

## RESEARCH MEMORANDUM

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

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

**Date:** February 12, 2012

**Re:** Early Lease Termination for Domestic Violence and Other Reasons

This memorandum provides information concerning various state statutes that allow a landlord or tenant to terminate a lease before its term expires. The first part focuses on statutes that allow a tenant who is the victim of domestic violence or sexual assault to terminate a lease early. (The majority of this section was included in the JEBUPRA's original memo to Scope and Program, but relevant parts have been updated.) The second part discusses statutes that allow tenants to terminate leases early due to their military service. The third and final part gives an overview of statutes that allow termination by landlords or tenants for other reasons.

### I. EARLY TERMINATION FOR DOMESTIC VIOLENCE OR SEXUAL ASSAULT

**A. Background.** The United States continues to experience a substantial problem with domestic/household violence. According to the National Coalition Against Domestic Violence, approximately 1.3 million women each year are victims of family/household violence, and 1 in 4 women will experience domestic violence in their lifetimes.<sup>1</sup> Most of the violent incidents — including assaults, rapes, and sexual assaults — occurred at or near the victim's home or apartment.<sup>2</sup> Typically, we place a high value on the safety and security of our homes, yet the available statistics show that victims of family or domestic violence cannot always rely on their home as a safe haven.

Experts in the area of domestic violence suggest that perhaps the most important factor in enabling a victim of domestic violence to escape further violence is the ability of the victim to obtain physical separation from the offender. Where the victim is a party to an unexpired lease agreement, however, background principles of landlord-tenant law create a serious practical obstacle to the ability of a victim to get such separation. Under traditional landlord-tenant law, the tenant cannot escape liability for rent by vacating the premises:

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<sup>1</sup>National Coalition Against Domestic Violence, Domestic Violence Facts, available online at the URL [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf).

<sup>2</sup>Over 75% of non-fatal violent crimes committed against spouses and over 65% of crimes against the offender's child or children occurred at or near the victim's home or apartment. U.S. Department of Justice, Bureau of Justice Statistics, Family Violence Statistics (June 2005), Table 2.2.

- If the tenant is the only signatory to the lease, the tenant's conduct in vacating the premises would constitute an abandonment of the lease.<sup>3</sup> In some states, the landlord has no duty to accept the tenant's abandonment, and can instead allow the premises to remain vacant, allow rent to continue to accrue, and hold the tenant liable for the rent as it accrues.<sup>4</sup> In other states, courts have required the landlord to take reasonable steps to re-let the premises (thereby mitigating the harm caused by the tenant's abandonment).<sup>5</sup> However, even in states that adopt this approach, the tenant may remain liable for rent and/or damages if the landlord is not able to find a suitable replacement tenant or if the landlord can only find a replacement on less favorable terms.
- If the tenant is not the only signatory to the lease, and other signatories remain in possession, the vacating tenant could continue to remain jointly and severally liable for the accrued rent (unless the landlord agrees to release the vacating tenant).

Thus, while a victim of domestic violence may reasonably believe that vacating the premises will enhance her physical well-being, the victim may be dissuaded from vacating due to her continued liability for unaccrued rent (or the landlord's imposition of substantial early termination penalties). This is especially harmful for those victims who have little or no financial support.<sup>6</sup> As a result, domestic violence victims may feel economically compelled to choose to stay with their abuser or in their current living situation, rather than face the economic hardship of leaving. As one commentator has noted, this economic compulsion may justify legislative intervention in the form of a statutory lease termination right for domestic violence victims:

Once victims make the difficult decision to leave their abusers, those who occupy rental housing face the challenge of avoiding fees related to early lease termination. In the absence of laws that exempt domestic violence victims from standard lease-termination procedures, negotiation with landlords serves as victims' only recourse. Some tenants, often with the help of attorneys and advocates, succeed in negotiating an early end to their lease. Because this method depends upon a landlord's discretion, victims lack the guaranteed escape that early-termination statutes provide. Without these statutes, a victim must convince their landlord that it is in the landlord's best interest to release the victim from the rental agreement. Unfortunately, a landlord may not realize the advantages of releasing a domestic violence victim from her lease....

Landlords respond to statutory protection for tenants who experience domestic violence with concern for the safety and quiet enjoyment of other tenants. With early-termination laws, landlords struggle to understand the policy behind releasing a tenant

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<sup>3</sup>WILLIAM B. STOEUBUCK & DALE A. WHITMAN, *THE LAW OF PROPERTY* § 6.82, at 402-403 (3d ed. West 2000).

<sup>4</sup>*Id.* at 403; MILTON R. FRIEDMAN & PATRICK A. RANDOLPH, JR., 2 *FRIEDMAN ON LEASES* § 16:3.1[A], at 16-39 (5th ed. 2009).

<sup>5</sup>STOEUBUCK & WHITMAN, *supra* note 3, at 403-405; 2 *FRIEDMAN ON LEASING*, *supra* note 4, § 16:3.1[B], at 16-43 to 16-51. URLTA § 4.203(c) does incorporate a mitigation requirement in residential leases.

<sup>6</sup>According to the National Coalition Against Domestic Violence, many domestic abusers also abuse their spouses/significant others financially, prohibiting them from working and/or denying them the financial resources needed to establish independence. *See Domestic Violence Facts*, *supra* note 1.

from a lease who has introduced criminal activity at the unit. The beauty behind policies that accommodate domestic violence victims lies in the fact that they encourage victims to take steps toward leaving their abusers and ending the violence. If victims know they have a range of options, they are less likely to keep the violence a secret, and the community is spared from future violence. Although some landlords raise concerns about perpetrators returning to the rental unit after the victim vacates, these concerns are generally unfounded; abusers target specific intimates or family members, not random individuals. Also, allowing victims to terminate their leases early may prevent or reduce physical damage to the unit caused by violence. Indeed, early-termination statutes may save landlords the inconvenience of repairing units.

If landlords realize the benefits of early-termination statutes for themselves and all their tenants, they may embrace negotiations and legislative proposals that benefit domestic violence victims. Although domestic violence victims may be able to terminate a lease early by negotiating with their landlords, they have no guarantee that every landlord will accommodate such a request. Early-termination statutes provide victims with the assurance that negotiations lack, in addition to offering a palatable alternative to enduring more abuse.<sup>7</sup>

Another problem faced by tenant victims of domestic violence is that landlords sometimes use domestic disturbances as a basis to terminate a victim's lease. In recent years, landlords in public and private housing have used "one-strike" or "zero tolerance" policies to combat crime and criminal activity on or around rental units.<sup>8</sup> Anecdotal evidence suggests landlords have often used this policy to evict tenants who have experienced domestic violence in their units, citing concerns for the safety of other tenants in the building and the tenant-victim's lack of ability to "control" the offender.<sup>9</sup> Congress addressed this problem in public housing by creating an exception to the zero-tolerance policy for domestic violence victims, yet no such exception exists for private landlords.<sup>10</sup> While landlords plainly have a legitimate interest in protecting the quiet enjoyment of other tenants, termination of a lease based solely upon a reported incident of domestic violence may have the undesirable effect of discouraging a victim of domestic abuse from contacting the police or seeking police protection, for fear of having her lease terminated.<sup>11</sup>

**B. The URLTA and Recent Statutory Development.** Nothing in the URLTA addresses these issues, which is not particularly surprising — public awareness of the levels and

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<sup>7</sup>Anne C. Johnson, *From House to Home: Creating a Right to Early Lease Termination for Domestic Violence Victims*, 90 MINN. L. REV. 1859, 1863-64 (2006) (footnotes omitted).

<sup>8</sup>Elizabeth M. Whitehorn, *Unlawful Evictions of Female Victims of Domestic Violence: Extending Title VII's Sex Stereotyping Theories to the Fair Housing Act*, 101 NW. L. REV. 1419 (2007).

<sup>9</sup>*Id.*

<sup>10</sup>Johnson, *supra* note 7, at 1870-1871 (discussing Violence Against Women Act).

<sup>11</sup>The National Center on Poverty Law suggests that survivors of domestic violence often have relatively greater difficulty finding suitable living arrangements because of poor credit, rental and employment histories (often made worse as a result of their abuse). Andrea Kovach, *Integrating Asset-Building Strategies into Domestic Violence Advocacy*, Clearinghouse Review (July-August 2009); Susan A. Rief & Lisa J. Krisher, *Subsidized Housing and the Unique Needs of Domestic Violence Victims*, Clearinghouse Review (May-June 2000).

consequences of domestic violence was much lower at the time the URLTA was drafted. As recognition and appreciation of the problem has grown, however, twenty jurisdictions (AZ, CA, CO, CT, DE, DC, IL, IN, MD, MI, MN, NC, ND, NJ, NY, OR, TX, UT, WA, WY) allow tenants who are victims of domestic abuse to terminate their lease before its term expires.<sup>12</sup> Four additional states (HI, OH, RI, TN) have also introduced comparable legislation.<sup>13</sup> At least three other states provide more limited remedies, such as prohibiting a landlord from terminating the tenancy of a domestic abuse victim or other retaliating against her or giving the tenant the right to change the locks on the premises.<sup>14</sup>

The remainder of this memorandum contains a narrative description of four important aspects of these existing statutes — (1) what type(s) of domestic abuse justify according the tenant with a termination right?; (2) what steps must the tenant follow to exercise that termination right?; (3) what is the economic impact of the termination upon the landlord (i.e., to what extent is the terminating tenant subject to liability for unaccrued rent, and what effect does the tenant’s exercise of a termination right have on the liability of nonvictim signatories?); and (4) the extent to which a landlord may use incidents of domestic violence as a basis to terminate the victim’s lease. At a minimum, any amendment to the URLTA should address these four issues. [Exhibit B contains a chart that highlights various characteristics of the existing statutes discussed below.]

**C. *What Type(s) of Abuse Permit a Tenant to Terminate Its Rental Liability?*** All of the statutes, except New York and New Jersey,<sup>15</sup> provide the tenant with rights in the case of “domestic violence,” “intrafamily violence,” or similar wording.<sup>16</sup> Two-thirds of these provisions also allow for early termination in cases of sexual assault or stalking, as opposed to domestic violence (although a court might well subsume sexual assault within the broader category of

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<sup>12</sup> ARIZ. REV. STAT. § 33-1318; CAL. CIV. CODE § 1946.7; COLO. REV. STAT. § 38-12-402; CONN. GEN. STAT. § 47a-11e; DEL. CODE tit. 25, § 5314; D.C. CODE § 42-3505.07; DEL. CODE ANN. Tit. 25, § 5314; 765 ILL. COMP. STAT. 750/15; IND. CODE § 32-31-9-12; MD. CODE, REAL PROP. § 8-5A-02; MICH. COMP. LAWS § 554.601b; MINN. STAT. § 504B.206; N.J. STAT. § 46:8-9.6; N.Y. REAL PROP. LAW § 227-c; N.C. GEN. STAT. § 42-45.1; N.D. CENT. CODE § 47-16-17.1; OR. REV. STAT. § 90.453; TEX. PROP. CODE § 92.016; UTAH CODE § 57-22-5.1; WASH. REV. CODE § 59.18.575; WYO. STAT. ANN. § 1-21-1303(b). Although the majority of these statutes expressly authorize the tenant to terminate, Illinois and Wyoming implicitly recognize the right to terminate by providing the tenant with an affirmative defense against the landlord’s action to recover rent for breach if the tenant vacates as a result of sexual violence. 765 ILL. COMP. STAT. 750/15; WYO. STAT. ANN. § 1-21-1303(b).

<sup>13</sup> Bills introduced in the 2011 session included: Hawai’i House Bill 812; Ohio House Bill 167; Rhode Island House Bill 7675; Tennessee House Bill 323.

<sup>14</sup> See ARK. CODE ANN. § 18-16-112 (right to change locks; protection against landlord retaliation); N.H. REV. STAT. ANN. § 540:2 (right to change locks; protection against landlord retaliation); N.M. STAT. ANN. § 47-8-33 (protection against eviction).

<sup>15</sup> Although New York’s statute is titled “Termination of residential lease by victim of domestic violence,” the text of the statute refers to tenants “for whose benefit any order of protection has been issued.” N.Y. REAL PROP. LAW § 227-c. New Jersey’s statute covers a tenant or a child of the tenant who “faces an imminent threat of serious physical harm from another named person if the tenant remains on the leased premises.” N.J. STAT. ANN. § 46:8-9.6.

<sup>16</sup> See, e.g., ARIZ. REV. STAT. § 33-1318(A) (“domestic violence”); D.C. CODE § 42-3505.07(b) (“intrafamily violence”).

domestic violence).<sup>17</sup> Several of the statutes expressly incorporate definitions of the predicate conduct from the criminal codes of the respective states.<sup>18</sup>

The jurisdictions diverge, however, as to how broadly their statutes apply. Five statutes appear to apply only when *the tenant* is the target of the violence,<sup>19</sup> while ten statutes also apply to instances in which a tenant's child or another member of the tenant's household is the victim.<sup>20</sup> Four others apply if the tenant is a victim but fears for the safety of a child because of the domestic violence.<sup>21</sup> New York's statute applies when a person who has obtained an order of protection and a court finds there is a substantial risk of harm to the person or the person's child.<sup>22</sup> In contrast, Michigan and New Jersey only require a tenant to have a reasonable apprehension of harm to themselves or a child from domestic violence in order to terminate their lease early.<sup>23</sup>

#### **D. What Steps Must Tenant Follow to Terminate the Tenant's Rental Liability?**

**(1) Written Notice and Proof of Domestic Violence.** Essentially all of the existing statutes require that the tenant must notify the landlord in writing of her intention to terminate the lease.<sup>24</sup> Further, the statutes typically require the tenant to provide the landlord with some

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<sup>17</sup> See ARIZ. REV. STAT. § 13-3601(A) (“domestic violence” includes sexual assault and stalking); ARK. CODE ANN. § 18-16-112 (sex crime or stalking); CAL. CIV. CODE § 1946.7(a) (sexual assault or stalking); DEL. CODE tit. 25, § 5314(6) (sexual offenses or stalking); D.C. CODE §§ 16-1001(9), 42-3505.07(b) (“intrafamily violence,” which includes any “act punishable as a criminal offense”); 765 ILL. COMP. STAT. 750/15 (sexual violence); IND. CODE § 32-31-9-3 (sex offense or stalking); MD. CODE, REAL PROP. § 8-5A-02(A)(2) (sexual assault); MICH. COMP. LAWS § 554.601b(1) (sexual assault or stalking); N.H. REV. STAT. ANN. § 540:2 (sexual assault or stalking); N.C. GEN. STAT. §§ 42-40(4), 42-45.1(a) (same); N.D. CENT. CODE § 47-07.1-01(2); (“domestic violence” includes “sexual activity compelled by physical force”); OR. REV. STAT. § 90.453(2)(c)(B) (sexual assault or stalking); TEX. PROP. CODE § 92.0161 (sexual assault or sexual abuse); UTAH CODE § 57-22-5.1 (stalking or sex crime); WASH. REV. CODE § 59.18.575(1)(a) (sexual assault, unlawful harassment, or stalking).

<sup>18</sup> See, e.g., ARIZ. REV. STAT. § 33-1318(A); OR. REV. STAT. § 90.453(3)(A); TEX. PROP. CODE § 92.016(a)(1).

<sup>19</sup> See ARIZ. REV. STAT. § 33-1318; DEL. CODE tit. 25, § 5314; IND. CODE § 32-31-9-12; N.M. STAT. ANN. § 47-8-33; UTAH CODE § 57-22-5.1.

<sup>20</sup> ARK. CODE ANN. § 18-16-112; CAL. CIV. CODE § 1946.7; D.C. CODE § 42-3505.07; 765 ILL. COMP. STAT. 750/15; MD. CODE, REAL PROP. § 8-5A-02; N.H. REV. STAT. ANN. § 540:2; N.C. GEN. STAT. § 42-45.1; TEX. PROP. CODE § 92.016; WASH. REV. CODE § 59.18.575. The Oregon statute is somewhat ambiguous. The text of the statute references only tenants who have been a victim of domestic violence, sexual assault, or stalking, but the statutory form to document the abuse states that “I or a minor member of my household have been a victim . . .” OR. REV. STAT. § 90.453.

<sup>21</sup> See COLO. REV. STAT. § 38-12-402; CONN. GEN. STAT. § 47a-11e; MINN. STAT. § 504B.206; N.D. CENT. CODE § 47-16-17.1.

<sup>22</sup> N.Y. REAL PROP. LAW § 227-c(2)(b)(i).

<sup>23</sup> MICH. COMP. LAWS § 554.601b (“tenant who has a reasonable apprehension of present danger to the tenant or his or her child”); N.J. STAT. § 46:8-9.6 (“tenant or a child of the tenant faces an imminent threat of serious physical harm from another named person if the tenant remains on the leased premises”).

<sup>24</sup> New York's statute does not specifically require that the notification be in writing, but it does require that the tenant have obtained an order of protection. N.Y. REAL PROP. LAW § 227-c(2)(a).

documentary proof of the violence.<sup>25</sup> The tenant could satisfy most of the statutes by providing a valid order of protection or its equivalent. Some of the statutes allow the tenant to provide a copy of a police report documenting the occurrence of domestic violence.<sup>26</sup> A few states permit the tenant to provide a report by a qualified domestic violence counselor<sup>27</sup> or medical professional.<sup>28</sup> New Jersey allows third party documentation from a licensed social worker,<sup>29</sup> while Washington allows such documentation from certain clergy.<sup>30</sup>

**(2) Time Periods for Written Notice and Effectiveness of Notice.** Some of the existing statutes impose time limits upon the tenant seeking to exercise a termination right, to ensure that a tenant seeking to terminate faces a legitimate fear of immediate harm (and is not merely using a more distant incident as a pretext to terminate the lease). These statutes vary, however, in distinct ways. Arizona and Indiana require that the relevant incident must have occurred within 30 days prior to the tenant's notice,<sup>31</sup> California requires that the notice must be given within 60 days of the date the tenant obtained documentary proof of the abuse,<sup>32</sup> Illinois requires notice within 60 days of the act of sexual violence,<sup>33</sup> D.C., Oregon, and Washington allow the tenant to give notice within 90 days of the relevant incident,<sup>34</sup> Connecticut requires notice within 90 days of the police report or 30 days of a victim advocate statement,<sup>35</sup> and Texas requires that the assault must have taken place within the "preceding six-month period."<sup>36</sup> Other statutes are silent with regard to this issue, or instead require that the tenant must be facing an "imminent" risk or threat.<sup>37</sup>

The statutes also vary significantly in terms of the effective termination date of the tenant's liability following notification to the landlord. The statutes in Minnesota and North

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<sup>25</sup> See, e.g., IND. CODE § 32-31-9-12(c); OR. REV. STAT. § 90.453(2); TEX. PROP. CODE § 92.016(b). The Delaware statute does not explicitly state that the tenant must give the landlord a copy of any protective order or police report, but does state that the tenant must be seeking relief from a court, police agency or domestic violence program. DEL. CODE tit. 25 § 5314(6).

<sup>26</sup> See, e.g., CONN. GEN. STAT. § 47a-11e; UTAH CODE § 57-22-5.1; WASH. REV. CODE § 59.18.575.

<sup>27</sup> See, e.g., DEL. CODE tit. 25 § 5314; D.C. CODE § 42-3505.07; OR. REV. STAT. § 90.453; WASH. REV. CODE § 59.18.575.

<sup>28</sup> See, e.g., D.C. CODE § 42-3505.07; N.J. STAT. § 46:8-9.6; OR. REV. STAT. § 90.453.

<sup>29</sup> N.J. STAT. § 46:8-9.6.

<sup>30</sup> WASH. REV. CODE § 59.18.575.

<sup>31</sup> ARIZ. REV. STAT. § 33-1318(C); IND. CODE § 32-31-9-12(c)(2).

<sup>32</sup> CAL. CIV. CODE § 1946.7(b)(2).

<sup>33</sup> 765 ILL. COMP. STAT. 750/15 (unless the victim is hospitalized or otherwise unable to provide notice within that time period).

<sup>34</sup> D.C. CODE § 42-3505.07(e); OR. REV. STAT. § 90.453(2)(c)(B); WASH. REV. CODE § 59.18.575(1)(b).

<sup>35</sup> CONN. GEN. STAT. § 47a-11e.

<sup>36</sup> TEX. PROP. CODE § 92.016.

<sup>37</sup> N.J. STAT. § 46:8-9.6(a); COLO. REV. STAT. § 38-12-402(2)(a); CONN. GEN. STAT. § 47a-11e(a); MINN. STAT. § 504B.206(a)(1).

Dakota require the tenant to give “advanced notice” and require that this advanced notice must specify a termination date, but these statutes do not provide a safe harbor for how much notice is needed to satisfy the “advanced notice” standard.<sup>38</sup> Many of the statutes provide that the tenant’s liability terminates 30 days following the tenant’s notice.<sup>39</sup> The Oregon and D.C. statutes shorten this period to 14 days<sup>40</sup> and Illinois allows the tenant to give notice “prior to or within 3 days of vacating” the premises.<sup>41</sup> Unfortunately, some of the statutes are entirely silent on this point, leaving a question as to whether the tenant’s right to possession and rental liability terminates immediately upon the date of the notice.

The New York statute provides a relatively unique approach. Under this statute, the tenant must first try to obtain the landlord’s voluntary consent to the termination. If the landlord refuses, the tenant must seek a court order allowing the tenant to terminate her lease.<sup>42</sup> The statute provides the court with discretion to establish a termination date, ranging from 30 to 150 days following the court order.<sup>43</sup>

**E. *What Is the Economic Impact of Termination Upon the Landlord?*** Obviously, granting a tenant victim of domestic violence the right to terminate her rental liability presents the landlord with an increased risk of nonpayment of rent. For this reason, an amendment to URLTA that addresses the rights and obligations of tenant victims of domestic violence should explore the extent to which the law can or should impose this risk entirely on the landlord or should instead require the tenant to reimburse the landlord for some portion of this cost. Evaluating the economic impact of termination upon the landlord involves consideration of at least three factors: (1) the terminating tenant’s liability for unaccrued rent; (2) the landlord’s obligation with respect to handling the tenant’s security deposit; and (3) whether the tenant’s exercise of a termination right has any impact upon the liability of other tenants under the lease (i.e., nonvictim signatories).

**(1) *The Tenant’s Liability for Rent.*** Most of the statutes provide that the tenant is liable for rent prorated to the date of termination, but that the tenant is not responsible for rent that would have accrued thereafter (or for damage to the unit thereafter caused by other tenants who remain in possession).<sup>44</sup> However, some of the statutes require the tenant to pay all rent due for

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<sup>38</sup> MINN. STAT. § 504B.206(1)(a); N.D. CENT. CODE § 47-16-17.1(2).

<sup>39</sup> See, e.g., ARIZ. REV. STAT. § 33-1318(C); N.J. STAT. § 46:8-9.7(a); N.C. GEN. STAT. § 42-45.1(a); TEX. PROP. CODE § 92.016(c).

<sup>40</sup> OR. REV. STAT. § 90.453(2)(a); D.C. CODE § 42-3505.07(d). The D.C. statute shortens the 14 day period if the landlord finds a replacement tenant in less than 14 days.

<sup>41</sup> 765 ILL. COMP. STAT. 750/15(a)(2).

<sup>42</sup> N.Y. REAL PROP. LAW § 227-c(2)(a).

<sup>43</sup> *Id.*

<sup>44</sup> See, e.g., ARIZ. REV. STAT. § 33-1318(D); IND. CODE § 32-31-9-12(d); N.J. STAT. § 46:8-9.7(a); TEX. PROP. CODE § 92.016(c).

the month in which the tenant terminates the lease and one additional month's rent.<sup>45</sup> Michigan releases the tenant from the obligation to pay rent "no later than the first day of the second month" after notice is given<sup>46</sup> and Utah requires the tenant to pay "the equivalent of 45 days' rent" from the date of the notice.<sup>47</sup> The Indiana and Oregon statutes explicitly state that the landlord cannot charge any early termination fees (provided for expressly in the lease or otherwise) solely on the basis of termination under these statutes.<sup>48</sup>

**(2) Handling of Security Deposits.** A majority of the existing statutes have included specific provisions governing the landlord's handling of a terminating tenant's security deposit. There are slight differences in these provisions with respect to the time frame for returning the deposit, depending largely upon whether the domestic violence/sexual assault victim was the only tenant or if other cotenants will be continuing the lease.<sup>49</sup> A primary drafting concern is to make certain that any provisions regarding handling of security deposits are not inconsistent with the provisions currently contained in URLTA § 2.101.

**(3) Liability of Other Tenants.** Most of the statutes make clear that the tenant's notification is effective only to terminate the tenant's right to possession/rental liability, not the rights and obligations of other nonvictim tenants under the lease.<sup>50</sup> This permits the landlord to continue to hold the remaining nonvictim tenants liable for rent as it accrues under the lease, thereby reducing the landlord's potential economic exposure due to the victim's termination.

Two states, New Jersey and Arizona, provide that the lease terminates as to all tenants (although Arizona excludes the offender from this right). The statutes provide that the landlord may enter into new leases with the remaining tenants if the landlord chooses to do so.<sup>51</sup>

Two states expressly address the liability of an abuser who has been excluded from the leased property under a protective order. The North Carolina statute makes it clear that the offender is not released from the obligation to pay rent even if he/she has been excluded from the

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<sup>45</sup> CAL. CIV. CODE § 1946.7(d); MINN. STAT. § 504B.206(3)(a); N.D. CENT. CODE § 47-16-17.1(5). Colorado has a similar provision, but it applies only if landlord has actually experienced damages equal to one month's rent because of the tenant's termination. COLO. REV. STAT. § 38-12-402(2)(b).

<sup>46</sup> MICH. COMP. LAWS § 554.601b.

<sup>47</sup> UTAH CODE § 57-22-5.1.

<sup>48</sup> IND. CODE § 32-31-9-12(d); OR. REV. STAT. § 90.453(4)(b).

<sup>49</sup> See, e.g., MINN. STAT. § 504B.206 (if victim is the only tenant, landlord must return security deposit by the first day of the month following the date tenant vacates or the termination date specified in the written notice, whichever occurs last; if other tenants are under the lease, landlord may keep security deposit until lease expires); N.D. CENT. CODE § 47-16-17.1(7) (if victim is the only tenant, landlord must return security deposit by the first day of the month following the date tenant vacates; if other tenants are under the lease, landlord may keep security deposit until lease expires).

<sup>50</sup> See, e.g., CAL. CIV. CODE § 1946.7(e) ("Nothing in this section relieves a tenant, other than the tenant who is ... a victim of domestic violence ... from their obligations under the rental agreement.").

<sup>51</sup> N.J. STAT. § 46:8-9.7(c); ARIZ. REV. STAT. § 33-1318(J).

unit by a protective order.<sup>52</sup> The Arizona statute goes even further, imposing civil liability upon the offender – regardless of whether the offender was a tenant under the lease -- for the landlord’s economic losses caused by the early lease termination.<sup>53</sup>

**F. *Can the Landlord Evict Tenant Based Upon Incidents of Domestic Violence?*** In recent years, landlords in public and private housing have utilized “one-strike” or “zero tolerance” policies to combat crime and criminal activity on or around the rental units.<sup>54</sup> Anecdotal evidence suggests landlords have often used this policy to evict tenants who have experienced domestic violence in their units, citing concerns for the safety of other tenants in the building and the tenant-victim’s lack of ability to “control” the offender.<sup>55</sup> Congress addressed this problem in public housing by creating an exception to the zero-tolerance policy for domestic violence victims, yet no such exception exists for private landlords.

Most of the existing statutes focus only upon the victimized tenant’s right to terminate the lease, and are silent about the landlord’s ability to use an incident of domestic violence as a basis to terminate the lease. Nine of the existing statutes, however — AR, CO, DE, IN, NH, NM, NC, ND, OR — provide explicitly that a landlord cannot terminate the lease only because the tenant is a victim of domestic violence.<sup>56</sup> The Delaware and North Carolina further specify that a landlord also cannot refuse to lease to a potential tenant solely because they have terminated a previous rental agreement under the statute.<sup>57</sup> Maryland and New Mexico address this issue indirectly, providing that a tenant can raise domestic assault as an affirmative defense in an eviction action by the landlord — with Maryland further providing that if the tenant provides a copy of a protective or peace order, then the tenant will have been deemed to have raised a rebuttable presumption that the breach of the lease does not warrant an eviction.<sup>58</sup>

## **II. EARLY TERMINATION FOR MILITARY SERVICE**

Thirteen states (DE, FL, GA, KS, LA, MD, NY, NC, OR, PA, TX, VA, WA) have statutes that mirror or expand upon federal law permitting a tenant to terminate his or her lease

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<sup>52</sup> N.C. GEN. STAT. § 42-45.1(c).

<sup>53</sup> ARIZ. REV. STAT. § 33-1318(I). This civil liability includes unpaid rent, early lease termination fees, costs to repair damage to the premises and any reductions or waivers of rent previously granted to the tenant who was the victim of domestic violence.

<sup>54</sup> Elizabeth M. Whitehorn, *supra* note 8, at 1437.

<sup>55</sup> *Id.*

<sup>56</sup> ARK. CODE ANN. § 18-16-112; COLO. REV. STAT. § 38-12-402(3); DEL. CODE tit. 25, § 5316; IND. CODE § 32-31-9-8; N.H. REV. STAT. ANN. § 540:2; N.M. STAT. ANN. § 47-8-33; N.C. GEN. STAT. § 42-42.2; N.D. CENT. CODE § 47-16-17.1(9); OR. REV. STAT. § 90.449.

<sup>57</sup> DEL. CODE tit. 25, § 5316; N.C. GEN. STAT. § 42-42.2.

<sup>58</sup> MD. CODE, REAL PROP. § 8-5A-05(B); N.M. STAT. ANN. § 47-8-33.

early as a result of the tenant’s military service.<sup>59</sup> The statutes are virtually identical with respect to the basic termination right – i.e., that a tenant who qualifies under the statute may terminate the lease upon 30 days’ written notice to the landlord. They vary greatly, however, with respect to their descriptions of the tenants who qualify and under what circumstances termination is permitted. A chart that summarizes these differences is attached as Exhibit B2.

**A. *What tenants qualify for termination rights?*** The federal statute governs leases executed by a “service member,” which the statute defines as a member of the “uniformed services,” including the armed forces (Army, Navy, Air Force, Marine Corps, and Coast Guard), the commissioned corps of the National Oceanic and Atmospheric Administration; and the commissioned corps of the Public Health Service.<sup>60</sup> About half of the state statutes expressly provide not only for members of the U.S. armed forces but also for members of the state national guard.<sup>61</sup> The rest simply use generic terms such as “service member” or “person in military service.”

In addition to addressing the rights of the service member, the federal statute provides that termination of the lease terminates any obligations that a dependent of the service member may have under the lease. Only two states (TX and WA) expressly address the rights of dependents.<sup>62</sup>

**B. *What Circumstances Permit Termination?*** The federal statute allows a service member to terminate the lease in two specific situations: (1) when the service member enters military service after executing the lease; or (2) the service member executes the lease while in military service and thereafter receives military orders for a change of station or to deploy with a military unit or as an individual in support of a military operation for a period of not less than 90 days.<sup>63</sup>

The Texas statute uses substantially the same language,<sup>64</sup> but the rest of the statutes offer varying levels of specificity regarding the circumstances that permit termination. Washington’s statute, for example, simply provides for termination when “the tenant receives reassignment or deployment orders.”<sup>65</sup> Florida, by contrast, provides a detailed list allowing a service member to terminate a lease when:

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<sup>59</sup> See DEL. CODE tit. 25, § 5314; FLA. STAT. § 83.682; GA. CODE § 44-7-22; KAN. STAT. §§ 58-2504, 2570; LA. REV. STAT. § 9:3261; MD. CODE, REAL PROP. § 8-212.1; N.Y. MIL. LAW § 310; N.C. GEN. STAT. § 42-45; OR. REV. STAT. §§ 90.472, 90.475; 51 PA. CONS. STAT. § 7315.1; TEX. PROP. CODE § 92.017; VA. CODE § 55-248.21:1; WASH. REV. CODE § 59.18.220; U.S.C.A. tit. 50 App. § 535.

<sup>60</sup> U.S.C.A. tit. 50 App. § 511.

<sup>61</sup> GA. CODE § 44-7-22; LA. REV. STAT. § 9:3261; OR. REV. STAT. §§ 90.472, 90.475; 51 PA. CONS. STAT. § 7315.1; VA. CODE § 55-248.21:1; WASH. REV. CODE § 59.18.220.

<sup>62</sup> TEX. PROP. CODE § 92.017; WASH. REV. CODE § 59.18.220.

<sup>63</sup> U.S.C.A. tit. 50 App. § 535.

<sup>64</sup> TEX. PROP. CODE § 92.017.

<sup>65</sup> WASH. REV. CODE § 59.18.220.

- The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises
- The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty
- The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty
- After entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters
- The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days
- The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises.<sup>66</sup>

In addition, if a service member dies during active duty, the Florida statute permits a relative to terminate the service member's lease.<sup>67</sup>

**C. *What Procedural Steps are Required?*** All of the statutes condition termination upon written notice to the landlord. The most common requirement is that notice be given at least thirty days before termination,<sup>68</sup> although several states require that thirty days elapse from the time the tenant's next monthly rent payment is due before the termination takes effect.<sup>69</sup> In addition to the written notice, almost every statute also requires the tenant to provide some evidence regarding the changed circumstances, such as a copy of the tenant's military orders or a letter signed by the tenant's commanding officer confirming those orders.<sup>70</sup>

**D. *What is the Effect of Termination?*** The statutes typically provide that the tenant is liable for the rent on a prorated basis to the effective date of the termination<sup>71</sup> but a handful include an exception that excuses the tenant from paying any rent if the lease is terminated at least 14 days prior to occupancy.<sup>72</sup> Most statutes further provide that the tenant shall not be liable for any penalty or fees as a result of the early termination,<sup>73</sup> but Louisiana and North Carolina

<sup>66</sup> FLA. STAT. § 83.682; *see also* GA. CODE § 44-7-22 (substantially the same).

<sup>67</sup> FLA. STAT. § 83.682.

<sup>68</sup> *See, e.g.*, FLA. STAT. § 83.682; GA. CODE § 44-7-22.

<sup>69</sup> *See, e.g.*, TEX. PROP. CODE § 92.017; VA. CODE § 55-248.21:1.

<sup>70</sup> *See, e.g.*, LA. REV. STAT. § 9:3261; 51 PA. CONS. STAT. § 7315.1.

<sup>71</sup> *See, e.g.*, OR. REV. STAT. §§ 90.472, 90.475; 51 PA. CONS. STAT. § 7315.1.

<sup>72</sup> *See, e.g.*, FLA. STAT. § 83.682; GA. CODE § 44-7-22; N.C. GEN. STAT. § 42-45.

<sup>73</sup> *See, e.g.*, N.C. GEN. STAT. § 42-45; OR. REV. STAT. §§ 90.472, 90.475.

allow a landlord to recover liquidated damages, within certain limits.<sup>74</sup> In addition, the federal statute, as well as the Pennsylvania and Texas statutes, permit the landlord to seek a court order modifying the relief provided under the act “as justice and equity” require.<sup>75</sup>

Landlords may be subject to criminal charges for attempt to detain the tenant’s personal property or security deposit for purposes of subjecting that property to a claim for rent. The federal statute makes such conduct a misdemeanor subject to a fine or imprisoned for not more than one year, or both.<sup>76</sup> New York and Pennsylvania have comparable provisions.<sup>77</sup> Texas provides a civil penalty equal to one month’s rent plus \$500 and attorney fees.<sup>78</sup>

**E. Is Waiver Permitted?** Four of the state statutes (FL, GA, LA, NC) provide that the early termination provisions may not be waived by the rental agreement.<sup>79</sup> A fifth (Texas) generally prohibits waiver but allows the parties to agree that the tenant waives his rights under this provision “if the tenant or any dependent living with the tenant moves into base housing or other housing within 30 miles of the dwelling.”<sup>80</sup>

### III. OTHER PROVISIONS ALLOWING FOR THE EARLY TERMINATION OF LEASES

Although not as prevalent as statutes that allow tenants who have been the victims of domestic violence or those in the military from terminating their leases early, some states have statutes that allow tenants or landlords to terminate leases early for other reasons. The most common provisions provide for termination because of the tenant’s death, because the tenant has an illness or disability that requires a change in residence, or because the tenant has committed a criminal act.

**A. Death or Disability of the Tenant.** At least a dozen states have statutory provisions that address termination upon the death or disability of a tenant. [Exhibit B3 accompanying this memorandum contains a chart that highlights various characteristics of the existing statutes discussed below.]

Eight states (CN, DE, MN, MS, NV, NJ, ND, WI) address the early termination of a lease

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<sup>74</sup> See LA. REV. STAT. § 9:3261 (up to one month's rent if the tenant completed less than six months of the lease agreement; up to half of one month's rent if the tenant completed at least six months of the lease agreement); N.C. GEN. STAT. § 42-45 (up to one month's rent if the tenant completed less than six months of the tenancy; up to half of one month's rent if the tenant completed at least six but less than nine months of the tenancy).

<sup>75</sup> U.S.C.A. tit. 50 App. § 535; 51 PA. CONS. STAT. § 7315.1; TEX. PROP. CODE § 92.017.

<sup>76</sup> U.S.C.A. tit. 50 App. § 535.

<sup>77</sup> N.Y. MIL. LAW § 310; PA. CONS. STAT. § 7315.1.

<sup>78</sup> TEX. PROP. CODE § 92.017.

<sup>79</sup> FLA. STAT. § 83.682; GA. CODE § 44-7-22; LA. REV. STAT. § 9:3261; N.C. GEN. STAT. § 42-45.

<sup>80</sup> TEX. PROP. CODE § 92.017.

for a specific term upon the death of the tenant.<sup>81</sup> A ninth state, South Dakota, statutorily codifies the typical common law rule that the death of the tenant or landlord causes termination only with respect to a tenancy at will.<sup>82</sup> Most of these statutes provide for termination only upon the death of the tenant (or the death of all tenants where there is more than one tenant),<sup>83</sup> but Nevada and New Jersey provide for termination upon the death of a spouse or cotenant.<sup>84</sup>

Six states (DE, MD, MI, NV, NJ, NY) allow tenants to terminate their leases if they suffer from a qualifying physical or mental disability that requires them to live someplace else.<sup>85</sup> Delaware, Michigan, and New Jersey also allow for tenants to terminate lease early if they are accepted for admission into a senior citizens' housing facility.<sup>86</sup>

Most statutes require some notice to the landlord to terminate the lease,<sup>87</sup> but the statutes vary with respect to the notice period (ranging from 30 days to 60 days). Statutes that allow early termination for disability or illness typically require some proof that the tenant has a qualifying condition that requires relocation, but as indicated on Exhibit B3, the statutes vary greatly with respect to what documentation is necessary.

**B. Termination When the Tenant has Committed a Criminal Act.** A number of jurisdictions have statutes that permit termination of a lease when a tenant has committed a criminal act. These statutes fall largely into two categories – statutes permitted the landlord to terminate the offender's lease and statutes permitted a tenant who is the victim of a criminal act to terminate his or her own lease.

**(1) Termination by landlord of the offender's lease.** Nine states (AR, IL, IA, NH, NY, OR, RI, TN, VT) have statutes that authorize a landlord to terminate a lease early if the tenant commits certain criminal acts.<sup>88</sup> The statutes vary widely with respect to the conduct that gives rise to termination. The most common provision is one that permits termination for conduct that

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<sup>81</sup> CONN. GEN. STAT. ANN § 47a-11d; DEL. CODE ANN. tit. 25, § 5314; MINN. STAT. ANN. § 504B.265; MISS. CODE ANN. § 89-8-29; NEV. REV. STAT. § 118A.340; N.J. STAT. ANN. §§ 46:8-9.1 & 9.2; N.D. CENT. CODE § 47-16-18; WIS. STAT. ANN. § 704.165.

<sup>82</sup> S.D. CODIFIED LAWS § 43-32-23.

<sup>83</sup> See, e.g., CONN. GEN. STAT. ANN § 47a-11d; DEL. CODE ANN. tit. 25, § 5314; MINN. STAT. ANN. § 504B.265; MISS. CODE ANN. § 89-8-29; N.D. CENT. CODE § 47-16-18.

<sup>84</sup> NEV. REV. STAT. § 118A.340; N.J. STAT. ANN. § 46:8-9.1.

<sup>85</sup> DEL. CODE ANN. tit. 25, § 5314; MD. CODE REAL PROP. § 8-212.1; MICH. COMP. LAWS § 554.601a; NEV. REV. STAT. ANN. § 118A.340; N.J. STAT. ANN. § 46:8-9.2; N.Y. MCKINNEY'S REAL PROP. § 227-A.

<sup>86</sup> See DEL. CODE ANN. tit. 25, § 5314; MICH. COMP. LAWS ANN. § 554.601a; N.J. STAT. ANN. § 46:8-9.2.

<sup>87</sup> But see MISS. CODE ANN. § 89-8-29 (termination upon death is presumed; cosigner on lease must send notice that cosigner intends to continue the lease).

<sup>88</sup> ARK. CODE ANN. § 18-16-112; 765 ILL. COMP. STAT. § 705/5; IOWA CODE § 562A.27A; N.H. REV. STAT. § 540:2; N.Y. REAL PROP. § 711; ORE. REV. STAT. § 90.445; R.I. GEN. LAWS § 34-18-24, § 34-18-36; TENN. CODE ANN. § 66-28-517; 9 VT. STAT. ANN. § 4467.

adversely affects the health or safety of others.<sup>89</sup> Arkansas and Oregon’s statutes are limited to acts of domestic violence or sexual assault.<sup>90</sup> Illinois’s statute applies to a tenant who commits a Class X felony.<sup>91</sup> New York’s statute targets occupancy or use of the premises for prostitution or other illegal trades or businesses.<sup>92</sup> [Exhibit B4 accompanying this memorandum contains a chart that highlights various characteristics of the existing statutes that fall into the first category.]

**(2) Termination by tenant who is the victim of a crime.** As indicated in Part I(B) above, a number of states permit a tenant who is the victim of domestic abuse or sexual assault to terminate their lease. In addition to those statutes, at least one state (Washington) allows a tenant to terminate the lease if threatened with a deadly weapon by another tenant or the landlord.<sup>93</sup>

**C. Miscellaneous Provisions.** Several other early termination provisions have been enacted in a single state. Delaware permits tenants to terminate leases early if a change in the tenant’s employment requires him or her to move in excess of thirty miles.<sup>94</sup> North Carolina allows tenants residing in a building containing less than fifteen rental units to terminate their lease early if the building is being sold in a foreclosure proceeding.<sup>95</sup> New York has a “cooling off” provision that permit tenants who are age sixty-two or older to terminate leases or contracts for assisted living facilities three days after signing them.<sup>96</sup>

## CONCLUSION

There is a growing movement to recognize a limited number of situations in which a tenant may be permitted to terminate a lease before the term expires. The drafting committee should consider whether modifications to the URLTA are desirable to bring the Act up to date with these developments. More specifically, the committee should consider the following issues:

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<sup>89</sup> See, e.g., TENN. CODE ANN. § 66-28-517 (willfully or intentionally commits a violent act; behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants or persons on the premises; or creates a hazardous and unsanitary condition on the property that affects the health, safety or welfare or the life or property of other tenants or persons on the premises); 9 VT. STAT. ANN. § 4467 (criminal activity, illegal drug activity, or acts of violence any of which threaten the health or safety of other residents).

<sup>90</sup> ARK. CODE ANN. § 18-16-112; ORE. REV. STAT. § 90.445.

<sup>91</sup> 765 ILL. COMP. STAT. § 705/5.

<sup>92</sup> N.Y. REAL PROP. § 711.

<sup>93</sup> See WASH. REV. CODE ANN. §§ 59.18.352, 59.18.354.

<sup>94</sup> See DEL. CODE ANN. tit. 25, § 5314 (tenant may terminate tenancy “whenever a change in location of the tenant's employment with the tenant's present employer requires a change in the location of the tenant's residence in excess of 30 miles”).

<sup>95</sup> See N.C. GEN. STAT. ANN. § 42-45.2. A related issue is whether the tenants have a right to *remain* in leased premises when the property is foreclosed. Federal law currently protects tenants for at least ninety days following foreclosure, but this law is scheduled to sunset on December 31, 2013. Protecting Tenants at Foreclosure Act of 2009, 12 U.S.C.A. §§ 5201, 5220 (West 2011).

<sup>96</sup> See N.Y. REAL PROP. LAW § 227-b.

1. Whether the URLTA should include a provision authorizing early termination for domestic violence or sexual assault. If so,
  - a. What underlying event(s) give rise to the right of termination (domestic violence, sexual assault, both?; must there be an actual attack or just a reasonable apprehension of harm?)
  - b. Would the provision apply only when the tenant is the target of the conduct or to other members of the household as well?
  - c. What procedural steps must the tenant follow to terminate?
    - What notice is required?
    - What proof/documentation must the tenant provide?
    - What is the time period for providing effective notice?
  - d. What is the scope of the termination right?
    - What is the extent of the tenant's liability for unaccrued rent after giving notice?
    - What effect does termination have upon the tenant's security deposit?
    - What is the continuing liability of non-victim cotenants?
2. Whether the URLTA should include a provision that protects tenants from eviction based solely on incidents of domestic violence.
3. Whether the URLTA should include a provision that supplements the federal statute authorizing early termination for members of the military in certain circumstances. If so,
  - a. What tenants qualify for early termination?
  - b. What circumstances permit early termination
  - c. What procedural steps are required and what is the scope of the termination right (See items 1(c) and (d))
4. Whether the URLTA should include provisions authorizing early termination in other circumstances, such as:
  - a. Death/disability of the tenant.
  - b. Termination by landlord if the tenant has committed a criminal act
  - c. Termination by a tenant who is the victim of a crime (other than domestic violence or sexual assault)
  - d. Change in employment