 70-25-201(1); VA. CODE ANN. § 55-248.15:1(A).

[66]COLO. REV. STAT. ANN. § 38-12-103(1); GA. CODE ANN. § 44-7-34(a).

[67]*Id.*

[68]IOWA CODE § 562A.12(3)(c).

[69]ME. REV. STAT. ANN. tit. 14 § 6033(2).

[70]MASS. GEN. LAWS ANN. ch. 186 § 15B(ii); N.H. REV. STAT. ANN. § 540-A:7(II); VT. STAT. ANN. tit. 9 § 4461(b)(4).

this disclosure or the level of detail required. While every state with a residential landlord-tenant statute does provide an itemization requirement,[71] no existing state statutes provide guidance as to the form of such itemization. A committee should explore whether providing some type of "safe-harbor" itemization form is desirable (or is instead unnecessary).

Likewise, a committee should address the effect of the itemization and whether it becomes binding upon the tenant unless the tenant formally objects. URLTA § 2.101 does not place upon the tenant any affirmative obligation to object to landlord's itemization to preserve its legal right to challenge landlord's compliance with its deposit refund obligation. Nevertheless, a number of states have adopted provisions making the landlord's itemization binding upon the tenant unless the tenant objects within a defined period.[72]

(8) ***What penalty (if any) should a landlord be assessed for failure to comply with its obligations regarding handling or application of a security deposit?***

URLTA § 2.101(c) provides that if Landlord does not comply with its obligation to return the security deposit in a timely manner, Tenant "may recover the property and money due him together with damages in an amount equal to [twice] the amount wrongfully withheld and reasonable attorney's fees." Twenty states follow this general approach. Eleven use the same "twice the amount wrongfully withheld" formula,[73] while eight others use a penalty of three times the amount wrongfully withheld,[74] and Kansas's penalty is 1.5 times the amount wrongfully withheld.[75]

By contrast, five states base the penalty on the entire deposit amount, not the amount wrongfully withheld. These include Alabama (2x original deposit),[76] California (2x original deposit),[77] Connecticut (2x deposit amount),[78] New Hampshire (2x deposit amount, less actual damages),[79] and Pennsylvania (2x deposit amount less actual damages).[80]

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[71]Because neither West Virginia nor Wyoming have residential landlord-tenant statutes, there is no written itemization requirement in those states.

[72]*See, e.g.*, DEL. CODE tit. 25 § 5514(f) (10 days); FLA. STAT. ANN. § 83.49(3)(b) (15 days); MICH. COMP. LAWS ANN. §§ 554.612, 554.613 (7 days); TENN. CODE ANN. § 66-28-301(b)(1), (d) (if Tenant does not indicate make objection to Landlord's itemization, Tenant cannot pursue claim for damages).

[73]ALASKA STAT. § 34.03.070(d); ARIZ. REV. STAT. § 33-1321(E); ARK. CODE ANN. § 18-16-306(a)(1)(A); DEL. CODE tit. 25 §5514(g)(1); 765 ILL. COMP STAT. ANN. § 710/1(1); ME. REV. STAT. ANN. tit. 14 § 6034(2); MO. REV. STAT. § 535.300(5); N.J. STAT. ANN. § 46:8-21.1; R.I. GEN. LAWS § 34-18-19(c); VT. STAT. ANN. tit. 9 § 4461(e).

[74]COLO. REV. STAT. ANN. § 38-12-103(3)(a); GA. CODE ANN. § 44-7-35(c); HAW. REV. STAT. § 521-44(h)(1); MD. CODE. ANN., REAL PROP. § 8-203(e)(4); MASS. GEN. LAWS ANN. ch. 186 § 15B(7); N.D. CENT. CODE § 47-16-07.1(3); S.C. CODE ANN. § 27-40-410(b); TEX. PROP. CODE ANN. § 92.109(a).

[75]KAN. STAT. ANN. § 58-2550(c).

[76]ALA. CODE § 35-9A-201(f).

[77]CAL. CIV. CODE § 1950.5(l).

[78]CONN. GEN. STAT. ANN. § 47a-21(d)(2).

[79]N.H. REV. STAT. ANN. § 540-A:8(I) (b).

Seven states have adopted a flat penalty amount, including Iowa ($200),[81] Louisiana ($200),[82] Minnesota ($500, in cases of bad faith),[83] Mississippi ($200),[84] New Mexico ($250, if bad faith),[85] South Dakota ($200, in cases of bad faith),[86] and Utah ($100).[87]

Of the remaining states, the majority do not provide for a specific penalty, but merely indicate that Landlord's failure results in the loss of its claim to the deposit[88] or provide only that the Tenant can recover the amount due.[89] Wisconsin provides only that the Landlord cannot intentionally misrepresent or falsify damages suffered.[90]

(9) ***What process, if any, should be available for landlord to retain a security deposit if landlord is unable to return the deposit because tenant does not provide a forwarding address?*** In some situations, a landlord may attempt to return a deposit without success because the address provided by the tenant turns out to be incorrect. A small number of states have adopted statutes that provide for forfeiture of the deposit if the landlord is unable to return the deposit because the tenant has failed to provide correct forwarding information within a specific time period. For example, Alabama's new statute provides as follows:

> Upon vacating the premises, the tenant shall provide to the landlord a valid forwarding address, in writing, to which the deposit or itemized accounting, or both, may be mailed. If the tenant fails to provide a valid forwarding address, the landlord shall mail, by first class mail, the deposit or itemized accounting, or both, to the last known address of the tenant or, if none, to the tenant at the address of the property. Any deposit unclaimed by the tenant as well as any check outstanding shall be forfeited by the tenant after a period of 180 days.[91]

Similar provisions exist in ten other states: Arkansas (180 days),[92] Delaware (1 year),[93] Georgia (90 days),[94] Hawaii (1 year),[95] Iowa (1 year),[96] Kentucky (60 days),[97] New Hampshire (6 months),[98] North Carolina (6 months),[99] Oklahoma (6 months),[100] Tennessee (60 days).[101]

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[80]68 PA. STAT. ANN. § 250.512(c).

[81]IOWA CODE § 562A.12(7).

[82]LA. REV. STAT. ANN. § 9:3252(A).

[83]MINN. STAT. ANN. § 504B.178(7).

[84]MISS. CODE ANN. § 89-8-21(4).

[85]N.M. STAT. ANN. § 47-8-18(E).

[86]S.D. CODIFIED LAWS § 43-32-24.

[87]UTAH CODE ANN. § 57-17-5.

[88]*E.g.*, FLA. STAT. ANN. § 83.49(3)(a); IND. CODE § 32-31-3-15; KY. REV. STAT. § 383.580(4); MICH. COMP. LAWS ANN. § 554.610; MONT. CODE ANN. § 70-25-203; VA. CODE ANN. § 55-248.15:1(A).

[89]NEB. REV. STAT. ANN. § 76-1416(3).

[90]WIS. ADMIN. CODE ATCP § 134.06(4)(b).

[91]ALA. CODE § 35-9A-201(d).

[92]ARK. CODE ANN. § 18-16-305(b)(2).

[93]DEL. CODE tit. 25 §5514(h).

(10) ***What obligation, if any, should a successor to the original landlord have to refund security deposits?*** Ideally, when a landlord sells an apartment building or other residential rental property, the landlord/seller transfers to the buyer all of the security deposit funds held for the tenants, and the buyer thereafter refunds security deposits to the tenants at the end of their respective leases. In some cases, however, the original landlord/seller may not have transferred these funds, and the question arises whether the buyer has any obligation to perform the original landlord's duty to refund security deposits. Clearly, residential tenants have an expectation that their security deposits will be refunded by whoever is serving as the landlord at the conclusion of the lease. At common law, however, there was some doubt whether the landlord's duty (whether express or implied) to refund a tenant's security deposit — an "affirmative" covenant — ran with the land to bind a buyer of the apartment building.

URLTA § 2.101 provides that "the holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section." This suggests that the successor to the landlord will have the burden of refunding tenant security deposits, regardless of whether the original landlord actually transferred the security deposit funds. Statutes in a few states seem to require this result, however, only if the deposited funds were actually paid to the successor.[102] Further, statutes in a number of states are simply silent about the buyer's liability for refunding deposits made to the prior owner.[103] A committee should consider an amendment to URLTA § 2.101 that would clarify a successor's liability to refund security deposits.

II. PET DEPOSITS

A. ***Background.*** The URLTA currently does not address the issue of pet deposits in its security deposit provisions. Thus it is unclear whether pet deposits are subject to the maximum deposit amounts in the Act, as well as to the procedures for refunding security deposits at the end of the lease term. This ambiguity has resulted in litigation in at least five states (CT, IL, NE, NJ, OH) to determine the status of pet deposits in relation to security deposit statutes. Eleven other

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[94]GA. CODE ANN. § 44-7-34(a).

[95]HAW. REV. STAT. § 521-44(c)

[96]IOWA CODE § 562A.12(4).

[97]KY. REV. STAT. § 383.580(7).

[98]N.H. REV. STAT. ANN. § 540-A:8(II).

[99]N.C. GEN. STAT. ANN. § 42-52.

[100]OKLA. STAT. ANN. tit. 41 § 115(B).

[101]TENN. CODE ANN. § 66-28-301(f).

[102]*See, e.g.*, COLO. REV. STAT. ANN. § 38-12-103(6); ME. REV. STAT. ANN. tit. 14 § 6035(2); N.H. REV. STAT. § 540-A:6(III)(c); OKLA. STAT. ANN. tit. 41 § 115(D).

[103]Delaware, Georgia, Kentucky, Michigan, Mississippi, Missouri, Montana, New Mexico, Ohio, Pennsylvania, South Dakota, Tennessee, Wisconsin.

states (AL, DE, GA, KS, MO, NE, NC, ND, OR, VA, WV) have taken steps to clarify the status of pet deposits in their statutes, but their approaches have been nonuniform. A related issue discussed below is whether tenants with disabilities should be exempt from paying pet deposits for their service animals.

B. *Judicial Decisions Regarding the Status of Pet Deposits.* Courts that have addressed the issue have come to differing opinions about whether pet deposits are governed by security deposit statutes like the URLTA, which do not expressly include or exclude pet payments from the statute. The outcome of these cases has been determined largely by whether the payment is refundable or non-refundable. In one of the leading cases on the issue, *Pool v. Insignia Residential Group*, an Ohio appellate court held that "where a pet deposit or pet fee is given to secure performance by the tenant under the lease, it may be considered a security deposit" subject to the statutory requirements for handling security deposits.[104] In similar holdings, courts in Connecticut, Illinois, Nebraska, and New Jersey concluded that pet deposits are subject to the provisions of security deposit statutes or ordinances.[105]

Other courts in Ohio, however, reached different results by distinguishing between security deposits and non-refundable fees.[106] Thus, in *Kopp v. Associated Estates Realty Corp.*, the court concluded that the security deposit statute was inapplicable to the particular pet fee at issue in the case because the fee "did not secure any performance of appellants under the lease, nor did it apply to damages caused by pets" but was an upfront, nonrefundable fee "for the contractual right to keep pets in the apartment."[107] Similarly, in *Pool*, the court distinguished between the pet deposit the landlord had charged in that case and a separate $30 per week fee paid by the tenant. The court agreed with the landlord that the weekly fee constituted additional rent, rather than a security deposit.[108]

C. *Statutory Provisions Governing Pet Payments*. States that have expressly addressed pet payments in their statutes generally have taken one of three approaches in clarifying landlord's duties with respect to those payments. The first approach is to expressly include pet deposits within the definition of security deposits governed by its statute, as Virginia has done.

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[104] Pool v. Insignia Residential Group, 736 N.E.2d 507, 510 (Ohio Ct. App. 1999).

[105] See Guilford Hous. Auth. v. Gilbert, No. SPNH1009102865, 2011 WL 522803 (Conn. Super. Ct., Jan. 11, 2011) (holding pet policy invalid because a pet deposit was a type of security deposit and therefore cannot exceed 1 month's rent); *Reilly v. Weiss*, 966 A.2d 500, 504 (N.J Super. A.D. 2009) (holding that the statutory limit of one and one-half month's rent for security deposits includes pet deposits as part of a security deposit, and such a limit on the total deposit cannot be waived); Perrone v. Mid-America Financial Investment Corp., No. A-03-177, 2004 WL 2032935 (Neb. App. Ct., Sept. 14, 2004) (finding a pet deposit in the amount equivalent to eight times the statutorily proscribed amount unlawful); Lawrence v. Regent Realty Group, Inc., 754 N.E.2d 334, 339 (Ill. 2001) (concluding that pet deposit constituted a security deposit governed by an ordinance requiring the landlord to pay interest on the deposit after the first year of the lease).

[106] *See* Yates v. Kanani, 2010 WL 2333506 (Ohio Ct. App. 2d Dist. 2010) (holding that tenant was not entitled to return of $300 pet deposit made to landlord as nothing in the record indicated it was refundable); Kopp v. Associated Estates Realty Corp., 2010 WL 1510196 (Ohio Ct. App. 10th Dist. 2010) (nonrefundable $300 pet fee was not a security deposit).

[107] *Kopp*, 2010 WL 1510196, at *6.

[108] *Pool*, 736 N.E.2d at 510.

[109] Two other states (Georgia and West Virginia) also include refundable pet deposits within the definition of security deposits but they have taken the further step of expressly excluding non-refundable pet fees.[110] This approach protects tenants from unreasonably high security deposits, but unless the state's statutory limits for security deposits is fairly high, these provisions may unduly constrain landlords from requesting adequate security for the additional damage that pets may cause.

A second approach, followed by five states (DE, KS, NE, NC, ND), is to exempt pet deposits from the security deposit statute, but subject them to separate limits on the amount that may be charged.[111] This approach represents a compromise between the parties' interests because it recognizes the desirability of allowing landlords to charge a higher deposit to reflect the additional damage that a pet could cause to the premises, but retains some protection for tenants against unlimited demands. The third approach, followed by three states (AL, MO, OR) is to expressly exempt pet deposits from the security deposit statute, without establishing any alternative limits on the amounts that landlords may charge.[112]

D. ***Service Animals for the Disabled.*** There is considerable variation among the statutes regarding pet deposits for service animals. Two states (DE and OR) address the issue in their security deposit statutes, expressly prohibiting landlords from charging a pet deposit for service

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[109] VA. CODE ANN. § 55-248.4 (West 2011) ("'Security deposit' means any refundable deposit of money that is furnished by a tenant to a landlord to secure the performance of the terms and conditions of a rental agreement, as a security for damages to the leased premises, or as a pet deposit.").

[110] *See* GA. CODE ANN. § 44-7-30(3) (2011) ("'Security deposit' means money or any other form of security . . . by a tenant to a landlord . . . and shall include, but not be limited to, damage deposits, advance rent deposits, and pet deposits. Such term shall not include nonrefundable fees . . . ."); W. VA. CODE ANN. § 37-6A-1(14) (2011) ("Security deposit does not include: (A) Rent; (B) a pet fee; or (C) application fee: Provided, That the parties expressly agree, in writing, that a pet fee or application fee is nonrefundable.").

[111] *See* DEL. CODE ANN. tit. 25, § 5514(i)(1)-(2) (West 2011) ("(1) A landlord may require a pet deposit. . . . (2) No landlord may require a pet deposit in excess of 1 month's rent, regardless of the duration of the rental agreement."); KAN. STAT. ANN. § 58-2550(a) (2009) ("[I]f the rental agreement permits the tenant to keep or maintain pets in the dwelling unit, the landlord may demand and receive an additional security deposit not to exceed 1/2 of one month's rent."); NEB. REV. STAT. ANN. § 76-1416(1) (2011) ("A landlord may not demand or receive security, however denominated, in an amount or value in excess of one month's periodic rent, except that a pet deposit not in excess of one-fourth of one month's periodic rent may be demanded or received when appropriate, but this subsection shall not be applicable to housing agencies organized or existing under the Nebraska Housing Agency Act."); N.C. GEN. STAT. ANN. § 42-53 (West 2011) ("Notwithstanding the provisions of this section, the landlord may charge a reasonable, nonrefundable fee for pets kept by the tenant on the premises."); N.D. CENT. CODE § 47-16-07.1(1) (2011) ("A lessor may not demand or receive security, however denominated, in an amount or value in excess of one month's rent, except if the lessee is housing a pet on the leased premises, the security may not exceed the greater of two thousand five hundred dollars or an amount equivalent to two months' rent.").

[112] *See* ALA. CODE § 35-9A-201(a) (2011) ("A landlord may not demand or receive money as security, in an amount in excess of 1 month's periodic rent except for pets . . . ."); MO. ANN. STAT. § 535.300(7) (West 2011) ("As used in this section, the term "security deposit" . . . does not include any money or property denominated as a deposit for a pet on the premises."); OR. REV. STAT. ANN. § 90.300 ("the landlord may require an additional deposit if the landlord and tenant agree to modify the terms and conditions of the rental agreement to permit a pet or for other cause and the additional deposit relates to the modification").

animals.[113] Other states address the issue in their fair housing or civil rights statutes and have taken divergent approaches to the issue.

Two states (ME and NE) have enacted housing discrimination statutes that expressly prohibit a landlord from charging pet deposits for service animals[114] while four others (MA, NH, OK, UT) expressly permit such deposits if the landlord routinely requires such deposits from other tenants.[115] Several states have statutes that specifically govern public housing. These statutes typically permit the landlord to require a deposit from tenants who are elderly or have a disability provided that the deposit is reasonable or not "financially prohibitive."[116]

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[113] *See* DEL. CODE ANN. tit. 25, § 5514(i)(3) ("A landlord may require an additional deposit from a tenant with a pet, but shall not require a pet deposit from a tenant if the pet is a duly certified and trained support animal for a disabled person who is a resident of the rental unit."); OR. REV. STAT. ANN. § 90.300 (West 2011) ("A landlord may not charge a tenant a pet security deposit for keeping a service animal or companion animal that a tenant with a disability requires as a reasonable accommodation under fair housing laws.").

[114] *See* ME. REV. STAT. ANN. § 4582-A ("It is unlawful housing discrimination, in violation of this Act: . . . For any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation or any of their agents to refuse to permit the use of a service animal or otherwise discriminate against an individual with a physical or mental disability who uses a service animal at the housing accommodation unless it is shown by defense that the service animal poses a direct threat to the health or safety of others or the use of the service animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the housing accommodation by others. The use of a service animal may not be conditioned on the payment of a fee or security deposit, although the individual with a physical or mental disability is liable for any damage done to the premises or facilities by such a service animal."); NEB. REV. STAT. ANN. § 20-131.04 ("Every totally or partially blind person, hearing-impaired person, or physically disabled person who has a service animal or obtains a service animal shall have full and equal access to all housing accommodations with such animal as prescribed in sections 20-131.01 to 20-131.04. Such person shall not be required to pay extra compensation for such animal. Such person shall be liable for any damage done to such premises by such animal. Any person who rents, leases, or provides housing accommodations for compensation to any totally or partially blind person, hearing-impaired person, or physically disabled person who has or obtains a service animal shall not charge an additional deposit for such animal.").

[115] MASS. GEN. LAW ANN. 151B § 4 ("Notwithstanding any general or special law, by-law or ordinance to the contrary, there shall not be established or imposed a rent or other charge for such handicap-accessible housing which is higher than the rent or other charge for comparable nonaccessible housing of the owner or other person having the right of ownership."); N.H. REV. STAT. § 167-D:3 ("It is lawful for any hearing ear dog, guide dog, or service dog to accompany his or her deaf or hearing impaired, blind or visually impaired, or mobility impaired master or a master with a seizure disorder diagnosed by a physician into any public facility, housing accommodation, or place of public accommodation to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons."); OKLA.ST.ANN. Tit. 25, § 1452 ("It shall be an unlawful discriminatory housing practice . . . To refuse to rent or lease housing to a blind, deaf, or disabled person on the basis of the person's use or possession of a bona fide, properly trained guide, signal, or service dog; . . . To demand the payment of an additional nonrefundable fee or an unreasonable deposit for rent from a blind, deaf, or disabled person for such dog. Such blind, deaf, or disabled person may be liable for any damage done to the dwelling by such dog . . ."); UTAH CODE ANN. 1953 § 62A-5b-104(1)(b) ("This section [of Human Services Code concerning rights of persons with disability] does not prohibit an owner or lessor of private housing accommodations from charging a person, including a person with a disability, a reasonable deposit as security for any damage or wear and tear that might be caused by a service animal if the owner or lessor would charge a similar deposit to other persons for potential wear and tear.").

[116] *See* ARIZ. REV. STAT. ANN. § 36-1409.01(C) ("A public agency which owns, operates, manages or

At least fourteen other states (AR, CA, FL, GA, IA, KS, LA, MD, MN, MO, MT, NJ, VA, WI) require landlords to make housing accommodations accessible to tenants with service animals "without extra compensation"[117] but it is unclear how that terminology applies to pet deposits. Some of these statutes expressly provide that the tenant may be held liable for damages done to the premises by the animal,[118] and at least one state court has interpreted its statute as permitting a landlord to impose a pet deposit to cover such damages.[119] A federal court, however, has suggested that charging a pet deposit would violate the federal Fair Housing Act.[120]

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contracts for rental housing accommodations shall not impose any requirement which makes the keeping of a pet by an elderly or handicapped tenant financially prohibitive and shall not in any case require a deposit of more than one month's rent for the keeping of a pet."); CAL. HEALTH & SAFETY CODE § 19901 ("Nothing in this section authorizes a local housing authority to impose any requirement which makes the keeping of a pet by an elderly person or person requiring supportive services financially prohibitive."); MINN. STAT. ANN. § 504B.261 ("In a multi-unit residential building, a tenant of a disability accessible unit, in which the tenant or the unit receives a subsidy that directly reduces or eliminates the tenant's rent responsibility, must be allowed to have two birds or one spayed or neutered dog or one spayed or neutered cat. . . . The landlord may require the renter to pay an additional damage deposit in an amount reasonable to cover damage likely to be caused by the animal. The deposit is refundable at any time the renter leaves the unit of housing to the extent it exceeds the amount of damage actually caused by the animal.").

[117] *See* ARK. CODE ANN. § 20-14-304; CAL. CIV. CODE § 54.1; FLA. STAT. ANN. § 413.08(6)(b); GA. CODE ANN. § 30-4-3(b); IOWA CODE § 216C.11; KAN. STAT. ANN. § 39-1108; LA. REV. STAT. tit 46, § 1954; MD. CODE, HUMAN SERVICES, § 7-704(c)(3); MINN. STAT. ANN. § 256C.025; MO. ANN. STAT. § 209.190; MONT. CODE ANN. § 49-4-214; N.J. STAT. ANN. § 10:5-29.2; VA. CODE ANN. § 51.5-45(B); WIS. STAT. ANN. §106.50.

[118] CAL. CIV. CODE § 54.1 ("nor shall this paragraph be construed to relieve a tenant from any liability otherwise imposed by law for real and personal property damages caused by such a dog when proof of the same exists"); FLA. STAT. ANN. § 413.08(6)(b) ("such a person is liable for any damage done to the premises or to another person on the premises by such an animal"); KAN. STAT. ANN. § 39-1108 ("Such person shall be liable for any damage done to the premises by such dog."); LA. REV. STAT. tit 46, § 1954 (2011) ("he shall not be required to pay extra compensation for such dog but shall be liable for any damage done to the premises or any person on the premises by such dog."); MD. CODE, HUMAN SERVICES, § 7-704 (c)(3) ("the individual may be liable for damages to the premises or facilities that the service animal causes"); MINN. STAT. ANN. § 256C.025 (individual "shall not be required to pay extra compensation for such service dog but shall be liable for any damage done to the premises by such service dog."); MO. ANN. STAT. § 209.190 ("he shall not be required to pay extra compensation for such dog but shall be liable for any damage done to the premises by such a dog."); MONT. CODE ANN. § 49-4-214 ("The person with a disability may not be required to pay extra compensation for the service animal but is liable for any damage done to the premises by the service animal."); N.J. STAT. ANN. § 10:5-29.2 ("A person with a disability who has a service or guide dog, or who obtains a service or guide dog, shall be entitled to full and equal access to all housing accommodations and shall not be required to pay extra compensation for such service or guide dog, but shall be liable for any damages done to the premises by such dog."); VA. CODE ANN. § 51.5-45(B) ("He shall not be required to pay extra compensation for such dog but shall be liable for any damage done to the premises by such dog.").

[119] *See* Dep't of Fair Employment and Housing v. Giosso, 2002 WL 471667, *6-7 (Cal.F.E.H.C. Jan. 10, 2002) (finding that landlord does not need to waive pet deposit for disabled tenant; distinguishing between a refundable deposit and a nonrefundable fee).

[120] *See* Intermountain Fair Hous. Council v. CVE Falls Park, L.L.C., 2:10-CV-00346-BLW, 2011 WL 2945824 (U.S. Dist. Ct., D. Idaho, July 20, 2011) (imposing an additional security deposit for a service animal made necessary by a tenant's handicap "constitutes a failure to provide the reasonable accommodation of waiving a general pet deposit or no-pet policy" required by 42 U.SC.§ 3604(f)(3)(b)).

Given these conflicting authorities, the drafting committee will want to tread carefully with respect to regulating pet deposits for service animals in the URLTA's security deposit provisions. While greater uniformity is desirable in this area of the law, the issue implicates fair housing and civil rights laws that are beyond the scope of the URLTA.

CONCLUSION

Section 2.101 has established a solid foundation for security deposit legislation in a substantial number of states. The drafting committee should consider, however, whether modifications are needed to bring the section up to date. More specifically, the committee should consider the following issues:

1. Whether Section 2.101 needs to be modified to clarify that security deposits are a security interest (rather than a trust, pledge, or debt) to ensure conformity with UCC Article 9

2. Whether there is a need to update the maximum deposit amount to conform to 2011 (and future) dollar values

3. Whether to clarify the landlord's obligations for holding deposits
   a. Where deposits may be held (type of account, type of institution)
   b. Whether landlord can commingle with landlord's other accounts
   c. Whether the accounts must be interest-bearing
   d. Whether the landlord may use the funds while in landlord's possession
   e. Whether the landlord must provide a receipt or notify tenants of location of the account
   f. Whether these duties may be waived

4. Whether Section 2.101 should include a default/mandatory rule to specify which party is entitled to interest earned on security deposits
   a. If landlord is to pay interest to tenant, how is interest calculated? (by the actual interest earned; by a set formula or set percentage?)
   b.Whether this provision may be waived by the parties

5. Whether to adjust the procedures for landlords to follow in returning the deposit
   a. How long should landlord have to return the deposit?
   b. When does the time period begin to run?
   c. What charges can be assesses against the deposit?
   d. What itemization must landlord make when retaining part of the deposit?
   e. What process should landlord follow if tenant has not provided forwarding address?

6. Whether Section 2.101's penalty for noncompliance should be adjusted

7. Whether Section 2.101 should be amended to clarify the obligations of a successor to the original landlord

8. Whether Section 2.101 should be amended to expressly include/exclude pet deposits (and, if excluded, whether separate rules should be developed regarding the handling of those deposits)

9. Whether any of the foregoing obligations should be adjusted to draw distinctions between different types of leases (furnished or unfurnished; short- or long-term tenancies) or the number of units that a landlord rents