

D R A F T
FOR DISCUSSION ONLY

REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For April 19-20, 2013 Drafting Committee Meeting

Without Prefatory Note and with Comments

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ON UNIFORM STATE LAWS

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April 2, 2013

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REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

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

2
3 **ARTICLE 1**

4 **GENERAL PROVISIONS**

5 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Revised Uniform
6 Residential Landlord and Tenant Act (201_).

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

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

10 (2) “Actual damages” means compensation for direct, consequential, or incidental
11 injuries or losses.

12 (3) “Action” means an action in law or equity for damages, possession, ejectment, or
13 quiet title, or any other proceeding in which rights are determined.

14 (4) “Assignment” or “assigns” means the transfer of the remaining balance of the term of
15 a lease to an assignee by the assignor.

16 (5) “Assignee” means, except for the purpose of paragraph (24), the person to which an
17 assignor has assigned the lease.

18 (6) “Assignor” means a person that assigns a lease to an assignee.

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

22 (8) “Bank” means an organization that is engaged in the business of banking. The term
23 includes savings banks, savings and loan associations, credit unions, and trust companies.

24 (9) “Bank account” means a checking, demand, time, savings, passbook, or similar
25 account maintained at a bank.

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

4 (11) “Contact person” means a person designated by a tenant under Section 1003(a).

5 (12) “Diminution in value of the dwelling unit” means a reduction from the rent provided
6 in a lease in an amount that reflects the extent to which a noncompliant condition of the premises
7 impairs the tenant’s use and enjoyment of the dwelling unit.

8 (13) “Domestic violence” means domestic violence as defined by [insert reference to
9 definition in other state law].

10 (14) “Dormitory” means a building with private or semi-private rooms with bathroom
11 facilities in the rooms or in the common areas but excludes kitchen or dining facilities in the
12 rooms.

13 (15) “Dwelling unit” means a building or the part of a building that is used as a home,
14 residence, or sleeping place by an individual or by two or more individuals, regardless of their
15 relationship to each other, who maintain a common household.

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

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

22 (18) “Fees” means amounts payable by the tenant to the landlord for which the landlord
23 has no obligation to account or return to the tenant.

24 (19) “Funds” means money, checks, and bank-account credits.

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

(21) “Immediate family member” means any of the following who habitually resides in the dwelling unit with the tenant:

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

(B) an individual having an [intimate][romantic, dating, or sexual] relationship with the tenant; or

(C) a foster child, stepchild, or ward of the tenant or of another individual named in subparagraphs (A) or (B).

(22) “Landlord” means the owner of a dwelling unit or the building of which it is a part, a successor in interest to the landlord, a person described in Section 301(d), and a person who enters into a lease on behalf of an undisclosed owner. Except for the duties imposed on a landlord under Section 303, the term includes a sublessor.

(23) “Lease” means a contract between a landlord and tenant under which the landlord rents to the tenant a dwelling unit for a tenancy for a fixed term or for a periodic tenancy.

(24) “Lien creditor” with respect to a security deposit, means:

(A) a creditor that has acquired a lien on the security deposit by attachment, levy, or the like;

(B) an assignee for the benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition in bankruptcy; or

(D) a receiver in equity from the time of appointment.

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

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

6 (26) "Owner" means a person vested with:

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 (27) "Periodic rent" means the amount of rent payable each month under a tenancy for a
11 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 (28) "Periodic tenancy" means a tenancy created under a lease or arising by operation of
15 law for a period of either month to month or week to week.

16 (29) "Perpetrator" means an individual who:

17 (A) is inflicting or has inflicted domestic violence on a tenant or an
18 immediate family member;

19 (B) has sexually assaulted a tenant or an immediate family member; or

20 (C) is stalking or has stalked a tenant or an immediate family member.

21 (30) "Person" means an individual, estate, business or nonprofit entity, public
22 corporation, government or governmental subdivision, agency, or instrumentality, or other legal
23 entity.

24 (31) "Premises" means a dwelling unit and the building of which the unit is a part,

1 including the facilities and appurtenances thereto, and the grounds, areas, and facilities held out
2 for the use of tenants generally or the use which is promised to the tenant.

3 (32) “Prepaid rent” means rent paid by the tenant before it is due under the lease.

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

6 (34) “Rent” means the payments 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 (35) “Security deposit” means funds provided to a landlord to secure payment or
9 performance of a tenant’s obligations under a lease or this [act]. The term includes damage
10 deposits, key deposits, and pet deposits. The term does not include prepaid rent and fees.

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

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

15 (38) “Sign” means, with present intent to authenticate or adopt a record:

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

17 (B) to attach to or logically associate with the record an electronic symbol, sound,
18 or process; or

19 (C) to send an electronic mail bearing the sender’s name or electronic mail
20 address.

21 (39) “Stalking” means: [stalking] as defined in [insert reference to definition in other
22 state law].

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

1 of the United States.

2 (41) “Sublease” or “sublet” means a transfer of less than the balance of the term of a
3 lease to a sublessee by a sublessor, or the creation of a cotenancy between the sublessor and
4 sublessee for any period during which both parties are entitled to possession of a dwelling unit or
5 a portion of the unit.

6 (42) “Sublessee” means a person to which a sublessor has subleased a dwelling unit.

7 (43) “Sublessor” means a person that subleases a dwelling unit to a sublessee.

8 (44) “Tenancy for a fixed term” means a tenancy under a lease for a fixed or computable
9 period of time, regardless of the length of the period.

10 (45) “Tenant” means a person entitled to possession of a dwelling unit under a lease. The
11 term includes an assignee, sublessee, and, if the tenant is not an individual, an individual the
12 tenant has authorized to occupy the dwelling unit. The term excludes a person who neither is a
13 party to the lease nor pays rent but occupies the dwelling unit with the permission of the tenant.

14 (46) “Tenant representative” means the personal representative of a deceased tenant’s
15 estate or, before the appointment of a personal representative, the contact person or, in the
16 absence of a contact person, any person known to the landlord who would be the tenant’s heir
17 under the intestate succession laws of this state.

18 (47) “Victim advocate” means an individual, whether paid or serving as a volunteer, who
19 provides services to victims of domestic violence, sexual assault, or stalking under the auspices
20 or supervision of a victim-services provider.

21 (48) “Victim-services provider” means a person that assists victims of domestic violence,
22 sexual assault, or stalking, including a rape crisis center, domestic violence shelter, faith-based
23 organization, or other organization with a documented history of work concerning domestic
24 violence, sexual assault, or stalking.

1 (49) “Willful” means a deliberate intent to perform a prohibited act under this [act] or a
2 lease, a deliberate intent to refrain from performing a required act under this [act] or a lease, or
3 an indifference to whether the act or failure to act violates a provision of this [act] or of a lease.

4 **Comment**

5
6 The definition of “abandonment” is broadly written to include any situation in which the
7 tenant relinquishes the right to possession with intent to terminate the lease before the end of the
8 term. Section 604(b) identifies specific circumstances in which the court may presume that the
9 tenant has abandoned the lease.

10
11 The definitions of rent, prepaid rent, and security deposit have been included or updated
12 from the 1972 act to reflect important distinctions in how these payments are handled under
13 Article 12.

14
15 The definition of “owner” would include a mortgagee in possession. It would not include
16 a mortgagee in a title theory state unless the mortgagee became entitled to possession.

17
18 The definition of “sublease” includes both the traditional definition of that term as well as
19 a transfer of the entire balance of the lease term where the sublessor is also entitled to possession
20 of the dwelling unit. For example, if landlord leases an apartment to a college student who in
21 turn relets to another college student for the duration of the original term and both students are
22 entitled to live in the dwelling unit, the re-letting is characterized as a sublease, not an
23 assignment, even though it is for the duration of the original term.

24
25 The definition of “tenant” recognizes that some leases are entered into by business
26 entities for their employees or by a trust on behalf of a beneficiary. For example, an LLC might
27 rent an apartment for a member or a manager. Both the LLC and the member or manager are
28 tenants, the latter because the member or manager has been authorized to occupy the dwelling
29 unit by the LLC, the former because it is legally entitled to possession under the lease.

30 31 **SECTION 103. SCOPE.**

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

34 (b) The following arrangements are not governed by this [act]:

35 (1) residence at an institution, public or private, if incidental to detention or the
36 provision of medical, mental health, geriatric, counseling, religious, disability, or similar service;

37 (2) residence in a dormitory owned or operated by an educational institution;

1 (3) occupancy under a contract of sale of a dwelling unit or the building of which
2 it is a part, if the occupant is the purchaser or an individual who succeeds to the purchaser's
3 interest;

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

6 (5) transient occupancy in a hotel or motel [or lodgings [subject to cite state
7 transient lodgings or room occupancy excise tax act]];

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

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

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

13 **Comment**

14
15 Subsection (b)(2) has been modified from the 1972 act, which excluded all University-
16 owned housing. Under this act, only traditional university dormitory housing is excluded from
17 the scope of this act. Rentals of university-owned apartments are now subject to the act.

18
19 This act applies to the lease of a mobile home but does not apply to a mere ground lease
20 of land upon which a mobile home is placed. Thus, if O owns a mobile home park and leases
21 space to T, that ground lease is not subject to this act. However, if T brings a mobile home onto
22 O's land and later leases the home to X, the T-X lease is subject to this act.

23 24 **SECTION 104. ADMINISTRATION OF REMEDIES; ENFORCEMENT; DUTY** 25 **TO MITIGATE.**

26 (a) Except as otherwise provided in this [act], the remedies provided by this [act] must be
27 so administered that an aggrieved party may recover appropriate damages.

28 (b) A right or obligation under this [act] is enforceable by an action unless the provision
29 creating it provides to the contrary.

(c) An aggrieved party has a duty to mitigate damages.

Comment

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

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

SECTION 106. UNCONSCIONABILITY.

(a) If a court, as a matter of law, finds a lease or any provision thereof was unconscionable when made, the court may refuse to enforce the lease, enforce the remainder of the lease without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(b) If a court, as a matter of law, finds that a settlement in which a party waives or agrees to forego a claim or right under this [act] or under a lease was unconscionable when made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(c) If a party or the court puts unconscionability of a lease or settlement into issue, the parties must be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease or settlement.

SECTION 107. KNOWLEDGE AND NOTICE.

(a) A person knows a fact if the person has actual knowledge of the fact.

(b) A person has notice of a fact if the person:

1 (1) knows of the fact;
2 (2) has received a notification of the fact; or
3 (3) has reason to know the fact exists from all of the facts known to the person at
4 the time in question.

5 (c) Except as otherwise provided in subsection (e), a person notifies, or gives, or sends
6 notice of a fact to another person by taking steps reasonably calculated to inform the other person
7 whether or not the other person learns of the fact.

8 (d) A person receives notification of a fact when
9 (1) the fact comes to the person's attention;
10 (2) in the case of a landlord, the notification is hand delivered by the tenant to the
11 landlord [or another person designated by the landlord] or sent in a record addressed to the post-
12 office or electronic mail address the landlord designates or, in the absence of a designation, is
13 delivered to the landlord by any other method reasonably calculated to provide notice to the
14 landlord; or

15 (3) in the case of a tenant, the notification is hand delivered by the landlord to the
16 tenant or sent in a record addressed to the post-office or electronic mail address the tenant
17 designates or, in the absence of a designation, is delivered to the tenant by any other method
18 reasonably calculated to provide notice to the tenant.

19 (e) Whenever, under this [act] notice in a record is to be sent by a landlord to a tenant or a
20 tenant to a landlord, the notice shall be sent to the landlord at the address specified in subsection
21 (d)(2) and to the tenant at the address designated in subsection (d)(3).

22 **SECTION 108. JURISDICTION AND VENUE.** The [designate appropriate court]
23 may exercise jurisdiction over a landlord or tenant with respect to conduct in this state governed
24 by this [act] or a claim arising from a transaction subject to this [act]. An action must be brought

1 in the [designate a court] in the county where the dwelling unit subject to the action is located.]

2 **Legislative Note:** This section is unnecessary in states that have addressed jurisdiction and venue
3 in their civil procedure code or other statutes.

4
5 **SECTION 109. COMMON LAW AND PRINCIPLES OF EQUITY.** Unless

6 displaced by this [act], the principles of law and equity supplement this [act]].

7 **Comment**

8 In light of this section, contract principles apply to the construction and interpretation of
9 leases, including provisions relating to mutuality or dependency of lease covenants. By
10 construing leases as contracts, for example, performance of promises the landlord and tenant
11 make to each other are dependent upon the other. Thus, the tenant's promise to pay rent is
12 conditioned upon (dependent upon) the landlord's provision of essential services and compliance
13 with Section 303. However, the landlord's obligation to maintain the dwelling unit as provided in
14 Section 303 is not conditioned upon the tenant's payment of rent.

15
16 **ARTICLE 2**

17 **GENERAL PROVISIONS APPLICABLE TO LEASE**

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

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

21 (b) Unless a lease otherwise provides:

22 (1) the tenant shall pay as rent for the use and occupancy of the dwelling unit an
23 amount comparable to the amount paid for other dwelling units of similar size and condition in
24 the same or a comparable location; and

25 (2) rent is:

26 (A) payable without demand or notice:

27 (i) at the address or place the landlord designates under Section
28 301(b)(3) or, if no designation is made, at the landlord's place of business at the time the lease
29 was made,

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

(B) uniformly apportioned from day to day.

(c) Except as otherwise provided in Section 202, unless the lease creates a tenancy for a fixed term, the tenancy is a periodic tenancy for week to week in the case of a tenant that pays rent weekly, and in all other cases, a periodic tenancy for month to month.

Comment

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

SECTION 202. EFFECT OF UNSIGNED, UNDELIVERED LEASE; IMPLIED LEASE.

(a) Subject to subsection (b):

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

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

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

(c) In the absence of a written lease signed by either the landlord or the tenant, if the tenant accepts possession and pays rent to the landlord without reservation of rights and the

landlord accepts rent from the tenant without reservation of rights, the tenancy created is a periodic tenancy for week to week in the case of a tenant that pays rent weekly and in all other cases a periodic tenancy for month to month.

SECTION 203. PROHIBITED PROVISIONS IN A LEASE.

(a) A lease may not provide that the tenant:

(1) waives or foregoes a right or remedy under this [act];

(2) authorizes a person to confess judgment on a claim arising out of the lease;

(3) will perform a duty imposed on the landlord by Section 303;

(4) agrees to pay the landlord's attorney's fees; or

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

(b) A provision in a lease prohibited by subsection (a) or by law of this state other than this [act] is unenforceable. If a landlord willfully uses a lease in violation of this section, the court, in addition to awarding the tenant actual damages, may award the tenant an amount up to [three] month's periodic rent, costs, and reasonable attorney's fees.

Comment

While subsection (a)(3) prohibits a lease from imposing the landlord's Section 303 duties on the tenant, Section 303(b) permits the landlord and tenant to agree that the tenant to perform one or more of the landlord's duties under Section 303 if that agreement is in *a contract separate from the lease*, the consideration for the contract is not tied to the tenant's rent, and the tenant's failure to perform under the contract does not discharge the landlord's duties under Section 303.

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

SECTION 204. SEPARATION OF RENT FROM THE DUTY TO MAINTAIN

PREMISES. Except as provided by law of this state other than this [act], a lease, assignment,

1 conveyance, trust deed, or security instrument may not permit the receipt of rent without the
2 obligation to comply with the landlord's duty to maintain the premises as provided in the lease or
3 Section 303.

4 **Comment**
5

6 The mere assignment of rent as security does not subject the assignee to the landlord's
7 obligations to maintain the premises. However, if the assignee actually receives the rent, then
8 that obligation would arise.

9 **ARTICLE 3**

10 **LANDLORD'S DUTIES**

11 **SECTION 301. REQUIRED DISCLOSURES.**

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

15 (1) all rules, regulations, and conditions of the landlord which govern the tenancy;

16 (2) any condition of the premises which would cause a landlord to be in breach of
17 a duty owed to a tenant under Section 303 and of which the landlord knows or, based on a
18 reasonable inspection, should have known; and

19 (3) whether the premises are in foreclosure or the landlord is in default on any
20 mortgage or other debt that could result in foreclosure.

21 (b) At or before the commencement of a tenancy, the landlord or any person authorized
22 to enter into a lease on the landlord's behalf must disclose to the tenant in a record:

23 (1) the name of:

24 (A) the landlord;

25 (B) any other person authorized to manage the premises; and

26 (C) an owner of the premises or a person authorized to act for the owner

1 for the purpose of service of process and receiving notices and demands;

2 (2) any post office address and electronic mail address of the landlord or any
3 other person designated by the landlord to which notices and demands should be sent; and

4 (3) the address or place to which the tenant must deliver rent.

5 (c) The landlord must keep current the information the tenant is required to be given by
6 subsection (b).

7 (d) A person who enters into a lease on the landlord's behalf and fails to comply with
8 subsections (b) or (c) becomes an agent of the landlord for:

9 (1) service of process and receiving and receipting for notices and demands; and

10 (2) performing the obligations of the landlord under this [act] and the lease.

11 **Comment**

12
13 Subsection (a) imposes upon the landlord a duty to inform the tenant of any conditions
14 that would make the premises uninhabitable or present an unreasonable risk of harm. These
15 conditions would include the standards for uninhabitability enumerated in Section 303 as well as
16 additional hazards.

17
18 The purpose of subsection (b) is to enable the tenant to proceed with the appropriate legal
19 proceeding, to know to whom complaints must be addressed and, failing satisfaction, against
20 whom the appropriate legal proceedings may be instituted.

21 **SECTION 302. DELIVERY OF POSSESSION OF DWELLING UNIT TO**

22 **TENANT.** At the commencement of the lease:

23 (1) the landlord must deliver actual possession of the dwelling unit to the tenant; and

24 (2) the landlord must comply with all duties imposed on the landlord by the lease and
25 Section 303.

26 **SECTION 303. LANDLORD'S DUTY TO MAINTAIN.**

27 (a) A landlord has the duty to make all repairs and to do or to refrain from doing
28 whatever is necessary to assure that the premises are maintained in a habitable condition. At
29

1 minimum, the duty to maintain requires the landlord to ensure that the premises:

2 (1) comply with applicable building, housing, and health codes;

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

5 (3) have plumbing facilities that conform to applicable law which are maintained
6 in good working order [and are connected to a sewage disposal system approved under
7 applicable law];

8 (4) have access to a water supply approved under applicable law that is capable of
9 producing hot and cold running water;

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

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

14 (7) are free of rodents, bedbugs, other vermin, mold, radon, asbestos, or other
15 hazardous substances;

16 (8) to the extent they include common areas and other areas under the landlord's
17 control, have such areas safe for normal and reasonably foreseeable uses and have such areas
18 clean, sanitary, and free from accumulation of debris, filth, rubbish, garbage, and the items listed
19 in paragraph (7);

20 (9) have an adequate number of appropriate receptacles for garbage and rubbish in
21 clean condition;

22 (10) have floors, walls, ceilings, stairways, and railings in good repair;

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

(12) have in good working order locks on all exterior doors of both the dwelling unit and the premises and locks or security devices on exterior windows of the dwelling unit and the premises in good repair; and

(13) have safety equipment required by applicable law.

(b) A landlord and tenant may agree, in a record signed by the landlord and tenant that is separate from the lease, that the tenant will perform one or more of the duties imposed on the landlord by subsection (a), subject to the following rules:

(1) Consideration for the agreement must be based on the value of the services provided by the tenant and not based on a reduction in the amount or percentage of the rent payable under the lease.

(2) The tenant's failure to adequately perform the duties does not:

(A) discharge the landlord from the performance of the duties;

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

(C) diminish or affect the obligations of the landlord under this [act] to the tenant or to other tenants in the premises.

(c) Nothing in this section abrogates, limits, or otherwise affects the obligation of a tenant to pay for any utility service in accordance with the lease.

Comment

Consistent with the practice of nearly every state, this section recognizes that modern urban conditions require the proper maintenance and operation of rental housing. This section imposes certain minimum duties of repair and maintenance upon landlords consistent with prevailing public standards. Section 401 imposes corresponding duties of cleanliness and proper use within the dwelling unit upon the tenant. These obligations may not be waived (see Section 203(a)), but subsection (b) permits the landlord and tenant to agree, by separate contract, that the tenant may perform repairs or maintenance provided that the consideration for the contract is not tied to the tenant's rent and the tenant's failure to perform under the contract does not discharge the landlord's duties under Section 303.

SECTION 304. LIMITATIONS ON LANDLORD'S LIABILITY.

1 (a) Unless the landlord and tenant otherwise agree, and except as otherwise provided in
2 subsection (b), a landlord that conveys in a good-faith sale to a bona fide purchaser the premises
3 that include a dwelling unit subject to a lease is relieved of liability under the lease and this [act]
4 as to events occurring after the later of the notice to the tenant of the conveyance or the
5 conveyance to the purchaser.

6 (b) Unless the landlord and tenant otherwise agree or as otherwise provided in Section
7 1205, the landlord remains liable to the tenant for security deposits and prepaid rent recoverable
8 by the tenant under Section 1204.

9 [(c) Unless the landlord and tenant otherwise agree, a manager of the premises is relieved
10 of liability under the lease and this [act] as to events occurring after the later of the notice to the
11 tenant of the termination of the manager's management authority or the termination of the
12 manager's management authority.]

13 **Comment**

14
15 The effect of Section 304(a), which appeared in the 1972 act, is to sever both privity of
16 contract and privity of estate between the assigning landlord and the tenant.

17 **SECTION 305. RULES AND REGULATIONS OF LANDLORD.**

18
19 (a) A landlord may adopt a rule or regulation, however described, concerning the
20 tenant's use and occupancy of the premises, but the rule or regulation is enforceable against the
21 tenant only if:

22 (1) its purpose is to promote the convenience, safety, or welfare of the tenants in
23 the premises, preserve the landlord's property from abusive use, or make a fair distribution of
24 services and facilities held out for the tenants generally;

25 (2) it is reasonably related to the purpose for which it is adopted;

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

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

(5) it is not for the purpose of evading the landlord's obligations under the lease or this [act]; and

(6) the tenant receives notice of it at the time the tenant enters into the lease or after it is adopted.

(b) After the tenant enters into the lease, if a rule or regulation is adopted that results in a substantial modification of the tenant's bargain, the rule is not enforceable against the tenant for the balance of the term of the lease unless the tenant consents to it in a record signed by the tenant.

ARTICLE 4

TENANT'S DUTIES

SECTION 401. TENANT'S DUTY TO MAINTAIN, USE, AND OCCUPY. A

tenant shall:

(1) comply with all obligations imposed on tenants by applicable building, housing, and health codes;

(2) except as otherwise provided in this [act], by law of this state other than this [act], or the lease, keep the dwelling unit as safe and sanitary as the conditions of the unit permit;

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

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

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

premises;

(6) in the absence of the landlord's consent, refrain and require other persons on the premises with the tenant's consent, other than the landlord or the landlord's agent, to refrain from an act that would destroy, deface, damage, impair, or remove any part of the premises;

(7) act and require other persons on the premises with the tenant's consent, other than the landlord or the landlord's agent, to act in a manner that will not disturb the use and enjoyment of the premises of another tenant of the dwelling unit or other dwelling units in the premises;

(8) notify the landlord within a reasonable time of any condition on the premises that requires repair or remediation by the landlord under Section 303; and

(9) return the dwelling unit to the landlord at the termination of the lease in the same condition as it was at the commencement of the tenancy, normal wear and tear and damage caused by casualties beyond the control of the tenant excepted, and

(10) unless the landlord and tenant otherwise agree, occupy the dwelling unit only as a dwelling unit.

Comment

Paragraphs (2) and (4) recognize that in some cases, noncompliant conditions are beyond the tenant's control.

Paragraph (10) leaves to judicial determination whether the incidental use of a dwelling unit for business, professional, or other purposes would constitute a use for other than a dwelling unit. See 1 A.L.R. 6th 135 (2005)(collecting and analyzing cases).

ARTICLE 5

TENANT REMEDIES

SECTION 501. NONCOMPLIANCE BY LANDLORD; IN GENERAL.

(a) Except as otherwise provided in subsection (b), if there is a noncompliance by the landlord with the lease or Section 303, the tenant must give the landlord notice [in a record

signed by the tenant] of the noncompliance and an opportunity to remedy the noncompliance within the following time periods:

(1) If the noncompliance by the landlord involves the failure to provide an essential service, the landlord must remedy the noncompliance not later than [5] days after the date of the notice.

(2) If the noncompliance with the lease or Section 303 does not involve the failure to provide an essential service, the landlord must remedy the noncompliance not later than [14] days after the date of the notice.

(b) If the noncompliance by the landlord poses an imminent threat to the health or safety of the tenant or other occupant of the dwelling unit, the tenant may remedy the noncompliance as promptly as the conditions require [and notify the landlord not later than [24] hours after taking any corrective action].

(c) If the landlord's noncompliance with the lease or Section 303(a) substantially interferes with the tenant's use and enjoyment of the premises and is not remedied during the time period in subsection (a), the tenant may:

(1) terminate the lease and recover actual damages, including damages based on the diminution in value of the dwelling unit as determined by the court without the use of expert testimony for the period before termination; or

(2) continue the lease and

(A) abate the rent for the period of the noncompliance subject to the terms of Section 505;

(B) recover actual damages, including damages based on the diminution in value of the dwelling unit as determined by the court without the use of expert testimony ;

(C) seek injunctive relief or specific performance;

(D) make repairs and deduct the cost from the rent as provided in Section 503; and

(E) secure essential services or comparable substitute housing during the period of noncompliance as provided in Section 504.

(d) If the landlord's noncompliance with the lease or Section 303(a) does not substantially interfere with the tenant's use and enjoyment of the premises, the tenant's remedies are limited to those provided in subsection (c)(2)(B), (C), and (D).

(e) A tenant may not seek remedies under this section to the extent:

(1) the 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).

(f) If a lease is terminated, the landlord shall return any security deposit and prepaid rent recoverable by the tenant under Section 1204.

(g) In addition to the remedies provided in subsections (c) and (d), if the landlord's noncompliance is willful, the court shall award the tenant costs and reasonable attorney's fees.

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 303 or under the lease. If there is a substantial noncompliance by the landlord with the lease or Section 303(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 substantial noncompliance in providing essential services. Not all services or obligations of the landlord described in Section 303(a) are "essential services." See Section 102(17).

1 This section also clarifies the measurement of damages when a tenant has occupied a
2 dwelling unit in a noncompliant condition. The 1972 Act permitted recovery of the “diminution
3 in the fair rental value” of the dwelling unit. That terminology is modified in this act to permit
4 recovery of damages based upon the “diminution in value of the dwelling unit,” which is defined
5 in Section 102(12) as “a reduction from the rent provided in a lease in an amount that reflects the
6 extent to which a noncompliant condition of the premises impairs the tenant’s use and enjoyment
7 of the dwelling unit.” The act further emphasizes that this calculation is to be determined by the
8 court without requiring expert testimony. In so doing the court may consider such factors as the
9 nature and duration of the defect, the proportion of the dwelling unit that is affected, the value of
10 services to which the tenant was deprived, the degree of discomfort imposed by the defect, and
11 the effectiveness of the landlord’s remediation efforts.

12
13 Remedies available to the tenant pursuant to Section 501 are not exclusive (see Section
14 109). Thus, to the extent permitted by state law, tort remedies also may be available.

15 A duty to mitigate damages exists under Section 104.

16
17 **SECTION 502. LANDLORD’S FAILURE TO DELIVER POSSESSION TO**
18 **TENANT.**

19 (a) Except as otherwise provided in subsection (d), if a landlord fails to deliver actual
20 possession of the dwelling unit to the tenant as provided in Section 302, rent abates until
21 possession is delivered and the tenant may:

22 (1) terminate the lease by sending [five] days’ notice in a record signed by the
23 tenant to the landlord; or

24 (2) demand performance of the lease by the landlord and, if the tenant elects,
25 recover actual damages and obtain possession of the dwelling unit from the landlord or any
26 person wrongfully in possession by any lawful means that could have been used by the landlord.

27 (b) If a tenant terminates the lease under subsection (a), the landlord shall return any
28 security deposit and prepaid rent recoverable under Section 1204 and fees.

29 (c) In addition to the rights provided to the tenant in subsection (a), if a landlord’s failure
30 to deliver possession to the tenant pursuant to Section 302 is willful and not in good faith, the
31 court shall award the tenant an amount equal to [three] months’ periodic rent or [triple] the actual

1 damages, whichever is greater, and costs and reasonable attorney's fees.

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

5 **Comment**

6
7 Under subsection (a)(2), a tenant may elect to file an action for possession directly
8 against a holdover tenant or other person in wrongful possession of the dwelling unit. This right
9 parallels, and would take priority over, the landlord's right to file an action for possession against
10 the holdover tenant under Section 302.

11 **SECTION 503. SELF-HELP FOR MINOR DEFECTS.**

12 (a) Except as otherwise provided in subsection (d), if a landlord fails to comply with the
13 lease or Section 303 and the reasonable cost of compliance is less than \$[500], the tenant may
14 notify the landlord of the tenant's intention to correct the condition at the landlord's expense.

15 (b) If a landlord fails to comply with the lease or Section 303 within the period provided
16 in Section 501(a), the tenant may take appropriate corrective steps. After submitting to the
17 landlord an itemized statement, including receipts for purchased items and services, the tenant
18 may deduct from the rent the actual and reasonable cost or the fair and reasonable value of the
19 work, not exceeding the amount specified in subsection (a), unless the tenant otherwise has been
20 reimbursed by the landlord.

21 (c) A repair by a tenant under subsection (b) must be made in a workmanlike manner and
22 in compliance with applicable law.

23 (d) A tenant may not repair under subsection (b) at the landlord's expense to the extent:

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

(2) the landlord was unable to remedy the condition because the tenant denied the landlord access to the dwelling unit or because of casualties beyond the landlord's control.

(e) A tenant's use of the remedy under this section is limited to \$[500] during any 12-month period.

Comment

Subsection (e) is intended to assure the landlord that over any given 12-month period the landlord's costs arising as the result of the tenant's election of this self-help remedy do not exceed \$500. The 12-month look back period begins to run 12 months immediately before the completion of the immediate repair for which the tenant has exercised the tenant's rights under this section. For example, suppose the tenant properly contracts for a plumber to make a repair that costs \$300. The repair is completed on November 10. The tenant is entitled to be reimbursed the entire \$300 if over the last 12 months beginning with November 10 of the preceding year the tenant never used this remedy. If over that period the tenant has previously used the remedy to the extent of \$400, the tenant would only be able to recoup \$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 the lease or Section 303, the landlord willfully or negligently fails to supply 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), 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 comparable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance and the court shall award to the tenant actual damages, costs, and reasonable attorney's fees.

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

(c) If the court orders the tenant to deposit funds in an escrow account outside the court pursuant to subsection (b), the bank or entity authorized by the court to hold the funds in escrow shall provide the [landlord and tenant] with monthly statements for the funds held in escrow.

(d) If a tenant fails to place the rent in escrow as ordered by the court under subsection (b), the court shall enter a judgment of possession in favor of the landlord.

(e) If rent has been paid into escrow under subsection (b) and the court determines:

(1) the landlord's noncompliance with the lease or Section 303 substantially interferes with the tenant's use and enjoyment of the premises, the court may order that:

(A) all or part of the rent held in escrow be released for the purpose of bringing the premises into compliance with the lease or Section 303;

(B) all or part of the rent held in escrow be refunded to the tenant for:

- (i) a repair made by the tenant in compliance with Section 503;
- (ii) damages based on the diminution in value of the dwelling unit as determined by the court without the use of expert testimony; or
- (iii) other actual damages;

(C) the tenant continue to pay rent into escrow as rent becomes due or abate future rent until the landlord brings the premises into compliance with the lease or Section 303; or

(D) any rent held in escrow not otherwise payable to the tenant and any other amount the court determines the tenant owes the landlord be paid to the landlord; or

(2) the landlord fully complied with the lease and Section 303, the court shall order the immediate release of any rent held in escrow to the landlord and direct the tenant to pay the landlord any remaining rent owed.

SECTION 506. FIRE OR CASUALTY DAMAGE.

(a) If a dwelling unit or premises are damaged or destroyed by fire or other casualty to the extent that enjoyment of the unit is substantially impaired or the premises require repairs that can be made only if the tenant vacates the unit:

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

(2) the landlord may send the tenant [30] days' notice in a record signed by the landlord of the landlord's intention to terminate the lease, in which case the lease terminates as of the expiration of the notice period; or

(3) if continued occupancy of the unit is lawful, the tenant may vacate any part of the unit rendered unusable by the fire or other casualty, in which case the tenant's liability for rent is reduced by the diminution in value of the unit as determined by the court without the use of expert testimony.

(b) If a lease is terminated, the landlord shall return any security deposit and prepaid rent recoverable under Section 1204. Accounting for rent in the event of termination or apportionment of the rent shall be made as of the date of the fire or other casualty.

SECTION 507. TENANT REMEDIES FOR UNLAWFUL REMOVAL, EXCLUSION, OR DIMINUTION OF ESSENTIAL SERVICES. If a landlord unlawfully removes or excludes the tenant from the premises or attempts to constructively evict the tenant by willfully interrupting or causing the interruption of an essential service to the tenant, the tenant may recover possession or terminate the lease and, in either case, the court shall award the tenant an amount equal to [three] months' periodic rent or [triple] the actual damages, whichever is greater, and costs, and reasonable attorney's fees. If the lease terminates, the landlord shall return any security deposit and prepaid rent recoverable under Section 1204.

SECTION 508. EARLY TERMINATION OF LEASE BY TENANT AS THE RESULT OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.

(a) If a tenant or an immediate family member becomes the victim of an act of domestic violence, sexual assault, or stalking, which creates a reasonable fear in the tenant or the immediate family member that the tenant or the immediate family member will suffer serious bodily harm or death by continued residence in the dwelling unit, the tenant is released from the lease on the date specified in the notice [described in paragraph (1)] if the tenant sends the landlord:

(1) notice in a record signed by the tenant not later than [90] days after the act of

1 domestic violence, sexual assault, or stalking and at least [14] days before the release date
2 specified in the notice specifying facts giving rise to the fear and of the tenant's intent to be
3 released from the lease; and

4 (2) one of the following documents:

5 (A) a copy of a valid outstanding temporary or permanent order of a court
6 of any state which restrains a perpetrator from contact with the tenant or an immediate family
7 member;

8 (B) a copy of the conviction of a perpetrator for an act of domestic
9 violence, sexual assault, or stalking against the tenant or an immediate family member; or

10 (C) a verification in a record signed by the tenant and an attesting third
11 party which complies with Section 509.

12 (b) If a tenant is the only tenant who is a party to the lease, a release under subsection (a)
13 terminates the lease on the date specified in the notice described in subsection (a)(1) and neither
14 the tenant nor an immediate family member is liable for rent accruing thereafter.

15 (c) Except as otherwise provided in Section 510(a)(2), if there are multiple tenants that
16 are parties to the lease, the release of one tenant under this section does not terminate the lease
17 with respect to other tenants. The tenant who is released from the lease is not liable for rent
18 accruing after the tenant is released from the lease. The landlord is not required to return to the
19 released tenant or the remaining tenant any security deposit or prepaid rent under Section 1204
20 until the lease terminates with respect to all tenants.

21 (d) If a tenant complies with this section, the landlord:

22 (1) except as otherwise provided in subsection (c), shall return the tenant's
23 security deposit and prepaid rent recoverable by the tenant under Section 1204 after the tenant
24 vacates the dwelling unit;

(2) may not assess a fee or other penalty against the tenant solely for exercising a right granted under this section; and

(3) may not disclose information required to be reported to the landlord under this section unless:

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

(B) the information is required to be disclosed by a court order or other law.

[(e) If a landlord willfully refuses to release a tenant who under this section is entitled to be released from the lease, the court shall award the tenant an amount equal to [three] months' periodic rent or [triple] actual damages, whichever is greater, and costs, and reasonable attorney's fees.]

SECTION 509. VERIFICATION.

(a) A verification provided by a tenant under Section 508(a)(2)(C) must include the following:

(1) to the best knowledge and belief of the tenant:

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

(B) the approximate dates during which the domestic violence, sexual assault, or stalking described in Section 508 occurred;

(C) the date of the most recent act of domestic violence, sexual assault, or stalking;

(D) a statement that because of the acts of domestic violence, sexual assault, or stalking, the tenant or an immediate family member has a reasonable fear that the tenant or the immediate family member will suffer serious bodily harm or death by continued

1 residence in the dwelling unit;

2 (E) the proposed date for the termination of the lease or the tenant's
3 release from the lease; and

4 (F) a statement that the tenant understands that the statements could be
5 used in court and that the tenant could be liable for perjury as well as the damages provided in
6 subsection (b) for making false statements in the verification; and

7 (2) to the best knowledge and belief of an attesting third party:

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

10 (B) the capacity in which the attesting third party received the information
11 regarding the domestic violence, sexual assault, or stalking;

12 (C) a statement that the attesting third party has read the tenant's
13 verification and has been advised by the tenant that the tenant or an immediate family member is
14 the victim of domestic violence, sexual assault, or stalking and has a reasonable fear of serious
15 bodily harm or death by continued residence in the dwelling unit;

16 (D) a statement that the attesting third party, based on the tenant's
17 verification, believes the tenant and understands that the verification may be used as the basis for
18 releasing the tenant from a lease or terminating the tenant's interest under the lease; and

19 (E) a statement that the attesting third party understands that the
20 verification could be used in court and that the attesting third party could be liable for perjury for
21 making a false statement in the verification.

22 (b) If a tenant willfully submits a false verification to the landlord under subsection
23 508(a)(2)(C), the court may award the landlord an amount up to [three] months' periodic rent or
24 [triple] actual damages, whichever is greater, and costs, and reasonable attorney's fees.

1 **Comment**

2
3 The following is an example of a verification that would comply with this section.

4 **Verification**

5
6 I, _____[insert name of tenant], do hereby state that:

7 (a) I am a tenant of a dwelling unit located at

8 _____[insert address of dwelling unit];

9 (b) I or an immediate family member has been a victim of acts of [domestic violence,]
10 [sexual assault,] or [stalking] occurring to the best of my knowledge over a period

11 _____[insert time period over which acts of
12 domestic violence, sexual assault or stalking occurred] which acts have created a reasonable fear
13 that I or an immediate family member will suffer serious bodily harm by continued residence in
14 the dwelling unit;

15 (c) The most recent act of that violence occurred on _____ [insert
16 date]; and

17 (d) The time since the most recent act of [domestic violence,] [[sexual assault,] or
18 [stalking] is less than [90] days from _____, the date specified as the termination
19 date in the notice accompanying this statement.

20 I hereby declare that the above statement is true and accurate to the best of my knowledge
21 and belief and that I understand it could be used as evidence in court and I could be subject to a
22 penalty for perjury by making false statements in this verification. I also understand that if I
23 willfully submit a false verification to the landlord, the landlord may recover from me the greater
24 of three months' rent or three times the landlord's actual damages.

25 _____
26 [Tenant's signature]

27
28 I, _____, [insert name of attesting third party] do hereby state
29 that:

30 (a) I am a _____[insert whichever is applicable: law
31 enforcement official, a licensed health care professional, a victim's advocate, or a victim-
32 services provider];

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

34 (c) The individual who signed the preceding statement has informed me that the
35 individual or an immediate family member is a victim of [domestic violence,] [sexual assault,] or
36 [stalking] based upon the acts listed in the preceding statement which acts have created a
37 reasonable fear that the tenant or an immediate family member will suffer serious bodily harm by
38 continued residence in the dwelling unit described in the preceding statement; and

39 (d) I have read and reasonably believe the preceding statement recounting acts of
40 [domestic violence,] [sexual assault,] or [stalking,] and understand that the tenant who made the
41 statement may use this document as a basis for terminating the tenant's lease for the dwelling
42 unit described in the preceding statement.

43 I hereby declare that the above statement is true and accurate to the best of my knowledge
44 and belief and that I understand it could be used as evidence in court and I could be subject to a
45 penalty for perjury by making false statements in this verification.
46 _____

SECTION 510. EFFECT ON PERPETRATOR.

(a) A landlord may recover from the perpetrator actual damages resulting from the tenant's exercise of a right under Section 508 and, if the perpetrator is a party to the lease, may:

(1) except as otherwise provided in Section 512(b), allow the perpetrator to remain in possession of the dwelling unit and hold the perpetrator liable on the lease for future rent payable under the lease; or

(2) terminate the perpetrator's interest under the lease by sending the perpetrator notice in a record signed by the landlord at least [5] days before the termination date specified in the notice and bring an action for possession against the perpetrator if the perpetrator fails to vacate the dwelling unit on the specified termination date.

(b) The perpetrator is not entitled to damages or other relief against a landlord or tenant that complies in good faith with Section 508 or this section.

SECTION 511. CHANGE OF LOCKS AS RESULT OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.

(a) Subject to subsections (b) and (c), if a tenant or an immediate family member, other than a perpetrator, has been the victim of domestic violence, sexual assault, or stalking, and the tenant has a reasonable fear that the perpetrator or other person acting on the perpetrator's behalf may attempt to gain access to the dwelling unit, the tenant may ask the landlord to change the locks to the dwelling unit.

(b) Not later than [three] days after receiving a request under subsection (a), or sooner if commercially reasonable to do so, the landlord shall change the locks at the tenant's expense. If the landlord fails to act within the [three]-day period:

(1) the tenant may change the locks without the landlord's consent and the tenant

1 shall give a key to the new locks to the landlord and to any other tenant, other than the
2 perpetrator, that is a party to the lease; and

3 (2) if the locks are changed under paragraph (1), the landlord may change the
4 locks a second time [, at tenant's expense,] to ensure compatibility with the landlord's master
5 key or otherwise accommodate the landlord's reasonable commercial needs.

6 (c) If the perpetrator is also a tenant who is a party to the lease, the locks may not be
7 changed under subsection (b) unless there is a court order expressly requiring the perpetrator to
8 vacate the dwelling unit and a copy of the order has been furnished to the landlord.

9 (d) A perpetrator is not entitled to any damages or other relief against the landlord or the
10 tenant who in good faith complies with this section.

11 **Comment**

12
13 The tenant is not required to comply with Section 508(a)(2) to cause a change of the
14 locks to the dwelling unit.

15
16 When a perpetrator is a tenant under the lease, subsection (c) would permit a change of
17 locks only if a court has expressly ordered the perpetrator to vacate the residence. In the absence
18 of this explicit language, a standard [stay away] [order of protection] would be insufficient.

19 20 **SECTION 512. EFFECT OF COURT ORDER TO VACATE.**

21 (a) Upon issuance of a court order requiring a perpetrator to vacate the dwelling unit,
22 neither a landlord nor a tenant has a duty to:

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

25 (2) provide the perpetrator with keys to the unit.

26 (b) If a perpetrator is a party to the lease, then upon issuance of a court order requiring
27 the perpetrator to vacate the dwelling unit, the perpetrator's interest in the tenancy terminates and
28 the landlord and any remaining tenants are entitled to any actual damages as a result of the

1 termination.

2 (c) The termination of the perpetrator's interest under a lease does not affect the
3 obligations of any remaining tenant under the lease.

4 (d) A landlord shall return any security deposit and prepaid rent recoverable under
5 Section 1204 following the termination of the lease as to all tenants, including a perpetrator.

6 **Comment**

7
8 Because of subsection (c), the landlord cannot increase the tenant-victim's rent because
9 the perpetrator who might also have been a tenant on the lease has been ordered to vacate the
10 dwelling unit. For example, suppose V and P are co-tenants on a lease providing monthly rent in
11 the amount of \$500. V is the victim of domestic violence committed by P; P has been ordered to
12 vacate the apartment. V continues to be liable for the monthly rent of \$500, and the landlord
13 cannot increase that rent to take account of the fact that P is no longer a tenant.

14
15 If a perpetrator's interest under a lease is terminated, the landlord may not increase the
16 obligations of the remaining tenant under the lease even if the landlord believes that the
17 remaining tenant might lack the financial ability to comply with lease. Thus, if the perpetrator
18 and the spouse of the perpetrator sign a lease with monthly rent of \$1,000 for which they are
19 jointly and severally liable, the termination of the perpetrator's interest does not affect the
20 spouse's obligation to continue to pay rent of \$1,000. And, the landlord cannot increase that rent
21 or security deposit to take account of the fact the perpetrator is no longer a party to the lease.

22 **ARTICLE 6**

23 **LANDLORD REMEDIES**

24 **SECTION 601. NONCOMPLIANCE WITH LEASE BY TENANT; FAILURE TO** 25 **PAY RENT.**

26
27 (a) Except as otherwise provided in this [act], if there is a noncompliance with Section
28 401 by a tenant which substantially affects health or safety or a substantial noncompliance with
29 the lease, the landlord may send a notice in a record signed by the landlord to the tenant
30 specifying the act and omission constituting the noncompliance and that the lease will terminate
31 upon a specified date not less than [30] days after receipt of the notice if the noncompliance is
32 not remedied not later than [14] days after receipt of the notice. If the tenant does not adequately

1 remedy the noncompliance during the [14]-day remediation period, the landlord may terminate
2 the lease.

3 (b) Subject to subsection (c), if substantially the same act or omission that constituted a
4 prior noncompliance of which notice under subsection (a) was sent recurs not later than [6]
5 months after the notice, the landlord may send to the tenant a notice in a record signed by the
6 landlord specifying the substantially same act or omission constituting the noncompliance and
7 that the lease will terminate on a specified date not less than [14] days after receipt of the notice
8 without the opportunity for the tenant to remedy the noncompliance.

9 (c) If the act or omission constituting noncompliance was nonpayment of rent, the
10 landlord may not elect to terminate the lease under subsection (b) unless within any [four]-month
11 period the tenant has failed to pay rent in a timely manner on at least [two] occasions.

12 (d) Except as otherwise provided in this [act], a landlord may recover actual damages and
13 obtain injunctive relief or specific performance for a tenant's noncompliance with Section 401
14 which substantially affects health or safety or a substantial noncompliance with the lease. In
15 addition, if the tenant's substantial noncompliance is willful, the court shall award the landlord
16 costs and reasonable attorney's fees.

17 **Comment**

18 If subsection (b) applies, the tenant has no right to cure the noncompliance to avoid
19 termination of the lease.

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

22 Acceptance of rent with knowledge of a noncompliance by the tenant or acceptance of
23 performance by the landlord that varies from the terms of the lease constitutes a waiver of the
24 landlord's right to terminate the lease for that noncompliance, unless the landlord and tenant
25 otherwise agree after the noncompliance has occurred.

SECTION 603. DISTRESS FOR RENT; LANDLORD LIENS.

(a) Distraint for rent is abolished.

(b) A landlord may not enforce a lien or security interest on the tenant's personal property unless the lien or security interest attached before the effective date of this [act].

Comment

This section prohibits the landlord from seizing the tenant's personal property to satisfy the landlord's claims against the tenant or filing a lien against the tenant's personal property to secure the tenant's obligations under the lease.

SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION.

(a) In this section: “reasonable efforts” means steps a landlord would have taken in good faith to rent a dwelling unit if the unit had been vacated at the end of the term, such as showing the unit to prospective tenants or advertising the availability of the unit.

(b) A tenant is presumed to have abandoned a dwelling unit if:

(1) the tenant has delivered possession of the unit to the landlord by returning the keys or otherwise notifying the landlord that the unit has been vacated; or

(2) rent is unpaid for at least [five] days, and the tenant has:

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

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

(c) If a tenant abandons the dwelling unit before the end of the term, the landlord, in fulfilling the duty to mitigate, shall make reasonable efforts to rent the unit.

(d) A landlord's duty under subsection (c) shall not take priority over the landlord's right to first rent any of the landlord's other vacant dwelling units.

(e) If a landlord rents a dwelling unit abandoned by a tenant to another tenant for a term beginning before the expiration of the abandoning tenant's lease, the abandoning tenant's lease

1 terminates as of the date of the new tenancy and the landlord may recover actual damages from
2 the abandoning tenant.

3 (f) If a landlord fails to lease a dwelling unit abandoned by a tenant after making
4 reasonable efforts to rent the unit at the amount of rent payable by the tenant, the landlord may
5 recover actual damages from the tenant.

6 (g) If a landlord fails to use reasonable efforts to rent a dwelling unit abandoned by a
7 tenant at the amount of rent payable by the tenant, the lease is deemed to be terminated as of the
8 date of the abandonment and the landlord and tenant are liable to each other under the lease only
9 for breaches occurring before the date of the abandonment. The landlord shall return the tenant's
10 security deposit and prepaid rent recoverable under Section 1204.

11 (h) A landlord may accept a tenant's abandonment of a dwelling unit by sending the
12 tenant a notice in a record signed by the landlord stating the landlord's intent to accept the
13 abandonment. If the landlord accepts the abandonment, the lease terminates as of the date of the
14 abandonment, and the landlord and tenant are liable to each other under the lease only for
15 breaches occurring before the acceptance of the abandonment. The landlord shall return the
16 tenant's security deposit and prepaid rent recoverable under Section 1204.

17 (i) If a lease is wrongfully terminated by a tenant, the landlord has a claim for possession.
18 The landlord also has a claim for past due rent and, unless the landlord accepts abandonment or
19 fails to mitigate, a separate claim for actual damages for breach of the lease, costs, and
20 reasonable attorney fees.

21 **Comment**

22
23 Under subsection (a) the reasonable steps include showing or advertising the unit.
24 Showing assumes of course that there are prospective tenants interested in seeing the unit.
25 Advertising can be by a variety of means including sending emails to prospective tenants, hiring
26 a real estate agent to locate prospective tenants, posting for rent signs on the premises and
27 advertising the unit for rent in newspapers or other media.

1
2 In light of subsection (d) when at the time the landlord is fulfilling the duty to mitigate
3 the landlord has other vacant units to rent, the landlord can show the other units to prospective
4 tenants before showing the abandoned unit to prospective tenants.
5

6 Under subsection (e) if the landlord rents the dwelling unit for the balance of the term,
7 the lease with the tenant terminates. As a result, under this section, re-letting for the tenant's
8 account is not available.
9

10 If a tenant abandons the dwelling unit, the landlord may choose to accept the
11 abandonment; thus agreeing to a termination of the lease. If, at the time of the abandonment the
12 tenant is in arrears on rent, the landlord would still have a cause of action to recover the past due
13 rent. However, by accepting the abandonment the landlord would not have a cause of action for
14 actual damages resulting from the abandonment. If a tenant abandons the dwelling unit and the
15 abandonment is not accepted by the landlord, the landlord can still recover damages from the
16 tenant for anticipatory breach except as limited by subsection (f).
17

18 **SECTION 605. RECOVERY OF POSSESSION LIMITED; INTERRUPTION OF**
19 **ESSENTIAL SERVICE.** Except in the case of abandonment or as permitted by this [act], a
20 landlord may not recover or take possession of a dwelling unit by an action or self-help or
21 willfully interrupt or cause the interruption of an essential service to the tenant.
22

23 **ARTICLE 7**

24 **ACCESS**

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

26 (a) A tenant may not unreasonably withhold consent to the landlord to enter into the
27 dwelling unit to inspect it, make a necessary or agreed-to repair, alteration, or improvement,
28 supply a necessary or agreed-to service, or exhibit the dwelling unit to a prospective or actual
29 purchaser, mortgagee, tenant, worker, or contractor.

30 (b) In case of emergency, a landlord may enter the dwelling unit without the tenant's
31 consent. In all other cases, the landlord may enter the dwelling unit only at reasonable times with
32 the tenant's consent and shall provide advance notice to the tenant of the landlord's intent to
enter as follows:

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

(2) When there is an emergency, when maintenance or repairs are being made at the tenant's request, or when it is otherwise impracticable to [give][send][one] day's notice [in a record], the landlord shall give notice that is reasonable under the circumstances. If the landlord has entered when the tenant is not present and prior notice [in a record] has not been [given] [sent], the landlord shall [place a notice of the entry in a conspicuous place in the dwelling unit] [give the tenant notice not later than [24 hours] after entry] indicating the fact of entry, the date and time of entry, and the nature of the emergency.

(c) A landlord may not abuse the right to access the tenant's dwelling unit or use that right to harass the tenant.

(d) Except as otherwise provided in this section, a landlord has no other right of access unless:

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

(2) pursuant to a court order; or

(3) the tenant has abandoned the dwelling unit.

SECTION 702. LANDLORD AND TENANT REMEDIES FOR ABUSE OF ACCESS.

(a) If a tenant unreasonably refuses to allow the landlord lawful access to the dwelling unit, the court may compel the tenant to grant the landlord access or may terminate the lease. In either case, the court shall award the landlord actual damages, costs, and reasonable attorney's fees.

1 (b) If a landlord makes an unlawful entry or a lawful entry in an unreasonable manner or
2 makes repeated demands for entry otherwise lawful but which have the effect of harassing the
3 tenant, the court may award injunctive relief to prevent the recurrence of the conduct or may
4 terminate the lease. In either case the court shall award the tenant actual damages or an amount
5 equal to [one] month's rent, whichever is greater, costs, and reasonable attorney's fees.

6 **ARTICLE 8**

7 **TERMINATION OF PERIODIC TENANCY; DEATH** 8 **OF TENANT; HOLDOVER TENANCY.**

9 **SECTION 801. TERMINATION OF PERIODIC TENANCY; DEATH OF A** 10 **TENANT.**

11 (a) A periodic tenancy continues until either the landlord or tenant sends the other the
12 notice described in subsection (b).

13 (b) Unless as otherwise provided in this [act], a periodic tenancy may be terminated as
14 follows:

15 (1) Either the landlord or tenant may terminate a periodic tenancy for week to
16 week by sending the other at least [five] days' notice in a record signed by the party sending the
17 notice of the intent to terminate on the date specified in the notice.

18 (2) Either the landlord or the tenant may terminate a periodic tenancy for month
19 to month by sending the other at least [one] month's notice in a record signed by the party
20 sending the notice of the intent to terminate at the end of a monthly period.

21 (c) If a tenant who is the only party to a lease dies before the end of a tenancy for a fixed
22 term or a periodic tenancy:

23 (1) [unless the tenant's will otherwise provides] [notwithstanding a contrary
24 provision in the tenant's will], the tenant's surviving spouse [or domestic partner] who resides in

1 the dwelling unit may notify the landlord by a signed record delivered not later than [20] days
2 after the tenant's death of the spouse's intent to assume the lease in accordance with its terms; or

3 (2) except as otherwise provided in paragraph (A), either the landlord or a tenant
4 representative may terminate the lease by notifying the other in a signed record of the intent of
5 the person delivering the notice to terminate the tenancy in accordance with the following:

6 (A) In the case of a tenancy for a fixed term, the record must be delivered
7 at least [60] days before the date specified in the record for the termination of the tenancy; and

8 (B) In the case of a periodic tenancy, the record must be delivered in
9 accordance with time period specified in subsection (b).

10 **Comment**

11
12 Under subsection (b), a month-to-month tenancy can be terminated by giving one
13 month's notice. The termination date in the notice must coincide with the normal end of the
14 monthly period. Thus, if the tenancy begins on the first of the month, the termination date in the
15 notice must be on the last day of at least the next month or it could be on the last date of any
16 month at least one month after the notice is given. If the month-to-month tenancy begins on the
17 15th of the month, the one month's notice must have a termination date no earlier than the 14th of
18 the next month but could have a termination date on the 14th for subsequent months. Consistent
19 with common law, this [act] would not require the notice to include a reason for the termination.
20

21 **SECTION 802. HOLDOVER TENANCY.**

22 (a) Except as otherwise provided in subsections (b) and (c) and in Section 502(a)(2), if a
23 tenant remains in possession without the landlord's consent after the expiration of a tenancy for a
24 fixed term or the termination of the lease, the landlord may bring an action for possession. If the
25 tenant's holdover is willful and not in good faith, the court shall award the landlord an amount
26 [equal to] [three] month's periodic rent or [triple] the actual damages, whichever is greater, and
27 costs, and reasonable attorney's fees.

28 (b) Except as otherwise provided in subsection (c), if a tenant remains in possession with
29 the landlord's consent after the expiration of a tenancy for a fixed term or the termination of the

1 lease, a periodic tenancy for month to month arises under the same terms as the lease unless the
2 landlord and tenant otherwise agree.

3 (c) If the lease includes a provision providing specific consequences if the tenant remains
4 in possession after the expiration of a tenancy for a fixed term or termination of the lease, the
5 terms of the lease control and, to the extent the tenant's continued possession is consistent with
6 the lease, subsections (a) and (b) do not apply.

7 **ARTICLE 9**

8 **RETALIATORY CONDUCT**

9 **SECTION 901. RETALIATORY CONDUCT PROHIBITED.**

10 (a) Except as otherwise provided in subsection (c), a landlord may not retaliate against a
11 tenant by taking one of the actions described in subsection (b) because the tenant has:

12 (1) complained [in good faith] to a governmental agency responsible for the
13 enforcement of:

14 (A) a building, housing, or health code violation applicable to the
15 premises;

16 (B) laws or regulations prohibiting discrimination in rental housing; [or]

17 [(C) governmental housing, wage, price, or rent control];

18 (2) complained in good faith to the landlord of a violation under Section 303;

19 (3) organized or become a member of a tenant's union or similar organization;

20 [or]

21 [(4) exercised [in good faith] a legal right or remedy under the lease or this [act]];

22 or

23 [(5) pursued [in good faith] a legal action against the landlord or testified [in good
24 faith] against the landlord in court].

1 (b) A landlord may not [, within six months after the tenant's conduct in subsection (a),]
2 retaliate against the tenant by:

- 3 (1) increasing or threatening to increase the rent;
4 (2) decreasing services, increasing the tenant's obligations, or otherwise
5 substantially altering the terms of the lease;
6 (3) bringing or threatening to bring an action for possession;
7 (4) terminating or refusing to renew the lease; or
8 (5) engaging in or threatening to engage in conduct prohibited under [the criminal
9 code].

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

11 (1) the violation of which the tenant's complained in subsection (a)(1) or (2) was
12 primarily caused by the tenant, an immediate family member, or other person on the premises
13 with the tenant's consent, other than the landlord or the landlord's agent;

14 (2) the tenant's conduct under subsection (a) was made in an unreasonable
15 manner, at an unreasonable time, or was repeated in a manner having the effect of harassing the
16 landlord;

17 (3) the tenant is in default in the payment of rent at the time the notice of the
18 action for possession under subsection (b)(3) was sent;

19 (4) the tenant, an immediate family member, or other person on the premises with
20 the tenant's consent, other than the landlord or the landlord's agent, engaged in conduct that
21 presents a threat to the health or safety of another tenant of the dwelling unit or another dwelling
22 unit on the premises;

23 (5) the tenant, an immediate family member, or other person on the premises with
24 the tenant's consent, other than the landlord or the landlord's agent, used the premises or the unit

1 for an illegal purpose;

2 (6) the landlord is seeking to recover possession on the basis of a notice to
3 terminate the lease and the notice was given to the tenant before the tenant engaged in an activity
4 described in subsection (a);

5 (7) compliance with the applicable building, housing, or health code requires
6 alteration, remodeling, or demolition that effectively would deprive the tenant of use of the unit;
7 or

8 (8) the landlord seeks in good faith to recover possession of the unit for
9 immediate use as the primary residence of the landlord or the landlord's parent, spouse, child, or
10 sibling.

11 **Comment**

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

15 **SECTION 902. TENANT REMEDIES FOR RETALIATORY ACTION.**

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

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

20 (2) the court shall award the tenant an amount equal to [three] months' periodic
21 rent or [triple] the actual damages, whichever is greater, and costs, and reasonable attorney's
22 fees; and

23 (3) if the lease terminates, the landlord shall return any security deposit and
24 prepaid rent recoverable under Section 1204.

25 (b) A tenant's exercise of rights under this section does not release the landlord from

1 liability under Section 501.

2 **SECTION 903. PRESUMPTION OF RETALIATORY ACTION.**

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

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

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

13 **ARTICLE 10**

14 **DISPOSITION OF PERSONAL PROPERTY**

15 **SECTION 1001. TENANT'S RIGHT TO RETRIEVE PERSONAL PROPERTY.**

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

18 (1) when the tenant vacates the dwelling unit at the termination of the lease;

19 (2) when an order that entitles the landlord to possession has been executed; or

20 (3) when the tenant abandons the dwelling unit.

21 (b) If personal property remains on the premises after possession of a dwelling unit has
22 been relinquished to the landlord, the landlord shall send the tenant notice in a record signed by
23 the landlord of the tenant's rights to retrieve the personal property. The notice required under this
24 section must:

1 (1) also be posted at the dwelling unit and sent to any forwarding address the
2 tenant provided to the landlord;

3 (2) inform the tenant of the right to contact the landlord to claim the property
4 within the time period in subsection (c); and

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

7 (c) The tenant may contact the landlord to retrieve the personal property not later than
8 [eight] days after the landlord sent the notice to the tenant.

9 (d) If the tenant contacts the landlord within the time period in subsection (c), the
10 landlord shall permit the tenant to retrieve the personal property not later than [15] days after the
11 date of contact or within a longer time period to which the parties agree.

12 (e) The landlord shall store the personal property in the dwelling unit or other place of
13 safekeeping and shall exercise reasonable care in moving or storing the personal property. The
14 landlord may require the tenant to pay the reasonable storage costs before retrieving the personal
15 property.

16 (f) If a landlord violates this section, the court shall award the tenant actual damages,
17 costs, and reasonable attorney's fees.

18 (g) Unless a landlord and tenant otherwise agree, if the tenant fails to contact the landlord
19 as provided in subsection (c) or to retrieve personal property as provided in subsection (d):

20 (1) if the landlord reasonably estimates the value of the personal property to be no
21 more than \$[1,000], the landlord may dispose of the property in any manner the landlord
22 considers appropriate; or

23 (2) if the landlord reasonably estimates the value of the personal property to be
24 greater than \$[1,000], the landlord shall sell it in a commercially reasonable manner and treat the

1 net proceeds as a part of the tenant's security deposit.

2 (h) Nothing in this section prohibits the landlord from immediately disposing of
3 perishable food, hazardous materials, or other garbage, or turning over animals or livestock to an
4 animal control officer, humane society, or other individual or organization willing to care for
5 such animal or livestock.

6 **Comment**

7
8 When a tenant who is the sole occupant of the dwelling unit dies, the tenant's
9 representative may elect to terminate the lease pursuant to Section 801. If that election is made
10 and the dwelling unit is vacated, possession of the dwelling unit is relinquished to the landlord
11 pursuant to Section 1001(a).
12

13 **SECTION 1002. DISPOSITION OF PERSONAL PROPERTY ON TENANT'S** 14 **DEATH.**

15 (a) Except as otherwise provided in this section, if a tenant who is the sole occupant of a
16 dwelling unit dies during the term of the lease leaving personal property in the dwelling unit, the
17 tenant's rights and responsibilities under Section 1001 apply to a tenant representative.

18 (b) If a landlord is unable to identify or contact a tenant representative not later than [10]
19 days after the landlord learns of the tenant's death, the landlord shall inventory the personal
20 property in the dwelling unit and

21 (1) cause a notice to be published, at least once a week for two consecutive weeks
22 in a newspaper of general circulation [or other media authorized to publish legal notices] for the
23 city or county in which the dwelling unit is located, stating:

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

25 (B) the date of the tenant's death;

26 (C) that the dwelling unit contained personal property that is subject to
27 disposal by the landlord if unclaimed by a [tenant representative] [personal representative,

1 contact person, or heir of the tenant] not later than [60] days after the last date of publication of
2 the notice; and

3 (D) the landlord's name and a telephone number, post office mailing
4 address, or electronic mail address at which the landlord may be contacted to claim the personal
5 property; and

6 (2) mail a copy of the notice with the inventory to the tenant at the tenant's last
7 known address.

8 (c) Not earlier than [15] days after the last date of publication of the notice, a landlord
9 may remove the personal property from the dwelling unit and store it in another place for
10 safekeeping. The landlord shall exercise reasonable care in moving or storing the personal
11 property.

12 (d) If a tenant representative is identified not later than [30] days after the last date of
13 publication of the notice, the tenant representative may retrieve the tenant's personal property
14 from the landlord not later than [60] days after the last date of publication of the notice. Before
15 retrieving the property, the tenant representative must pay the landlord's reasonable costs of
16 moving or storing the property.

17 (e) If a tenant representative is not identified not less than [30] days after the last date of
18 publication of the notice, the landlord may dispose of the personal property in compliance with
19 Section 1001(g).

20 **Comment**

21 Subsection (a) permits a tenant's representative to exercise a deceased tenant's rights and
22 responsibilities regarding removal of the tenant's personal property from the premises. Sections
23 1001 and 1002 do not govern the ultimate disposition of the personal property removed from the
24 property by a tenant representative; those rights are determined under the state's law governing
25 decedents' estates. Thus, the tenant representative takes possession of the personal property
26 subject to those other laws.
27

1 The tenant representative typically will be the personal representative of the decedent's
2 estate, but if no personal representative has been appointed, tenant representative will be the
3 contact person under Section 1003 or, in the absence of a contact person, an heir of the tenant
4 under the state's intestate succession laws. See Section 102(46) In the latter case, the landlord
5 has no obligation to identify all of the tenant's heirs and may give possession to *any* individual
6 the landlord knows to be an heir of the tenant.

7
8 Subsections (b) through (e) provide a process through which the landlord may dispose of
9 the personal property if no tenant representative is identified.

10
11 **SECTION 1003. CONTACT PERSON.**

12 (a) At a landlord's request, the tenant must designate a contact person to act for the tenant
13 on the tenant's death. The name, address, and telephone number of the contact person shall be
14 disclosed in a record signed by the tenant and delivered to the landlord.

15 (b) A tenant, without a request from the landlord, may designate a contact person by a
16 signed record delivered to the landlord that complies with subsection (a).

17 (c) When a tenant who has designated a contact person is the sole tenant under a lease
18 and the landlord, on reasonable inquiry, has no knowledge that a personal representative has been
19 appointed for the deceased tenant's estate, the landlord:

20 (1) on learning of the tenant's death, shall notify the contact person of the tenant's
21 death;

22 (2) shall give the contact person access to the premises at a reasonable time [and
23 in the presence of the landlord] for the purpose of removing any personal property from the
24 dwelling unit and other personal property of the tenant elsewhere on the premises;

25 (3) may require the contact person or any person who removes personal property
26 from the premises to sign an inventory of the property being removed; and

27 (4) shall return the deceased tenant's security deposit and prepaid rent recoverable
28 under Section 1204 to the contact person.

29 (d) A person accepts appointment as a contact person by exercising authority pursuant to

1 this [act] or by any other assertion or conduct indicating acceptance.

2 (e) A contact person's authority to act under this [act] terminates on the appointment of a
3 personal representative for the deceased tenant's estate.

4 (f) A landlord that complies with this section in good faith is not liable to another person
5 that has a claim or interest in the personal property removed from the premises or the security
6 deposit or prepaid rent.

7 (g) A landlord that willfully violates subsection (c) is liable to the estate of the deceased
8 tenant for actual damages.

9 **Comment**

10 The purpose of this section is to authorize a contact person to remove the tenant's
11 personal property and receive the return of the security deposit and prepaid rent. Whether the
12 contact person is entitled to keep any of the tenant's personal property or security deposit will
13 depend on law other than this act.

14 **ARTICLE 11**

15 **ASSIGNMENTS AND SUBLEASES**

16 **SECTION 1101. TENANT'S RIGHT TO SUBLEASE OR ASSIGN.**

17 (a) In this section, "transferee" means a person a tenant has authorized to possess a
18 dwelling unit for any period of time up to and including the balance of the term without first
19 obtaining the landlord's consent otherwise required by subsection (b).

20 (b) Except as otherwise provided in a lease, a tenant may not assign or sublease a lease
21 without the landlord's consent in a record signed by the landlord. If the tenant violates this
22 subsection, the landlord may terminate the lease by sending a notice in a record signed by the
23 landlord to the tenant at least [10] days before the termination date specified in the notice and
24 after the lease has terminated file an action for possession.

25 (c) A landlord may refuse consent to an assignment or sublease only if the landlord
26 provides the tenant with a record signed by the landlord that:

(1) is delivered to the tenant within [10] business days of the tenant's request to assign or sublease the dwelling unit; and

(2) provides commercially reasonable objections to the assignment or sublease.

(d) For the purpose of subsection (c), commercially reasonable objections include the following:

(1) the insufficient credit standing or financial responsibility of the proposed assignee or sublessee;

(2) the need for alteration to the premises for the use of the assignee or sublessee;

(3) the number of persons to reside in the dwelling after the assignment or sublease;

(4) past abuses of other rented premises by the proposed assignee or sublessee, as stated in a record signed by a prior landlord of the proposed assignee or sublessee; and

(5) unwillingness of the assignee or sublessee to act in accordance with the lease and the landlord's rules and regulations.

(e) A landlord's refusal to consent to an assignment or sublease by the tenant is unreasonable if based solely on the following grounds:

(1) personal taste;

(2) convenience;

(3) reasons inconsistent with anti-discrimination principles under law other than this [act]; or

(4) the landlord's desire to charge a higher rent.

(f) Except as otherwise provided in the lease, a landlord's consent to an assignment or

1 sublease is not a consent or waiver of the landlord's rights with respect to any subsequent
2 transfers by the assignee, sublessor, or sublessee.

3 (g) If a landlord's consent to an assignment or sublease is required under the terms of a
4 lease or this [act], the landlord shall be deemed to have given consent if landlord:

5 (1) knows the tenant has authorized another person to possess a dwelling unit for
6 any period of time up to and including the balance of the term without the landlord's required
7 consent; and

8 (2) fails to cause the tenant's transferee to leave the dwelling unit not later than
9 [30] days after acquiring such knowledge.

10 **SECTION 1102. RIGHTS FOLLOWING ASSIGNMENT OR SUBLEASE.**

11 (a) A landlord's consent to an assignment or sublease, or an assignment or sublease
12 without the landlord's consent where the landlord's consent is not required by the terms of the
13 lease, releases the landlord and the assignor or sublessor from all liability to each other arising
14 under the lease or this [act] for all acts occurring:

15 (1) in the case of an assignment, after the assignment; and,

16 (2) in the case of a sublease in which the sublessor is not entitled to occupy the
17 dwelling unit, during the period of the sublease.

18 (b) A landlord and an assignee or sublessee are entitled to all rights of and subject to all
19 duties imposed on the landlord and tenant under the terms of the lease, other than any provisions
20 of the lease that are expressly or impliedly personal to the landlord or the tenant.

21 **Comment**

22 Under the common law an assignor or sublessor remains liable on the lease on the theory
23 in the case of an assignment that the landlord and assignor are in privity of contract and in the
24 case of a sublet are in privity of contract and privity of estate.
25

This section deviates from the common law and reflects a fundamental shift in the rights of landlords and tenants. The underlying premise of this section is that if the landlord consents to an assignment or sublet, the landlord implicitly concludes that the transferee is tenant-worthy. Therefore, it is not necessary to hold the assignor or sublessor liable on the lease. If the landlord is at all concerned about the tenant-worthiness of the transferee, the landlord can refuse to consent to the assignment or sublease.

ARTICLE 12

SECURITY DEPOSITS

SECTION 1201. NATURE AND AMOUNT OF SECURITY DEPOSIT.

(a) Except as otherwise provided in subsection (b), a landlord may not collect a security deposit in an amount [or value] which, together with any fees payable at the commencement of the lease, exceeds [1.5] month[s] of periodic rent. For purposes of this subsection fees exclude amounts paid to a prospective landlord to qualify for a lease, such as application fees.

(b) If a lease is for a furnished dwelling unit or the tenant keeps or maintains pets or makes alterations to the unit as permitted by the lease, the landlord may collect an additional security deposit in an amount commensurate with the additional risk of damage.

(c) A landlord's interest in a tenant's security deposit and prepaid rent is limited to a security interest. The security interest continues in the identifiable proceeds of the security deposit or prepaid rent.

(d) Notwithstanding other law, a landlord's security interest in a security deposit or prepaid rent is effective against and takes priority over all creditors of the tenant.

(e) Except as provided by law other than this [act], creditors of the landlord can acquire no greater interest in a security deposit or prepaid rent than the interest of the landlord.

Comment

Consistent with the 1972 act, subsection (a) limits what a landlord may demand of a tenant at the commencement of the lease as a security deposit but places no limit on prepaid rent. Unlike the 1972 act, however, this act includes fees within subsection (a) to discourage landlords from circumventing the limit on security deposits by charging fees instead.

1
2 This act differs from the 1972 act in its treatment of prepaid rent. The act treats both
3 security deposits and prepaid rent as the property of the tenant in which the landlord has a
4 security interest and provides protection of the funds from both the landlord and tenant's
5 creditors. This treatment is consistent with the modern trend of recognizing that the purpose of a
6 security deposit is to ensure the tenant's compliance with the tenant's obligations under the lease;
7 thus, the landlord is not entitled to the deposit unless the tenant fails to comply with one or more
8 of those obligations.
9

10 Prepaid rent is treated as property of the tenant for a similar reason. The act defines
11 prepaid rent as rent paid in advance of the date on which it is due under the terms of the lease.
12 See Section 102(32). Thus, prepaid rent reflects funds that the landlord has accepted on the
13 tenant's behalf before the tenant is actually obligated to make the payment under the terms of the
14 lease. Like the 1972 act, this act provides a number of situations in which the landlord is required
15 to return prepaid rent (as well as a security deposit) on termination of the lease. Imposing the
16 same safekeeping requirements on both types of payments ensures that the funds are available
17 for return in those situations.

18 Whether a payment constitutes prepaid rent depends on the terms of the lease. For
19 example, if a one-year lease provides for payment of \$500 in rent every month on the first of the
20 month, a \$3,000 payment at the beginning of the lease would be prepaid rent for six months of
21 the lease. Conversely, if the lease provides that the full amount of the rent is due and payable at
22 the commencement of the lease, payment of that amount would not be prepaid rent. The funds in
23 this latter situation would belong entirely to the landlord on payment and would not be subject to
24 the safekeeping requirements of Section 1203.

25 Subsection (d) intends to clarify the priority of the landlord's interest in security deposits
26 and prepaid rent as a security interest if the tenant files for bankruptcy. *See In re Verus Inv.*
27 *Mgmt., LLC*, 344 B.R. 536, 546 (Bankr. N.D. Ohio 2006) (landlord's assignee was a secured,
28 rather than unsecured, creditor with respect to a perfected security interest in a certificate of
29 deposit that served as a security deposit under a commercial lease); *cf. In re Coomer*, 375 B.R.
30 800, 804-06 (Bankr. N.D. Ohio 2007) (applying § 541 of the Bankruptcy Code to conclude that
31 bankruptcy trustee was not entitled to a security deposit that landlord was holding to secure the
32 debtor-tenant's obligations under a residential lease). Designating security deposits and prepaid
33 rent as a security interest should similarly protect the tenant's interests in the event of the
34 landlord's bankruptcy. *See In re Frempong*, 460 B.R. 189, 195 (Bankr. N.D. Ill. 2011) (stating
35 that under Chicago municipal ordinance, tenant security deposits "are held 'in trust' by the
36 landlord and thus are not part of the Bankruptcy Estate of any landlord in a Bankruptcy filing");
37 *cf. 6 West's Fed. Admin. Prac. § 7032* (3d ed.) (the bankruptcy estate acquires any security
38 interest held by the debtor and the right to enforce that security interest, but not the property
39 subject to that security interest).
40

41 In light of subsection (e), whether a transferee of funds from a bank account maintained
42 for the purpose of holding security deposits and prepaid rents takes the funds free from the
43 tenant's interest is governed by other law.
44

45 **SECTION 1202. TENANT PROHIBITED FROM USING SECURITY DEPOSIT**

1 **AS RENT.** Unless the landlord and tenant otherwise agree in a signed record, the tenant may
2 not withhold any portion of any month's rent on the grounds that the security deposit is security
3 for unpaid rent. If a tenant willfully violates this section, the court shall award the landlord the
4 unpaid rent to which the landlord is entitled and an additional amount equal to [twice] the
5 periodic rent, and costs and reasonable attorney's fees.

6 **Comment**
7

8 Section 1202 is a new provision to address the common misconception of tenants that the
9 security deposit may be used in lieu of paying rent, particularly the last month's rent. The
10 primary purpose of a security deposit is to provide the landlord with funds to reimburse the
11 landlord for the costs incurred in remedying any damages to the dwelling unit by the tenant. If
12 the tenant could withhold rent only to have it charged against the security deposit, the landlord
13 would have no funds to pay for any damages. A tenant that wrongfully withholds last month's
14 rent is subject to the penalty imposed by this section.
15

16 **SECTION 1203. SAFEKEEPING AND USE OF SECURITY DEPOSITS.**

17 (a) With respect to funds received by a landlord as security deposits and prepaid rent, the
18 landlord:

19 (1) must maintain the identifiability of the funds by:

20 (A) holding the funds in a bank account in this state that is used
21 exclusively for security deposits and prepaid rent, and

22 (B) maintaining records that indicate at all times the amount of the funds
23 attributable to each tenant whose funds are being held in the account;

24 (2) must, in a signed record, notify the bank that maintains the bank account in
25 which the funds are held that the account is a special account for the purpose of holding security
26 deposits and prepaid rent;

27 (3) may commingle the funds received from other tenants in the same bank
28 account but may not commingle other funds, including the landlord's personal or business funds,
29 in the same bank account;

1 (4) except as provided in paragraph (5) may, on termination of the lease, apply
2 funds from the bank account only to the payment of any actual damages the landlord has suffered
3 by reason of the tenant's noncompliance with the lease or with this [act]; and

4 (5) may, to the extent the funds in the account include prepaid rent, apply funds
5 from the account to the payment of rent as it becomes due.

6 (b) Commingling permitted by this [act] does not destroy a tenant's property rights in a
7 security deposit or prepaid rent. The effect of commingling not permitted by this [act] is
8 governed by other law.

9 (c) A tenant's right to the return of all or part of a security deposit held in a bank account
10 has priority over any right of set-off the bank with which the account is maintained may have for
11 obligations owed to the bank by the landlord other than charges normally associated with the
12 bank's maintenance of the account.

13 (d) [Unless the lease provides otherwise, a landlord need not deposit security deposits and
14 prepaid rent into an interest-bearing account or have interest thereon paid to the tenant.]

15 (e) If the landlord willfully fails to comply with subsection (a), the court shall award the
16 tenant actual damages or one month's periodic rent, whichever is greater, and costs and
17 reasonable attorney's fees. This subsection does not preclude the landlord or tenant from
18 recovering other damages to which the landlord may be entitled under this [act].

19 **Comment**

20
21 Section 1203 introduces a new requirement that landlords segregate both security
22 deposits and prepaid rent from the landlord's other funds. Imposing the safekeeping
23 requirements on both types of payments ensures that the funds are available for return as
24 required under various provisions in the act.

25
26 Typically, security deposits are applied by a landlord to unpaid rent, unpaid utility
27 charges, late fees, repair work, or cleaning contracted for by the tenant but not paid, costs of
28 repossession, costs for storage or disposal of unclaimed property, and costs of restoring the
29 dwelling unit to its condition at the commencement of the lease, normal wear and tear excepted.

1 The provision allowing a landlord to apply a security deposit to actual damages would allow the
2 landlord to apply the deposit against unpaid rent. The fact that this could be done is not intended
3 to implicitly approve the withholding of rent by a tenant in anticipation of the landlord's
4 application of the security deposit to unpaid rent. In fact, Section 1202 expressly penalizes a
5 tenant for that behavior, when willful. Rather, Section 1203(a)(4) simply recognizes that,
6 notwithstanding the Section 1202 penalty, some tenants may willfully withhold rent and, thus,
7 landlords should be allowed to apply the security deposit towards the unpaid rent.

8
9 The effect of commingling not permitted by this [act], as, for example, when the landlord
10 commingles the landlord's personal funds with the security deposit, is governed by law other
11 than this act.

12 13 **SECTION 1204. RETURN OF SECURITY DEPOSITS OR PREPAID RENT.**

14 (a) Upon termination of a lease, a tenant is entitled, to the extent and in the manner
15 provided in this section, to the return of an amount by which:

16 (1) prepaid rent exceeds the amount of rent remaining due under the lease; and

17 (2) the security deposit exceeds any amount the tenant owes the landlord for
18 noncompliance with terms of the lease or this [act].

19 (b) Not later than [30] days after the termination of the lease and subject to subsection
20 (c), the landlord shall:

21 (1) return to the tenant the amount of the security deposit and prepaid rent the
22 landlord in good faith reasonably believes is due the tenant; and

23 (2) if less than the entire amount of the tenant's security deposit or prepaid rent is
24 returned to the tenant, provide the tenant with a signed record specifying the items to which the
25 security deposit or prepaid rent is being applied and the amount of the security deposit or prepaid
26 rent being applied for each item.

27 (c) The landlord shall send the amount of the security deposit and prepaid rent to be
28 returned to the tenant under subsection (b)(1) and any record required by subsection (b)(2),
29 postage paid, to an address provided by the tenant to the landlord on termination of the lease, or,
30 in the absence of that address, to the address specified in Section 107(d)(3).

1 (d) The penalties for noncompliance with this section are as follows:

2 (1) If a landlord fails to comply with the provisions of subsection (b) and (c), the
3 court shall award the tenant the amount of the security deposit and prepaid rent to which the
4 tenant is entitled and an additional amount equal to [two] times the amount of security deposit
5 and prepaid rent to which the tenant is entitled or \$[250], whichever is greater, and costs and
6 reasonable attorney's fees.

7 (2) If a landlord retains an amount in excess of the landlord's good faith
8 calculation of the amount to which the landlord is entitled, the court shall award the tenant the
9 amount of the security deposit and prepaid rent to which the tenant is entitled and an additional
10 amount equal to [two] times the amount of the security deposit and prepaid rent to which the
11 tenant is entitled or \$[250], whichever is greater, and costs and reasonable attorney's fees.

12 (e) If the amount returned to the tenant and any record is misdelivered or is undeliverable,
13 the landlord remains liable for any security deposit and prepaid rent to which the tenant is
14 entitled but is not liable for the penalties under subsection (d).

15 (f) Notwithstanding other law of this state, any security deposit or prepaid rent unclaimed
16 by the tenant and the amount of any check that remains outstanding more than [180] days after
17 the security deposit or prepaid rent and any record are sent to the tenant pursuant to subsection
18 (c) are [forfeited by the tenant][treated as unclaimed property under other law of this state].
19 Nothing in this subsection precludes a tenant from recovering from the landlord a penalty for
20 noncompliance as provided in subsection (d).

21 **Comment**

22
23 Section 1204 provides new procedural requirements for withholding or returning security
24 deposits and prepaid rent. These rules are triggered automatically by the termination of the lease,
25 rather than requiring the tenant to make a demand for the payment as was required under the
26 1972 act.
27

1 The time frame set forth in subsection (f) may supersede the time limits for other forms
2 of unclaimed property provided in other law of the state.
3

4 **SECTION 1205. RIGHTS AND OBLIGATIONS OF LANDLORD'S**
5 **SUCCESSOR.**

6 (a) Not later than [30] days after the termination of the landlord's interest in the premises,
7 whether by sale, assignment, death, appointment of receiver, or otherwise, the landlord or the
8 personal representative of the landlord's estate shall do one of the following acts, either of which
9 relieves the landlord or the landlord's estate from further liability with respect to the security
10 deposits and prepaid rent held by the landlord:

11 (1) transfer the security deposit and prepaid rent being held by the landlord to the
12 person succeeding to the landlord's interest in the premises and notify each tenant of the amount
13 transferred to the successor, of any claims made against the security deposits or prepaid rent
14 before the transfer, and of the successor's name and address; or

15 (2) return the security deposits and prepaid rent to the tenant pursuant to the terms
16 of Section 1204.

17 (b) On receipt of any portion of the security deposits and prepaid rent under subsection
18 (a), the landlord's successor has all of the rights and obligations of a landlord under this [article]
19 for those funds.

20 **Comment**

21
22 Section 1205 is a new section that provides for disposition of security deposits and
23 prepaid rent after a transfer of the landlord's interest in the premises.
24

25 **ARTICLE 13**

26 **MISCELLANEOUS PROVISIONS**

27 **SECTION 1301. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
28 applying and construing this uniform act, consideration must be given to the need to promote

1 uniformity of the law with respect to its subject matter among states that enact it.

2 **SECTION 1302. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
3 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
4 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,
5 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
6 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
7 U.S.C. Section 7003(b).

8 **SECTION 1303. REPEALS.** The following are repealed:

9 **SECTION 1304. EFFECTIVE DATE.** This [act] takes effect