

D R A F T  
FOR DISCUSSION ONLY

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

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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For November 2013 Drafting Committee Meeting

Clean Draft

*WITH PRELIMINARY COMMENTS*

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October 25, 2013

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

2                                   **ARTICLE 1**

3   **GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

20                  (7) “Bank account” means a checking, demand, time, savings, passbook, or similar  
21 account maintained at a bank.

22                  (8) “Building, housing, or health code” includes any law, ordinance, and governmental  
23 regulation concerning fitness for habitation or the construction, maintenance, operation,

occupancy, use, or appearance of the premises.

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

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

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

(12) “Dwelling unit” means:

(A) In the case of a structure having two or more units to be leased, the designated unit within the structure, together with the fixtures and appurtenances therein, to be used as the home, residence, or sleeping place by an individual or by two or more individuals who maintain a common household, regardless of their relationship to each other. Unless the lease otherwise provides, the term excludes areas associated with the structure but exterior to it such as parking areas and grounds and the common areas within the structure such as hallways, entrances, and basements; and

(B) In the case of a structure having only one unit to be leased, the entire structure, together with the fixtures, facilities, and appurtenances therein, to be used as the home, residence, or sleeping place by an individual or by two or more individuals who maintain a common household, regardless of their relationship to each other. Unless the lease otherwise provides, the term excludes areas associated with the structure but exterior to it such as parking areas, detached garages, other buildings and grounds.

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



1           (14) “Essential services” means heat, hot and cold running water, plumbing, and  
2 electricity. The term includes gas, air conditioning, or other services if required to be supplied to  
3 a tenant by the lease or by law which, if not supplied to the tenant, would create a  
4 [serious][substantial] threat to the health, safety, or property of the tenant or an immediate family  
5 member.

6           (15) “Fees” means amounts payable by a tenant to a landlord for which the landlord has  
7 no obligation to account or return to the tenant. The term does not include a security deposit or  
8 unearned rent.

9           (16) “Funds” means money, checks, bank-account credits, or the like.

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

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

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

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

18               (C) a foster child, stepchild, or [ward] of the tenant or of an individual named in  
19 subparagraphs (A) or (B).

20          (19) “Landlord” means an owner of a dwelling unit or the building of which it is a part,  
21 a successor in interest to the landlord, and any person that enters into a lease on behalf of an  
22 owner. Except for the duties imposed on a landlord under Section 303, the term includes an  
23 assignor to whom section 1103(a) does not apply and a sublessor.

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

3           (21) “Normal wear and tear” means deterioration that results from the intended use of a  
4 dwelling unit, including breakage or malfunction due to age or deteriorated condition. The term  
5 does not include deterioration that results from negligence, carelessness, accident, or abuse of the  
6 unit, fixtures, equipment, or chattels by the tenant, an immediate family member, or other  
7 individual on the premises with the tenant's consent, other than the landlord or the landlord's  
8 agent.

9           (22) “Owner” means a person vested with:

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

11                   (B) all or part of the beneficial ownership and a right to present use and  
12 enjoyment of the premises.

13           (23) “Periodic rent” means the amount of rent payable each month under a tenancy for a  
14 fixed term or a periodic tenancy for month to month or payable each week under a periodic  
15 tenancy for week to week. If rent is payable annually, periodic rent is the amount of the annual  
16 rent divided by 12.

17           (24) “Periodic tenancy” means a tenancy created under a lease or arising by operation of  
18 law for either month to month or week to week.

19           (25) “Perpetrator” means an individual who:

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

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

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

1 (26) "Person" means an individual, estate, business or nonprofit entity, public  
2 corporation, government or governmental subdivision, agency, or instrumentality, or other legal  
3 entity.

4 (27) "Premises" means a dwelling unit and the structure of which it is a part if the  
5 structure has two or more units to be leased. The term also includes all areas associated with the  
6 structure whether exterior or interior to it that are excluded from the definition of dwelling unit,  
7 including the fixtures, facilities, and appurtenances thereto, which areas are held out for the use  
8 of tenants generally or the use of which is promised to the tenant.

9 (28) "Prepaid rent" means rent paid to a landlord for a future rental period but prior to the  
10 first day of the rental period to which it is to be applied.

11 (29) "Record" means information that is inscribed on a tangible medium or that is stored  
12 in an electronic or other medium and is retrievable in perceivable form.

13 (30) "Rent" means the payments to be made to or for the benefit of the landlord for the  
14 use and occupation of a dwelling unit. The term does not include a security deposit or fees.

15 (31) "Security deposit" means funds, and the identifiable proceeds thereof, provided to a  
16 landlord to secure payment or performance of a tenant's obligations under a lease or this [act],  
17 regardless of how the funds are denominated. The term does not include unearned rent and fees.

18 (32) "Security interest" means an interest in personal property that secures payment or  
19 performance of a tenant's obligations under a lease or this [act].

20 (33) "Sexual assault" means [sexual assault] as defined in [insert reference to definition  
21 in other state law].

22 (34) "Sign" means, with present intent to authenticate or adopt a record:

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

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

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

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

(37) “Sublease” [or “sublet”] means a transfer of the tenant’s right to possession of the  
dwelling unit to another person for a period of time that is less than the balance of the term of  
the tenant’s lease. The term also includes the tenant’s creation of a co-tenancy or other right of  
concurrent possession of all or part of the dwelling unit for more than [30] days with another  
person who is not:

(A) an individual related to the sublessor 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 an individual named in  
subparagraphs (A) or (B).

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

(39) “Tenant” means a person entitled to possession of a dwelling unit under a lease. The  
term includes an assignee, sublessee, and, if the tenant is not an individual, an individual the  
tenant has authorized to occupy the unit. If the tenant is an individual, the term excludes a

1 person that neither is a party to the lease nor pays rent but occupies the dwelling unit with the  
2 tenant's permission.

3 (40) "Tenant representative" means:

4 (A) the personal representative of a deceased tenant's estate; or

5 (B) before the appointment of a personal representative, the contact person, or in  
6 the absence of a contact person, any person reasonably known to the landlord to be an heir of the  
7 tenant under the intestate succession laws of the state.

8 (41) "Unearned rent" means rent and prepaid rent paid to a landlord for any period of  
9 time beyond the termination date of the tenancy.

10 (42) "Victim advocate" means an individual, whether paid or serving as a volunteer, who  
11 provides services to victims of domestic violence, sexual assault, or stalking under the auspices  
12 or supervision of a victim-services provider or of a court or a law enforcement or prosecution  
13 agency.

14 (43) "Victim-services provider" means a person that assists victims of domestic violence,  
15 sexual assault, or stalking. The term includes a rape crisis center, domestic violence shelter,  
16 faith-based organization, or other organization with a documented history of work concerning  
17 domestic violence, sexual assault, or stalking.

18 (44) "Willfully" means a deliberate intent to perform an act prohibited under this [act] or  
19 by a lease, a deliberate intent to refrain from performing an act required under this [act] or by a  
20 lease, or an indifference to whether the act or failure to act violates this [act] or a lease.

## 21 **Comment**

22  
23 The definition of "abandonment" is broadly written to include any situation in which the  
24 tenant relinquishes the right to possession with intent to terminate the lease before the end of the  
25 term. Section 604(b) identifies specific circumstances in which the court may presume that the  
26 tenant has abandoned the lease.

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

3  
4 The definition of landlord includes both the owner of the dwelling unit and any agent of  
5 that owner, such as a management company. Where a dwelling unit is leased by a management  
6 company on behalf of the owner, both would be landlords under this act.

7  
8 The definition of “owner” includes a mortgagee in possession. It would not include a  
9 mortgagee in a title theory state unless the mortgagee became entitled to possession.

10  
11 The definition of “sublease” includes both the traditional definition of that term as well as  
12 a transfer of the entire balance of the lease term where the sublessor is also entitled to possession  
13 of the dwelling unit. For example, if landlord leases an apartment to a college student who in  
14 turn relets to another college student for the duration of the original term and both students are  
15 entitled to live in the dwelling unit, the re-letting is characterized as a sublease, not an  
16 assignment, even though it is for the duration of the original term.

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

23  
24 The definition of “unearned rent” contemplates two circumstances where a refund will be  
25 due a tenant because the lease was properly terminated. The first circumstance is that “rent”  
26 (defined in Section 102(30)) was paid to the landlord for any period of time beyond the  
27 termination of the date. For example, assume a one-year lease with rent payable on the first. The  
28 tenant pays rent to the landlord on April 1 for the month of April. However on April 10 the  
29 tenant properly terminates the lease. In this case “unearned rent” includes the amount of rent  
30 attributable to the period April 10 to April 30. Because rent is apportioned on a daily basis (See  
31 Section 201(b)(2)(B), this means that 2/3 of the April 1<sup>st</sup> payment would be “unearned rent.”  
32 The second circumstance is that “prepaid rent” (defined in Section 102(28)) was paid to the  
33 landlord for any period of time beyond the termination of the date. For example, suppose before  
34 the commencement date of the lease a tenant pays the landlord an amount for the last month’s  
35 rent. Three months into the lease tenant properly terminated the lease. In this case, unearned  
36 rent” includes the prepaid rent for the last month. In both examples, under Section 1204 amounts  
37 treated as unearned rent must be returned to the landlord after taking account on any proper  
38 charges against the same as set forth in Section 1204.

### 39 40 **SECTION 103. SCOPE.**

41 (a) For purposes of this section “dormitory” means a building with private or semi-  
42 private rooms with bathroom facilities in the rooms or in the common areas but without kitchen  
43 or dining facilities in the rooms.

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

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

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

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

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

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

(5) occupancy in a hotel or motel [or lodgings subject to [cite state transient lodgings or room occupancy excise tax act]] for a period of thirty-one continuous days or less;

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

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

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

### **Comment**

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

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





1 provision to avoid an unconscionable result.

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

5 **SECTION 107. KNOWLEDGE AND NOTICE.**

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

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

8 (1) knows of the fact;

9 (2) has received a notification of the fact in accordance with subsection (e); or

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

12 (c) Whenever this [act] specifically requires notice in a record from a landlord to a tenant  
13 or a tenant to a landlord, the notice must be:

14 (1) personally delivered to the landlord or tenant, or

15 (2) deposited in the mail or delivered for transmission by any other usual means  
16 of transmission, electronic or otherwise, with any postage or any cost of transmission provided  
17 for and properly addressed to the landlord or the tenant.

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

21 (e) A person receives notification of a fact:

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

23 (2) in the case of a record from a landlord to a tenant or a tenant to a landlord,

1 when the record is:

2 (A) personally delivered under subsection (c)(1); or

3 (B) sent in accordance with subsection (c)(2).

4 **Comment**

5 A number of sections in this act require either a landlord or a tenant to send the other  
6 notice in a record signed by the party giving the notice. (See, Sections 508 and Section 511  
7 relating to domestic violence, sexual assault, or stalking, Section 601 relating to terminations for  
8 nonpayment of rent, Section 801 relating to termination of a periodic tenancy, Section 1001  
9 relating to retrieval of personal property, and Section 1101 relating to assignments or subleases).  
10 When notice in a signed record is required, it must be given in accordance with subsection (c). In  
11 other cases it could be given by other means reasonably calculated to come to the recipient's  
12 attention.

13  
14 Under subsection (e) a person knows of a fact when the fact comes to the person's  
15 attention. A fact might come to the person's attention as the result of face-to-face conversation,  
16 the telephone, or by a receipt of a record.

17  
18  
19 **[SECTION 108. COMMON LAW AND PRINCIPLES OF EQUITY.** Unless  
20 displaced by this [act], the principles of law and equity supplement this [act]].

21 **Comment**

22  
23 In light of this section, contract principles apply to the construction and interpretation of  
24 leases, including provisions relating to mutuality or dependency of lease covenants. By  
25 construing leases as contracts, for example, performance of promises the landlord and tenant  
26 make to each other are dependent upon the other. Thus, the tenant's promise to pay rent is  
27 conditioned upon (dependent upon) the landlord's provision of essential services and compliance  
28 with Section 303. However, the landlord's obligation to maintain the dwelling unit as provided in  
29 Section 303 is not conditioned upon the tenant's payment of rent.

30  
31 **ARTICLE 2**

32 **GENERAL PROVISIONS APPLICABLE TO LEASE**

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

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

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

2 (1) the tenant shall pay as rent for the use and occupancy of the dwelling unit for  
3 the term of the lease an amount comparable to the amount paid for other dwelling units of similar  
4 size and condition in the same or a comparable location determined at the commencement of the  
5 lease; and

6 (2) rent is:

7 (A) payable without demand or notice:

8 (i) at the address or place the landlord designates under Section  
9 301(b)(3) or, if no designation is made, at the landlord's place of business at the time the lease  
10 was made; and

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

13 (B) uniformly apportioned from day to day.

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

17 **Comment**

18  
19 Under subsection (c), tenancies at will are effectively abolished; the only recognized  
20 tenancies other than a tenancy for a fixed term, is a periodic tenancy for month to month or the  
21 less common week to week.

22  
23 **SECTION 202. EFFECT OF UNSIGNED, UNDELIVERED LEASE; IMPLIED**  
24 **LEASE.**

25 (a) Subject to subsection (b):

26 (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 the landlord or 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 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 attorney's fees and costs of the landlord; 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 the liability and 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 includes a provision in a lease that violates subsection (a), the court, in addition to awarding the tenant actual damages, may award the tenant an amount up to [three] months' 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 DUTY TO MAINTAIN**

**PREMISES.** Except as otherwise provided by law of this state other than this [act], a lease, assignment, sublease, conveyance, trust deed, or security instrument may not permit the receipt of rent without the obligation to comply with the landlord's duty to maintain the premises as provided in the lease or Section 303.

#### **Comment**

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

## **ARTICLE 3**

### **LANDLORD'S DUTIES**

#### **SECTION 301. REQUIRED DISCLOSURES BY LANDLORD AND TENANT.**

(a) Before accepting any funds to be applied towards a security deposit, prepaid rent, or fees or before entering into a lease, a prospective landlord or any person authorized to enter into a lease on the prospective landlord's behalf shall disclose to the prospective tenant in a record the

1 following information:

2 (1) all rules and conditions which govern the tenancy;

3 (2) any condition of the premises which would breach a duty owed to a tenant  
4 under Section 303 and of which the prospective landlord knows or had the prospective landlord  
5 done a reasonable inspection of the premises should have known;

6 (3) whether the premises are in foreclosure or the landlord is knowingly in default  
7 on any obligation to pay money or perform another obligation that could result in foreclosure;  
8 and

9 (4) in the case of prepaid rent, the month or other period of the lease to which the  
10 prepaid rent is to be applied.

11 (b) At or before the commencement of a tenancy,

12 (1) the landlord shall disclose to the tenant in a record:

13 (A) the name of:

14 (i) the landlord;

15 (ii) any other person authorized to manage the premises; and

16 (iii) the owner of the premises or a person authorized to act for the  
17 owner for the purpose of service of process and receiving notices and demands;

18 (B) the mail address and any address used for the receipt of electronic  
19 communications by the landlord or any other person designated by the landlord to which notices  
20 and demands must be sent; and

21 (C) the address or place to which the tenant must deliver rent; and

22 (2) the tenant shall disclose to the landlord the tenant's mail address and any  
23 address used by the tenant for the receipt of electronic communications.

(c) A landlord or any person authorized to enter into a lease on the landlord's behalf and the tenant must keep current the information required to be given by subsection (b).

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

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

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

#### **Comment**

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

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

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

**TENANT.** The landlord must deliver actual possession of the dwelling unit to the tenant at the commencement of the term of the lease.

#### **Comment**

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

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

(a) A landlord has the duty to make all repairs and to do or refrain from doing whatever is necessary to assure that the premises are maintained in a habitable condition. At a minimum, the duty to maintain requires the landlord to ensure that the premises:

(1) comply with all obligations imposed upon the landlord by any applicable building, housing, health codes, and other laws;

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

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

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

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

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

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

(8) to the extent they include common areas and other areas under the landlord's control, have such areas safe for normal and reasonably foreseeable uses consistent with the lease and in good repair and have such areas clean and sanitary, and have reasonable measures in place to control the presence of debris, filth, rubbish, garbage, and the items listed in paragraph (7) in such areas;

(9) have an adequate number of appropriate receptacles in clean condition for garbage, rubbish, and recyclable material;



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

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

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

(13) have safety equipment required by applicable law.

### **Comment**

Consistent with the practice of nearly every state, Section 303 recognizes that modern 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. This section sets forth only minimum standards. Because many jurisdictions do not have building, housing, or health codes applicable to rental housing, it is appropriate that this statute incorporate minimum standards of maintenance. A lease could impose other maintenance obligations on the landlord. It could also impose other maintenance obligations on the tenant so long as those obligations do not absolve the landlord of the landlord's obligations under this section. *See* Section 203(a)(3).

### **SECTION 304. DUTIES OF LANDLORD PERFORMED BY TENANT.**

(a) 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 Section 303, subject to the following rules:

(1) Consideration for the agreement cannot be based on a reduction in the amount or percentage of the rent payable under the lease; and

(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

1 tenant or to other tenants in the premises.

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

4 **Comment**  
5

6 Section 304 permits the landlord and tenant to agree, by separate contract, that the tenant  
7 may perform repairs or maintenance provided that the consideration for the contract is not tied to  
8 the tenant's rent and the tenant's failure to perform under the contract does not discharge the  
9 landlord's duties under Section 303.

10 **SECTION 305. LIMITATIONS ON LANDLORD'S LIABILITY.**

11 (a) Unless the landlord and tenant otherwise agree in a record signed by the landlord and  
12 the tenant, and except as otherwise provided in subsection (b), a landlord that conveys in a good-  
13 faith sale to a bona fide purchaser premises that include a dwelling unit subject to a lease is  
14 relieved of liability under the lease and this [act] as to events occurring after the later of the  
15 notice to the tenant of the conveyance or the conveyance to the purchaser.

16 (b) Unless the landlord and tenant otherwise agree in a record signed by the landlord and  
17 the tenant or as otherwise provided in Section 1205, the landlord remains liable to the tenant for  
18 the amount of any security deposit and unearned rent.

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

23 **Comment**  
24

25 The effect of Section 305(a), which first appeared in the 1972 act, is to sever both privity  
26 of contract and privity of estate between the assigning landlord and the tenant.  
27

28 The landlord's release from liability occurs with respect to events occurring after the later  
29 of the notice to the tenant of the conveyance or the conveyance to the purchaser. If the event

1 occurred prior to that time, the landlord could be liable. For example, suppose a landlord installs  
2 a defective smoke alarm and later sells the building to a bona fide purchaser. Thereafter a fire on  
3 the premises injures a tenant. The evidence establishes that the tenant would not have been  
4 injured if the smoke alarm had not been defective. This section would not relieve the landlord  
5 from potential liability as the smoke alarm was installed prior to the sale of the building to a third  
6 party.

7 [Insert comment showing relationship to section 1205]  
8

## 9 **SECTION 306. RULES OF LANDLORD.**

10 (a) A landlord may adopt a rule, concerning the tenant's use and occupancy of the  
11 premises, but the rule is enforceable against the tenant only if:

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

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

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

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

19 (5) it is not for the purpose of evading an obligation of the landlord under the  
20 lease or this [act]; and

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

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

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

2 (10) notify the landlord within a reasonable time of any condition of the premises that  
3 requires repair or remediation by the landlord under Section 303 or the lease;

4 (11) return the dwelling unit to the landlord at the termination of the lease in the same  
5 condition as it was at the commencement of the tenancy, except for normal wear and tear,  
6 damage caused by casualties beyond the control of the tenant, and additions and improvements  
7 installed on the premises with the landlord's consent; and

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

#### 10 **Comment**

11  
12 Under paragraph (3) the tenant is obligated to keep the dwelling unit in a safe or sanitary  
13 condition unless the duty to do so is imposed on another, such as the landlord. For example,  
14 because Section 303 imposes a duty on the landlord to conform plumbing fixtures to applicable  
15 law, that duty is not shifted to the tenant by this section.

16  
17 Paragraph (9) would prohibit the tenant from engaging in any illegal activities on the  
18 premises that would disturb the use and enjoyment of the premises by other tenants, including  
19 the tenant's cotenants as well as tenants in other dwelling units on the premises.

20  
21 Paragraph (12) leaves to judicial determination whether the incidental use of a dwelling  
22 unit for business, professional, or other purposes would constitute a use for other than a dwelling  
23 unit. See 1 A.L.R. 6<sup>th</sup> 135 (2005)(collecting and analyzing cases).

### 24 **ARTICLE 5**

#### 25 **TENANT REMEDIES**

##### 26 **SECTION 501. NONCOMPLIANCE BY LANDLORD; IN GENERAL.**

27  
28 (a) If there is noncompliance by the landlord with the lease or Section 303, the tenant  
29 must give the landlord notice in a record signed by the tenant of the noncompliance and an  
30 opportunity to remedy the noncompliance within the following time periods:

31 (1) Subject to subparagraph (2),

1 (A) If the noncompliance by the landlord involves the failure to provide an  
2 essential service, the landlord shall remedy the noncompliance not later than [5] days after the  
3 date of the receipt of the notice, and

4 (B) If the noncompliance does not involve the failure to provide an  
5 essential service, the landlord must remedy the noncompliance not later than [14] days after the  
6 date of the receipt of the notice.

7 (2) If the noncompliance poses an [imminent][serious] threat to the health or  
8 safety of the tenant or other occupant of the dwelling unit, the landlord must remedy the  
9 noncompliance as promptly as the conditions require.

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

13 (1) terminate the lease and [except in cases of a natural disaster] recover actual  
14 damages for the period before termination, including damages based on the diminution in value  
15 of the dwelling unit as determined by the court based upon evidence which need not include  
16 expert testimony; or

17 (2) continue the lease and:

18 (A) withhold the rent for the period of noncompliance subject to Section  
19 505;

20 (B) recover actual damages, including damages based on the diminution  
21 in value of the dwelling unit as determined by the court based upon evidence which need not  
22 include expert testimony;

23 (C) seek injunctive relief or specific performance;

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

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

(c) 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 (b)(2)(B), (C), and (D).

(d) 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).

(e) If a lease is terminated, the landlord shall return to the tenant the amount of any security deposit and unearned rent to which the tenant is entitled.

(f) In addition to the remedies provided in subsections (b) and (c), 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(14).

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(10) 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.” In so doing, the court may consider such factors as the nature and duration  
8 of the defect, the proportion of the dwelling unit that is affected, the value of services to which  
9 the tenant was deprived, the degree of discomfort imposed by the defect, and the effectiveness of  
10 the landlord’s remediation efforts. For example, if, as a result of noncompliance, the tenant is  
11 deprived only of the use of office space, the diminution in value should be less than if the  
12 noncompliance results in the loss of bath and kitchen facilities in the entire dwelling unit.

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

16  
17        A duty to mitigate damages exists under Section 104.

18  
19        **SECTION 502. LANDLORD’S FAILURE TO DELIVER POSSESSION TO**  
20 **TENANT.**

21        (a) Except as otherwise provided in subsection (d), if a landlord does not deliver actual  
22 possession of the dwelling unit to the tenant as provided in Section 302, rent abates until  
23 possession is delivered, and the tenant may:

24                (1) terminate the lease by a notice in a record signed by the tenant at any time  
25 before the landlord delivers possession of the dwelling unit to the tenant; or

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

29        (b) If a tenant terminates the lease under subsection (a), the landlord must return to the  
30 tenant any security deposit, unearned rent, and fees received from the tenant.

31        (c) In addition to the rights provided to the tenant in subsection (a), if a landlord’s failure  
32 to deliver possession to the tenant pursuant to Section 302 is willful and not in good faith, the



1 court shall award the tenant an amount equal to [three] months' periodic rent or [triple] the actual  
2 damages, whichever is greater, costs, and reasonable attorney's fees.

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

### 6 **Comment**

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

12  
13 If the tenant elects to sue the holdover tenant for possession, the tenant effectively elects  
14 to continue the lease with the landlord and thus, under subsection (d), is liable to the landlord for  
15 rent for the period beginning with the commencement of the lease.

### 16 **SECTION 503. SELF-HELP FOR MINOR DEFECTS.**

17  
18 (a) Except as otherwise provided in subsection (d), if a landlord fails to comply with the  
19 lease or Section 303 and the reasonable cost of compliance is less than [\$500][one month's rent],  
20 the tenant may notify the landlord of the tenant's intent to correct the condition at the landlord's  
21 expense.

22 (b) If a landlord fails to comply with the lease or Section 303 within the period provided  
23 in Section 501(a), the tenant may take appropriate corrective steps. [Subject to subsection (d),]  
24 after submitting to the landlord an itemized statement, including receipts for purchased items  
25 and services, the tenant may deduct from the rent the actual and reasonable cost or the fair and  
26 reasonable value of the work, not exceeding the amount specified in subsection (a), unless the  
27 tenant otherwise has been reimbursed by the landlord.

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

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

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

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

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

#### 9 **Comment**

10 Under subsection (d), the tenant may not repair at a landlord's expense to the extent the  
11 damage that was repaired was caused by the tenant, an immediate family member, or another  
12 person, other than the landlord, on the premises with the tenant's consent. For example, if the  
13 tenant breaks the door lock, the tenant cannot deduct the cost of the repair from the rent, if the  
14 repair was undertaken by the tenant. Subsection (d) would not preclude the tenant from making  
15 the repair under the authority of the first sentence of subsection (b).

16  
17 Subsection (e) is intended to assure the landlord that over any given 12-month period the  
18 landlord's costs arising as the result of the tenant's election of this self-help remedy do not  
19 exceed [\$500][one month's rent]. The 12-month look back period begins to run 12 months  
20 immediately before the completion of the immediate repair for which the tenant has exercised the  
21 tenant's rights under this section. For example, suppose the tenant paying monthly rent of \$300  
22 properly contracts for a plumber to make a repair that costs \$300. The repair is completed on  
23 November 10. The tenant is entitled to be reimbursed the entire \$300 if over the last 12 months,  
24 beginning with November 10 of the preceding year, the tenant never used this remedy. If over  
25 that period the tenant has previously used the remedy to the extent of \$400, the tenant would  
26 only be able to recoup \$100 of the cost of the current \$300 repair. (Fix once we know which  
27 bracketed amount the committee selects).

#### 28 29 **SECTION 504. LANDLORD'S WRONGFUL FAILURE TO PROVIDE** 30 **ESSENTIAL SERVICE.**

31 (a) If, contrary to the terms of the lease or Section 303, the landlord willfully or  
32 negligently fails to supply an essential service, the tenant may give notice to the landlord

1 pursuant to Section 501(a) specifying the failure and, if the landlord fails to comply within the  
2 period specified in Section 501(a), may:

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

5 (2) procure comparable substitute housing during the period of the landlord's  
6 noncompliance, and,

7 (3) in addition to the remedy provided in subparagraph (2) of this subsection, the  
8 court shall award the tenant actual damages, costs, and reasonable attorney's fees.

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

#### 12 **Comment**

13  
14 Under subsection (a)(2), a tenant's actual damages could include the difference between  
15 the rent provided in the lease and the actual and reasonable cost of substitute housing as well as  
16 moving expenses.

### 17 **SECTION 505. LANDLORD'S NONCOMPLIANCE AS DEFENSE TO ACTION** 18 19 **FOR NONPAYMENT OF RENT.**

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

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

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

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

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

7 (1) the landlord fully complied with the lease and Section 303, the court shall  
8 order the immediate release of any rent held in escrow to the landlord and direct the tenant to pay  
9 the landlord any remaining rent owed; or

10 (2) the landlord's noncompliance with the lease or Section 303 substantially  
11 interferes with the tenant's use and enjoyment of the premises, the court may order one or all of  
12 the following remedies:

13 (A) a release to the landlord of all or part of the rent held in escrow for the  
14 purpose of bringing the premises into compliance with the lease or Section 303;

15 (B) a refund to the tenant of all or part of the rent held in escrow for:

16 (i) a repair made by the tenant in compliance with Section 503;

17 (ii) damages based on the diminution in value of the dwelling unit  
18 as determined by the court based upon evidence which need not include expert testimony; or

19 (iii) other actual damages;

20 (C) that the tenant continue to pay rent into escrow as rent becomes due or  
21 abate future rent until the landlord brings the premises into compliance with the lease or Section  
22 303; or

23 (D) payment to the landlord of any rent held in escrow not otherwise

1 payable to the tenant and any other amount the court determines the tenant owes the landlord.

2 **Comment**

3  
4 Under subsection (b), if either party seeks a court order seeking the escrow of rent, the  
5 court, in its discretion, will determine whether to order an escrow of rent. If the court orders rent  
6 to be escrowed it shall also order the amount to be escrowed. This amount could be all of the rent  
7 or merely some portion thereof.

8  
9 **SECTION 506. FIRE OR CASUALTY DAMAGE.**

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

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

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

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

24 (b) If a lease is terminated, the landlord shall return to the tenant the amount of any  
25 security deposit and unearned rent to which the tenant is entitled. Accounting for rent in the  
26 event of termination or apportionment of the rent shall be made as of the date of the fire or other  
27 casualty.

1           **SECTION 507. TENANT REMEDIES FOR UNLAWFUL REMOVAL,**  
2 **EXCLUSION, OR DIMINUTION OF ESSENTIAL SERVICE.** If a landlord unlawfully  
3 removes or excludes the tenant from the premises or attempts to constructively evict the tenant  
4 by willfully interrupting or causing the interruption of an essential service to the tenant, the  
5 tenant may recover possession or terminate the lease and, in either case, the court shall award the  
6 tenant an amount equal to [three] months' periodic rent or [triple] the actual damages, whichever  
7 is greater, costs, and reasonable attorney's fees. If the lease terminates, the landlord shall return  
8 to the tenant the amount of any security deposit and unearned rent to which the tenant is entitled.

9           **SECTION 508. EARLY RELEASE OR TERMINATION OF LEASE BECAUSE**  
10 **OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.**

11           (a) Subject to subsection (e), if as the result of an act of domestic violence, sexual  
12 assault, or stalking a tenant or an immediate family member has a reasonable fear of further acts  
13 of domestic violence, sexual assault, or stalking by continued residence in the dwelling unit, the  
14 tenant may be released from the lease by giving a notice that complies with subsection (b).

15           (b) A tenant shall be released from a lease if the tenant gives the landlord:

16                   (1) notice in a record signed by the tenant of the tenant's intent to be released  
17 from the lease not later than [90] days after the act of domestic violence, sexual assault, or  
18 stalking and at least [14] days before the release date specified in the notice specifying facts  
19 giving rise to the fear; and

20                   (2) one of the following documents:

21                           (A) a copy of a valid outstanding temporary or permanent court order  
22 which restrains a perpetrator from contact with the tenant or an immediate family member;

23                           (B) a copy of the conviction of a perpetrator for an act of domestic

1 violence, sexual assault, or stalking against the tenant or an immediate family member; or

2 (C) a verification in a record signed by the tenant and an attesting third  
3 party which complies with Section 510.

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

7 (d) Except as otherwise provided in Section 511(a)(2), if there are multiple tenants that  
8 are parties to the lease, the release of one tenant under this section does not terminate the lease  
9 with respect to other tenants. The tenant who is released from the lease is not liable for rent  
10 accruing after the tenant is released from the lease. The landlord is not required to return to the  
11 released tenant or a remaining tenant any security deposit or unearned prepaid rent until the lease  
12 terminates with respect to all tenants.

13 (e) This section shall not apply if the tenant is the perpetrator.

14 **Comment:**

15 Under subsection (b)(2)(a), the court order could be issued by a state or federal court, a  
16 tribal court order, or a court of a foreign jurisdiction.

17  
18 **SECTION 509. LANDLORD'S OBLIGATIONS IN EVENT OF EARLY**  
19 **RELEASE OR TERMINATION.**

20 (a) If a tenant complies with Section 508, the landlord:

21 (1) except as otherwise provided in Section 508 (d), shall return to the tenant the  
22 amount of any security deposit and unearned rent to which the tenant is entitled after the tenant  
23 vacates the dwelling unit;

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

(3) may not disclose information required to be reported to the landlord under Section 508 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.

(b) If a landlord willfully refuses to release a tenant who under Section 508 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, costs, and reasonable attorney's fees.

#### **SECTION 510. VERIFICATION.**

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

(1) from 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 approximate 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 further acts of domestic violence, sexual assault, or stalking by continued residence in the dwelling unit;



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

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

6 (2) from an attesting third party:

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

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

11 (C) a statement that the attesting third party has read the tenant's  
12 verification and has been advised by the tenant that the tenant or an immediate family member is  
13 the victim of domestic violence, sexual assault, or stalking and has a reasonable fear that the  
14 tenant or the immediate family member will suffer further acts of domestic violence, sexual  
15 assault, or stalking 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

1 [triple] actual damages, whichever is greater, costs, and reasonable attorney's fees.

2 **Comment**

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

5 **Verification**

6  
7 I, \_\_\_\_\_[insert name of tenant], state that:

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

9 \_\_\_\_\_[insert address of dwelling unit];

10 (b) I or an immediate family member has been a victim of acts of [domestic violence,]  
11 [sexual assault,] or [stalking] occurring to the best of my knowledge over a period  
12 \_\_\_\_\_[insert time period over which acts of  
13 domestic violence, sexual assault, or stalking occurred] which acts have created a reasonable fear  
14 that I or an immediate family member will suffer further acts of domestic violence, sexual  
15 assault, or stalking by continued residence in the dwelling unit;

16 (c) The most recent act of that violence occurred on \_\_\_\_\_ [insert  
17 date]; and

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

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

26  
27 \_\_\_\_\_ [Tenant's signature]

28 I, \_\_\_\_\_, [insert name of attesting third party] state that:

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

32 (b) My business address and phone number is: \_\_\_\_\_;

33 (c) The individual who signed the preceding statement has informed me that the  
34 individual or an immediate family member is a victim of [domestic violence,] [sexual assault,] or  
35 [stalking] based upon the acts listed in the preceding statement which acts have created a  
36 reasonable fear that the tenant or an immediate family member will suffer further acts of  
37 domestic violence, sexual assault, or stalking by continued residence in the dwelling unit  
38 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 declare that the above statement is true and accurate to the best of my knowledge and  
44 belief and that I understand it could be used as evidence in court and I could be subject to a

1 penalty for perjury by making false statements in this verification.

2  
3 [Attesting third party's signature]  
4

5 **SECTION 511. EFFECT ON PERPETRATOR.**

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

8 (1) except as otherwise provided in Section 513(b), allow the perpetrator to  
9 remain in possession of the dwelling unit and hold the perpetrator liable on the lease for future  
10 rent payable under the lease; or

11 (2) terminate the perpetrator's interest under the lease by sending the perpetrator  
12 notice in a record signed by the landlord of the landlord's intention to terminate the lease at least  
13 [5] days before the termination date specified in the notice and bring an action for possession  
14 against the perpetrator if the perpetrator fails to vacate the dwelling unit on the specified  
15 termination date.

16 (b) A perpetrator is not entitled to damages resulting from a good faith exercise of a right  
17 granted to a landlord or a tenant by Section 508 or this section.

18 **Comment**

19 If a tenant does not exercise a right to be released from a lease on which the perpetrator is  
20 also a party, the landlord could still terminate the perpetrator's interest in the lease under Section  
21 401 because of the perpetrator's breach of the duty not to engage in criminal acts.

22  
23 **SECTION 512. CHANGE OF LOCKS AS RESULT OF DOMESTIC VIOLENCE,**  
24 **SEXUAL ASSAULT, OR STALKING.**

25 (a) Subject to subsections (b) and (c), if a tenant or immediate family member, other than  
26 a perpetrator, has been the victim of domestic violence, sexual assault, or stalking, and the tenant  
27 has a reasonable fear that the perpetrator or other person acting on the perpetrator's behalf may

1 attempt to gain access to the dwelling unit, the tenant may ask the landlord to change the locks or  
2 other security devices for the dwelling unit.

3 (b) Not later than [three] days after receiving a request under subsection (a), or sooner if  
4 commercially reasonable to do so, the landlord shall change the locks or security devices at the  
5 tenant's expense. If the landlord fails to act in a timely manner:

6 (1) the tenant may change the locks or other security devices without the  
7 landlord's consent and the tenant shall give a key or other means of access to the new locks or  
8 security devices to the landlord and any other tenant, other than the perpetrator, that is a party to  
9 the lease; and

10 (2) if the locks or other security devices are changed under paragraph (1), the  
11 landlord may change them a second time [, at the tenant's expense,] to ensure compatibility with  
12 the landlord's master key or other means of access or otherwise accommodate the landlord's  
13 reasonable commercial needs.

14 (c) If a perpetrator is a party to the lease, the locks or other security devices may not be  
15 changed under subsection (b) unless there is a court order expressly requiring the perpetrator to  
16 vacate the dwelling unit [or a no-contact order] and a copy of the order has been [given] to the  
17 landlord.

18 (d) A perpetrator is not entitled to damages or other relief against a landlord or a tenant  
19 complying in good faith with this section.

#### 20 **Comment**

21  
22 The tenant is not required to comply with Section 508(a)(2) to cause a change of the  
23 locks to the dwelling unit.

24  
25 When a perpetrator is a tenant under the lease, subsection (c) would permit a change of  
26 locks only if a court has expressly ordered the perpetrator to vacate the residence. In the absence  
27 of this explicit language, a standard [stay away] [order of protection] would be insufficient.

1  
2           **SECTION 513. EFFECT OF COURT ORDER TO VACATE.**

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

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

7                   (2) provide the perpetrator with a key to the unit.

8           (b) If a perpetrator is a party to the lease, then upon issuance of a court order requiring  
9 the perpetrator to vacate the dwelling unit, the perpetrator's interest in the tenancy terminates and  
10 the landlord and any remaining tenants are entitled to any actual damages from the perpetrator as  
11 a result of the termination.

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

14           (d) Subject to subsection (b), a landlord shall return to all tenants, including a perpetrator,  
15 the amount of any security deposit and unearned rent to which they are entitled following the  
16 termination of the lease.

17                                   **Comment**

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

24  
25           If a perpetrator's interest under a lease is terminated, the landlord may not increase the  
26 obligations of the remaining tenant under the lease even if the landlord believes that the  
27 remaining tenant might lack the financial ability to comply with lease. Thus, if the perpetrator  
28 and the spouse of the perpetrator sign a lease with monthly rent of \$1,000 for which they are  
29 jointly and severally liable, the termination of the perpetrator's interest does not affect the  
30 spouse's obligation to continue to pay rent of \$1,000. And, the landlord cannot increase that rent

1 or security deposit to take account of the fact the perpetrator is no longer a party to the lease.

2  
3 **SECTION 514. LIMITATIONS ON LANDLORD’S CONDUCT WITH**  
4 **RESPECT TO VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR**  
5 **STALKING.**

6 (a) In this section, the word “tenant” includes an applicant seeking to enter into a lease  
7 with a landlord.

8 (b) Except as provided in subsection (c), a landlord may not increase or threaten to  
9 increase the rent, security deposit, or fees payable under a lease, decrease or threaten to decrease  
10 services due under the lease or this [act], terminate or threaten to terminate a lease, refuse to  
11 renew a lease, serve or threaten to serve a notice to terminate a periodic tenancy, bring or  
12 threaten to bring an action for possession, refuse to let a dwelling unit, or impose different rules  
13 or selectively enforce the landlord’s rules:

14 (1) primarily because the tenant under the lease or an immediate family member  
15 is or has been the victim of domestic violence, sexual assault, or stalking;

16 (2) because of a violation of the lease or this [act] by the tenant if the violation  
17 results from an incident of domestic violence, sexual assault, or stalking against the tenant or an  
18 immediate family member; or

19 (3) because of criminal activity relating to domestic violence, sexual assault, or  
20 stalking against the tenant or an immediate family member or any police or emergency response  
21 to a good faith complaint of activities relating to domestic violence, sexual assault, or stalking  
22 against the tenant or an immediate family member.

23 (c) A landlord may terminate the lease of a tenant if the landlord gave the tenant a prior  
24 notice in a record signed by the landlord regarding a perpetrator’s behavior relating to domestic

1 violence, sexual assault, or stalking against the tenant or an immediately family member, and  
2 subsequently:

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

5 (2) the perpetrator damages the premises, harms another person on the premises,  
6 or otherwise disturbs the use and enjoyment of the premises by another tenant of the dwelling  
7 unit or other dwelling units in the premises.

8 (d) If a landlord willfully violates this section:

9 (1) the tenant may:

10 (A) terminate the lease; or

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

13 (C) obtain appropriate injunctive relief; and

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

## 16 **ARTICLE 6**

### 17 **LANDLORD REMEDIES**

#### 18 **SECTION 601. NONCOMPLIANCE WITH LEASE BY TENANT; FAILURE TO** 19 **PAY RENT.**

20 (a) Except as otherwise provided in this [act] or by law of this state other than this [act],  
21 if there is a substantial noncompliance with the lease or this [act], the landlord may give the  
22 tenant a notice in a record signed by the landlord specifying the act and omission constituting the  
23 noncompliance and that the lease will terminate on a specified date not less than [30] days after

1 receipt of the notice if the noncompliance is not remedied not later than [14] days after receipt of  
2 the notice. If the tenant does not adequately remedy the noncompliance during the [14]-day  
3 remediation period, the landlord may terminate the lease.

4 (b) A landlord may terminate a lease, without giving the tenant an opportunity to remedy  
5 a noncompliance, by giving the tenant notice in a record signed by the landlord that the lease will  
6 terminate on a specified date not less than [14] days after receipt of the notice in the following  
7 circumstances:

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

10 (2) the noncompliance is substantially the same act or omission that constituted a  
11 prior noncompliance, other than for nonpayment of rent, for which notice under subsection (a)  
12 had been sent within the six months preceding the latest noncompliance.

13 (c) Except as otherwise provided in this [act], a landlord may recover actual damages and  
14 obtain injunctive relief or specific performance for a tenant's noncompliance with Section 401  
15 that substantially affects health or safety or a substantial noncompliance with the lease.

#### 16 **Comment**

17  
18 If subsection (b) applies, the tenant has no right to cure the noncompliance to avoid  
19 termination of the lease.

20  
21 While not required by this act, good practice would suggest that a landlord taking  
22 advantage of subsection (b) would include in the notice a statement of the noncompliance that  
23 had previously occurred with the time periods set forth in that subsection.

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

25  
26 Acceptance of rent by a landlord with knowledge of noncompliance by a tenant with the lease or  
27 this act or acceptance by the landlord of the tenant's performance that varies from the terms of  
28 the lease or this [act] constitutes a waiver of the landlord's right to terminate the lease for that



1 noncompliance, unless the landlord and tenant otherwise agree after the noncompliance has  
2 occurred.

3 **SECTION 603. DISTRESS FOR RENT; LANDLORD LIENS.**

4 (a) Distraint for rent is abolished.

5 (b) Except as otherwise permitted under Article 12, a landlord may not enforce a lien or  
6 security interest on a tenant's personal property unless the lien or security interest attached  
7 before the effective date of this [act].

8 **Comment**  
9

10 This section prohibits the landlord from seizing the tenant's personal property to satisfy  
11 the landlord's claims against the tenant or filing a lien against the tenant's personal property to  
12 secure the tenant's obligations under the lease.  
13

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

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

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

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

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

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

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

26 (c) If a tenant abandons the dwelling unit before the end of the term, the landlord, in

1 fulfilling the duty to mitigate, shall make reasonable efforts to rent the unit.

2 (d) A landlord's duty under subsection (c) does not take priority over the landlord's right  
3 to first rent any of the landlord's other dwelling units that are available to rent.

4 (e) If a landlord rents a dwelling unit abandoned by a tenant to another tenant for a term  
5 beginning before the expiration of the abandoning tenant's lease, the abandoning tenant's lease  
6 terminates as of the date of the new tenancy and the landlord may recover actual damages from  
7 the abandoning tenant.

8 (f) If a landlord uses reasonable efforts to rent a dwelling unit abandoned by the tenant  
9 but is unable to rent the dwelling unit for an amount equal to the rent payable by the tenant, the  
10 landlord may recover actual damages from the tenant.

11 (g) If a landlord fails to use reasonable efforts to rent a dwelling unit abandoned by a  
12 tenant, the lease terminates as of the date of the abandonment and the landlord and tenant are  
13 liable to each other under the lease only for breaches occurring before the date of the  
14 abandonment. The landlord shall return to the tenant the amount of any security deposit and  
15 unearned rent to which the tenant is entitled.

16 (h) A landlord may accept a tenant's abandonment of a dwelling unit only by a notice in a  
17 record signed by the landlord accepting the abandonment. If the landlord accepts the  
18 abandonment, the lease terminates as of the date of the abandonment, and the landlord and tenant  
19 are liable to each other under the lease only for breaches occurring before acceptance of the  
20 abandonment. The landlord shall return to the tenant the amount of any security deposit and  
21 unearned rent to which the tenant is entitled

22 (i) If a tenant wrongfully terminates the lease, the landlord has a claim for possession.  
23 The landlord also has a claim for past due rent and, unless the landlord accepts abandonment or

1 fails to mitigate, a separate claim for actual damages for breach of the lease, costs, and  
2 reasonable attorney's fees.

### 3 **Comment**

4  
5 Under subsection (a) the reasonable steps include showing or advertising the unit.  
6 Showing assumes of course that there are prospective tenants interested in seeing the unit.  
7 Advertising can be by a variety of means including sending emails to prospective tenants, hiring  
8 a real estate agent to locate prospective tenants, posting for rent signs on the premises, and  
9 advertising the unit for rent in newspapers or other media.

10  
11 In light of subsection (d), when at the time the landlord is fulfilling the duty to mitigate  
12 the landlord has other vacant units to rent, the landlord can show the other units to prospective  
13 tenants before showing the abandoned unit to prospective tenants.

14  
15 Under subsection (e), if the landlord rents the dwelling unit for the balance of the term,  
16 the lease with the tenant terminates. As a result, under this section, re-letting for the tenant's  
17 account is not available.

18  
19 If a tenant abandons the dwelling unit, the landlord may choose to accept the  
20 abandonment, thus agreeing to a termination of the lease. If, at the time of the abandonment the  
21 tenant is in arrears on rent, the landlord would still have a cause of action to recover the past due  
22 rent. However, by accepting the abandonment the landlord would not have a cause of action for  
23 actual damages resulting from the abandonment. If a tenant abandons the dwelling unit and the  
24 landlord does not accept the abandonment, the landlord can still recover damages from the tenant  
25 for anticipatory breach except as limited by subsection (f).

26  
27 **SECTION 605. RECOVERY OF POSSESSION LIMITED; INTERRUPTION OF**  
28 **ESSENTIAL SERVICE.** Except in a case of abandonment of a dwelling unit or as permitted  
29 by this [act], a landlord may not recover or take possession of a dwelling unit by an action or  
30 self-help or by willfully interrupting or causing the interruption of an essential service to the  
31 tenant.

## 32 **ARTICLE 7**

### 33 **ACCESS**

#### 34 **SECTION 701. LANDLORD'S ACCESS TO DWELLING UNIT.**

35 (a) A tenant may not unreasonably withhold consent to the landlord to enter into the

1 dwelling unit to inspect it, make a necessary or agreed-to repair, alteration, or improvement,  
2 supply a necessary or agreed-to service, or exhibit the dwelling unit to a prospective or actual  
3 purchaser, mortgagee, tenant, worker, contractor, or public official responsible for enforcement  
4 of a building, housing, or health code.

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

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

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

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

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

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

2 (2) pursuant to a court order; or

3 (3) the tenant has abandoned the dwelling unit.

4 **SECTION 702. LANDLORD AND TENANT REMEDIES FOR ABUSE OF**  
5 **ACCESS.**

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

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

16 **ARTICLE 8**

17 **TERMINATION OF PERIODIC TENANCY; DEATH**

18 **OF TENANT; HOLDOVER TENANCY**

19 **SECTION 801. TERMINATION OF PERIODIC TENANCY.**

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

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

1 (1) The landlord or tenant may terminate a periodic tenancy for week to week by  
2 giving not less than [five] days' notice in a record of the intent to terminate the lease on the date  
3 specified in the notice signed by the party giving the notice.

4 (2) The landlord or the tenant may terminate a periodic tenancy for month to  
5 month by giving not less than [one] month's notice in a record of the intent to terminate the lease  
6 at the end of the monthly period signed by the party giving the notice.

#### 7 **Comment**

8  
9 Under subsection (b), a month to month tenancy can be terminated by giving one month's  
10 notice. The termination date in the notice must coincide with the normal end of the monthly  
11 period. Thus, if the tenancy begins on the first of the month, the termination date in the notice  
12 must be on the last day of at least the next month or it could be on the last date of any month at  
13 least one month after the notice is given. If the month-to-month tenancy begins on the 15<sup>th</sup> of the  
14 month, the one-month notice must have a termination date no earlier than the 14<sup>th</sup> of the next  
15 month but could have a termination date on the 14<sup>th</sup> for subsequent months. Consistent with  
16 common law, this [act] would not require the notice to include a reason for the termination.  
17

18 **SECTION 802. TERMINATION UPON DEATH OF TENANT.** If a tenant who is  
19 the only party to a lease dies before the end of a tenancy for a fixed term or a periodic tenancy:

20 (a) the tenant's surviving spouse [, partner in a civil union, or domestic partner] who  
21 resides in the dwelling unit may assume the lease by giving the landlord a notice in a record  
22 expressing the spouse's [or partner's] intent to assume the lease. The record shall be:

23 (1) signed by the surviving spouse [or partner], and

24 (2) sent to the landlord not later than [20] days after the tenant's death. For  
25 purposes of this subparagraph (2), the notice is sent if it is deposited in the mail or delivered for  
26 transmission by any other usual means of transmission, electronic or otherwise, with postage or  
27 any cost of transmission provided for and properly addressed.

28 (b) Except as otherwise provided in subsection (a) or law of this state other than this  
29 [act], either the landlord or a tenant representative may terminate the lease by notifying the other

1 in a signed record of the intent of the person signing the record to terminate the tenancy, and

2 (1) if the record is signed by the landlord, it shall be personally delivered to the  
3 tenant representative or sent to the tenant representative at the tenant representative's mail or  
4 electronic mail address, or

5 (2) if the record is signed by the tenant representative, it shall be personally  
6 delivered to the landlord or sent to the landlord at the landlord's mail or electronic mail address.

7 **SECTION 803. HOLDOVER TENANCY.**

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

14 (b) Except as otherwise provided in subsection (c), if a tenant remains in possession with  
15 the landlord's consent after the expiration of a tenancy for a fixed term or the termination of the  
16 lease, a periodic tenancy for month to month arises under the same terms as the lease unless the  
17 landlord and tenant otherwise agree.

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

## ARTICLE 9

## RETALIATION

## SECTION 901. RETALIATION PROHIBITED.

(a) Except as otherwise provided in Section 902, a landlord may not retaliate against a tenant by engaging in conduct described in subsection (b) because the tenant has:

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

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

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

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

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

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

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

or

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

(b) A landlord may not [, within six months after the tenant’s conduct in subsection (a),] retaliate against the tenant by taking or threatening to take any of the following actions:

(1) increasing the rent;

(2) decreasing services, increasing the tenant's obligations, or otherwise substantially altering the terms of the lease;



- 1 (3) bringing an action for possession except for nonpayment of rent;
- 2 (4) terminating or refusing to renew the lease; or
- 3 (5) conduct prohibited under [the criminal code].

4 **Comment**

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

7  
8 **SECTION 902. ACTS NOT CONSIDERED RETALIATORY.** A landlord is not  
9 liable for retaliation if:

10 (a) the violation of which the tenant complained in Section 901(a)(1) or (2) was primarily  
11 caused by the tenant, an immediate family member, or other person on the premises with the  
12 tenant's consent, other than the landlord or the landlord's agent;

13 (b) the tenant's conduct described in Section 901(a) was made in an unreasonable  
14 manner or at an unreasonable time, or was repeated in a manner having the effect of harassing  
15 the landlord;

16 (c) the tenant was in default in the payment of rent at the time the notice of the action for  
17 possession described in Section 901(b)(3) was sent;

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

21 (e) the tenant, an immediate family member, or other person on the premises with the  
22 tenant's consent, other than the landlord or the landlord's agent, used the premises for an illegal  
23 purpose;

24 (f) the landlord is seeking to recover possession on the basis of a notice to terminate the  
25 lease and the notice was given to the tenant before the tenant engaged in conduct described in

subsection (a); or

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

### **SECTION 903. TENANT REMEDIES FOR RETALIATORY CONDUCT.**

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

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

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

(3) if the lease terminates, the landlord shall return to the tenant the amount of any security deposit and unearned rent to which the tenant is entitled.

(b) A tenant's exercise of rights under this section does not release the landlord from liability under Section 501.

### **SECTION 904. PRESUMPTION OF RETALIATORY CONDUCT.**

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

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

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

4 **Comment**

5 If the landlord presents evidence rebutting the presumption of retaliation, the tenant has  
6 the burden to prove the landlord's dominant purpose was retaliatory.

7  
8 **ARTICLE 10**

9 **DISPOSITION OF PERSONAL PROPERTY**

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

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

13 (1) when the tenant vacates the dwelling unit at the termination of the tenancy;

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

15 (3) when the tenant abandons the dwelling unit pursuant to section 604.

16 (b) If personal property remains on the premises after possession of a dwelling unit has  
17 been relinquished to the landlord, the landlord shall give the tenant notice in a record of the  
18 tenant's right to retrieve the personal property signed by the landlord. The notice required under  
19 this section must:

20 (1) also be posted in the dwelling unit and sent to any forwarding address the  
21 tenant provided to the landlord;

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

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

1 (c) If the tenant contacts the landlord not later than [8] days after the landlord gave the  
2 notice to the tenant under subsection (b), the landlord shall permit the tenant to retrieve the  
3 personal property not later than [15] days after the date of contact or within a longer time period  
4 if the parties agree.

5 (d) The landlord shall store or leave the personal property in the dwelling unit or other  
6 place of safekeeping and shall exercise reasonable care in moving or storing the personal  
7 property. The landlord may require the tenant to pay the reasonable moving or storage costs  
8 before retrieving the personal property.

9 (e) Nothing in this section prohibits the landlord from immediately disposing of  
10 perishable food, hazardous materials, and garbage, or turning over animals to an animal control  
11 officer, humane society, or other individual or organization willing to care for the animal.

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

14 (1) if the landlord estimates in good faith the value of the personal property to be  
15 no more than \$[1,000], the landlord may dispose of the property in any manner the landlord  
16 considers appropriate; or

17 |            (2) if the landlord estimates in good faith the value of the personal property to be  
18 greater than \$[1,000], the landlord shall sell it in a commercially reasonable manner and treat the  
19 | net proceeds as a part of the tenant's security deposit.

#### 20 **Comment**

21  
22 This section applies if a lease terminates early as the result of domestic violence, sexual  
23 assault, or stalking. However, if there are co-tenants to the lease such that the lease does not  
24 terminate then this section does not apply. In the latter case, control of the dwelling unit remains  
25 with the other tenants; it does not belong to the landlord. Thus, if the tenant whose interest in the  
26 lease is released leaves personal property at the dwelling unit, that tenant would need to contact  
27 the remaining tenants to retrieve that property.

1 When a tenant who is the sole occupant of the dwelling unit dies, the tenant's  
2 representative may elect to terminate the lease pursuant to Section 802. If that election is made  
3 and the dwelling unit is vacated, possession of the dwelling unit is relinquished to the landlord  
4 pursuant to Section 1001(a).

5  
6 **SECTION 1002. DISPOSITION OF PERSONAL PROPERTY ON TENANT'S**  
7 **DEATH.**

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

11 (b) If a landlord is unable to contact a tenant representative not later than [10] days after  
12 the landlord learns of the tenant's death, the landlord [shall inventory the personal property in the  
13 dwelling unit] and:

14 (1) mail a copy of a notice [with the inventory] to the tenant at the tenant's last  
15 known address or other address of the tenant known to the landlord stating:

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

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

18 (C) that the premises contained personal property that is subject to  
19 disposal by the landlord if unclaimed by a personal representative, contact person, or heir of the  
20 tenant not later than [60] days after the last date of publication of the notice; and

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

23 (2) cause the notice to be published, at least once a week for two consecutive  
24 weeks in a manner consistent with [the rules of civil procedure relating to service by  
25 publication].

26 (c) Not earlier than [15] days after the last date of publication of the notice, a landlord

1 may remove the personal property from the dwelling unit and store it in another place for  
2 safekeeping. The landlord shall exercise reasonable care in moving or storing the personal  
3 property.

4 (d) If a tenant representative is identified not later than [30] days after the last date of  
5 publication of the notice, the tenant representative may retrieve the tenant's personal property  
6 from the landlord not later than [60] days after the last date of publication of the notice. Before  
7 retrieving the property, the tenant representative must pay the landlord's reasonable costs of  
8 inventorying, moving, and storing the property and the reasonable costs of publishing the notice  
9 pursuant to subsection (b)(2).

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

### 13 **Comment**

14  
15 Subsection (a) permits a tenant's representative to exercise a deceased tenant's rights and  
16 responsibilities regarding removal of the tenant's personal property from the premises. Sections  
17 1001 and 1002 do not govern the ultimate disposition of the personal property removed from the  
18 property by a tenant representative; those rights are determined under the state's law governing  
19 decedents' estates. Thus, the tenant representative takes possession of the personal property  
20 subject to those other laws.

21  
22 The tenant representative typically will be the personal representative of the decedent's  
23 estate, but if no personal representative has been appointed, the tenant representative will be the  
24 contact person under Section 1003 or, in the absence of a contact person, an heir of the tenant  
25 under the state's intestate succession laws. See Section 102(40). In the latter case, the landlord  
26 has no obligation to identify all of the tenant's heirs and may give possession to *any* individual  
27 the landlord knows to be an heir of the tenant.

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

### 30 **SECTION 1003. CONTACT PERSON.**

31  
32 (a) At a landlord's request, the tenant shall designate a contact person to act for the tenant

1 on the tenant's death. The name, address, and telephone number of the contact person must be  
2 disclosed in a record signed by the tenant and delivered to the landlord.

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

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

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

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

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

14 (4) shall return to the contact person the deceased tenant's security deposit and  
15 unearned rent to which the tenant would otherwise have been entitled.

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

18 (e) Once a contact person or the landlord knows of the appointment of a personal  
19 representative for the deceased tenant's estate, the contact person's authority to act under this  
20 [act] terminates.

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

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

### **Comment**

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

## **ARTICLE 11**

### **ASSIGNMENTS AND SUBLEASES**

**SECTION 1101. COMMERCIALY REASONABLE OBJECTION.** For the purpose of this article, a commercially reasonable objection includes the following:

(a) the landlord's good faith belief that the proposed assignee or sublessee may not meet the financial obligations under the lease;

(b) the landlord's good faith determination that the proposed assignee or sublessee has received an unsatisfactory criminal [or civil] background check;

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

(d) an increase in the number of individuals to reside in the dwelling unit after the assignment or sublease that could place an unreasonable burden on the premises or the use and enjoyment of the premises by other tenants on the premises;

(e) the landlord's good faith reliance on information from third parties of inappropriate conduct of the proposed assignee or sublessee;

(f) the refusal of the proposed assignee or sublessee to sign a record agreeing to comply with the lease and the landlord's rules; and

(g) the tenant's refusal to pay a reasonable fee as provided for in the lease for the



landlord's costs related to a proposed assignment or sublet.

## **Comment**

Under the common law a landlord could refuse to consent to an assignment or sublet for any reason whatsoever unless the lease otherwise provided. The section changes the common law rule by requiring landlord to have a commercially reasonable objection to refusing consent. Anti-discrimination laws also cabin in the ability of a landlord to withhold consent to an assignment or sublet.

### **SECTION 1102. TENANT'S RIGHT TO SUBLEASE OR ASSIGN.**

(a) Unless a lease authorizes a tenant to assign or sublet the lease without the landlord's consent, a tenant may not assign or sublease a lease without the landlord's consent in a record signed by the landlord. If the tenant violates this subsection, the landlord may terminate the lease by sending the tenant a notice in a record signed by the landlord of the landlord's intent to terminate the lease at least [10] days before the termination date specified in the notice.

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

(1) is given to the tenant no later than [14] calendar days after the tenant's request to assign or sublease the dwelling unit; and

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

(c) Except as otherwise provided in the lease, a landlord's consent to an assignment or sublease is not a consent or waiver of the landlord's rights with respect to any subsequent transfers by the assignee, sublessor, or sublessee.

(d) If a landlord's consent to an assignment or sublease is required under the terms of a lease or this [act], the landlord is deemed to have consented if the landlord:

(1) knows the transferee is in possession of the dwelling unit; and

(2) not later than [30] days after acquiring such knowledge fails to take

1 commercially reasonable steps to cause the assignee or sublessee to vacate the dwelling unit.

## 2 **SECTION 1103. RIGHTS FOLLOWING ASSIGNMENT OR SUBLEASE.**

3 (a) Except as otherwise provided in subsection (b), a landlord's consent to an assignment,  
4 or an assignment without the landlord's consent when the landlord's consent is not required by  
5 the terms of the lease, releases the landlord and the assignor from all liability to each other  
6 arising under the lease or this [act] for all acts occurring after the assignment.

7 (b) Subsection (a) does not apply if the landlord had a commercially reasonable objection  
8 to a proposed assignee but the landlord consented to the assignment in exchange for the tenant's  
9 agreement to remain liable on the lease.

10 (c) A landlord and an assignee or sublessee are entitled to all rights of and subject to all  
11 duties imposed on a landlord and tenant under the lease, other than a provision of the lease that  
12 is expressly or impliedly personal to the landlord or the tenant.

## 13 **ARTICLE 12**

### 14 **SECURITY DEPOSITS, FEES, AND UNEARNED RENT**

#### 15 **Reporters' Note to the Drafting Committee**

16  
17 This draft differs from prior drafts in a couple of significant ways. First, unlike the prior  
18 drafts, this draft suggests a ceiling on the total amount landlords can collect from tenants at the  
19 inception of the lease for rent and security in whatever combination. Based upon comments  
20 made near the end of the last drafting meeting, the draft provides a ceiling equal to three months'  
21 rent, which is based upon the assumption that landlords will collect the first month's rent, the last  
22 month's rent and a security deposit equal to one month's rent, but landlords are free to configure  
23 the total amount any way they wish. As drafted, this limitation would not apply to fees, such as  
24 application fees, pet fees, surety bonds, and the like.

25  
26 Secondly, the prior draft treated security deposits and prepaid rent alike in that it required  
27 the funds be placed in safekeeping accounts in which the landlord essentially had only a security  
28 interest. Thus, the funds would be protected (assuming the landlord complies with the  
29 safekeeping requirement) and the tenant would have preference to the funds if later a dispute  
30 arose among the tenant and other creditors or transferees of the landlord. Additionally, funds in  
31 the account would not be subject to the claims of the tenant's creditors or transferees. This draft  
32 preserves this approach for the security deposit but not the prepaid rent.

1           **SECTION 1201. PAYMENTS REQUIRED AT THE COMMENCEMENT OF**  
2   **THE LEASE.**

3           (a) Except as otherwise provided in subsections (b) and (c), a landlord may not require a  
4   tenant to pay, at or prior to the commencement of the lease, an amount equal to more than [two]  
5   months of periodic rent. This amount includes, in any combination, prepaid rent, a security  
6   deposit [, or any payments not otherwise described in subsection (b)].

7           (b) The limitation in subsection (a) does not apply to the first month's rent, application  
8   fees, surety bonds, insurance premiums, non-refundable cleaning fees, or non-refundable pet  
9   fees.

10          (c) If a lease is for a furnished dwelling unit or the tenant keeps pets in the premises or is  
11   permitted by the lease to make alterations to the premises, the landlord may require the tenant to  
12   pay an additional security deposit in an amount commensurate with the additional risk of damage  
13   to the premises.

14           **SECTION 1202. LANDLORD, TENANT, AND THIRD PARTY INTERESTS IN**  
15   **SECURITY DEPOSIT.**

16          (a) A landlord's interest in a tenant's security deposit is limited to a security interest.

17          (b) Notwithstanding law other than this [act], a landlord's security interest in a tenant's  
18   security deposit is effective against and has priority over all creditors and transferees of the  
19   tenant.

20          (c) Subject to subsection (f), creditors and transferees of a landlord can acquire no greater  
21   interest in a security deposit than the interest of the landlord.

22          (d) The following rules apply to a tenant's interest in the tenant's security deposit:

23               (1) The tenant's interest in a security deposit held in a bank account has priority

1 over any right of set-off that the bank in which the account is maintained may have for  
2 obligations owed to the bank by the landlord other than charges normally associated with the  
3 bank's maintenance of the account.

4 (2) The tenant's interest is not destroyed if the security deposit is commingled  
5 with the security deposits of other tenants in a bank account pursuant to Section 1203(a)(3); and

6 (3) The effect of commingling not permitted by this [act] is determined by law  
7 other than this [act].

8 (e) Unless a landlord and tenant otherwise agree [in a signed record], if a tenant fails to  
9 pay rent when due and the landlord uses the whole or any portion of a security deposit to pay the  
10 rent that is due, a court shall award the landlord an amount equal to the amount of the security  
11 deposit applied towards the payment of rent and may award the landlord an additional amount up  
12 to [twice] the periodic rent, and costs and reasonable attorney's fees.

13 (f) Nothing in subsection (c) abrogates the generally applicable rules of law enabling a  
14 person to whom funds have been paid to take the funds free of competing claims to the funds.

#### 15 **Comment**

16  
17 Subsection (a) intends to clarify the priority of the landlord's interest in security deposits  
18 as a security interest if the tenant files for bankruptcy. *See In re Verus Inv. Mgmt., LLC*, 344 B.R.  
19 536, 546 (Bankr. N.D. Ohio 2006) (landlord's assignee was a secured, rather than unsecured,  
20 creditor with respect to a perfected security interest in a certificate of deposit that served as a  
21 security deposit under a commercial lease); *cf. In re Coomer*, 375 B.R. 800, 804-06 (Bankr. N.D.  
22 Ohio 2007) (applying § 541 of the Bankruptcy Code to conclude that bankruptcy trustee was not  
23 entitled to a security deposit that landlord was holding to secure the debtor-tenant's obligations  
24 under a residential lease). Designating security deposits as a security interest should similarly  
25 protect the tenant's interests in the event of the landlord's bankruptcy. *See In re Frempong*, 460  
26 B.R.189, 195 (Bankr. N.D. Ill. 2011) (stating that under Chicago municipal ordinance, tenant  
27 security deposits "are held 'in trust' by the landlord and thus are not part of the Bankruptcy  
28 Estate of any landlord in a Bankruptcy filing"); *cf. 6 West's Fed. Admin. Prac.* § 7032 (3d ed.)  
29 (the bankruptcy estate acquires any security interest held by the debtor and the right to enforce  
30 that security interest, but not the property subject to that security interest).

31 Under subsection (b), whether a transferee of funds from a bank account maintained for  
32 the purpose of holding security deposits takes the funds free from the tenant's interest is

1 governed by other law.

2  
3 Under subsection (3), the effect of commingling not permitted by this [act], as, for  
4 example, when the landlord commingles the landlord's personal funds with the security deposit,  
5 is governed by law other than this act.

6  
7 Subsection (e) addresses the common misconception of tenants that the security deposit  
8 may be used in lieu of paying rent, particularly the last month's rent. The primary purpose of a  
9 security deposit is to provide the landlord with funds to reimburse the landlord for the costs  
10 incurred in remedying any damages to the dwelling unit by the tenant. If the tenant could  
11 withhold rent only to have it charged against the security deposit, the landlord would have no  
12 funds to pay for any damages. A tenant that willfully withholds last month's rent is subject to the  
13 penalty imposed by this section.

14  
15 **SECTION 1203. SAFEKEEPING OF SECURITY DEPOSITS.**

16 (a) With respect to funds received by a landlord as security deposits, the landlord:

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

18 (A) holding the funds in a bank account maintained by a bank in this state  
19 which is used exclusively for security deposits; and

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

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

25 (3) may commingle the funds received from other tenants as security deposits in  
26 the same bank account but may not commingle other funds, including the landlord's personal or  
27 business funds, in the same bank account.

28 (b) If the landlord willfully fails to comply with subsection (a), the court shall award the  
29 tenant actual damages or one month's periodic rent, whichever is greater, costs, and reasonable  
30 attorney's fees.

(c) Unless a lease provides otherwise, a landlord is not required to deposit a security deposit into an interest-bearing account or to pay a tenant any interest thereon.

### **Comment**

Section 1203 introduces a new requirement that landlords segregate security deposits from the landlord's other funds. Imposing the safekeeping requirements ensures that the funds are available for return as required under various provisions in the act.

Subsection (b) does not preclude the landlord or tenant from recovering other damages to which the landlord or tenant may be entitled under this [act].

The segregation requirement does not apply to prepaid rent. Rent payments made by or on behalf of the tenant for future dates, even if required by the terms of the lease or as a condition of entering into the lease, are not security deposits. Rather, they are payment for those future dates, discharging, to the extent of the payment, the obligation to pay rent for those dates. Accordingly, unlike security deposits, the tenant no longer owns the funds paid. But see Section 1204 relating to the landlord's duty to refund unearned rent in situations in which the tenancy terminates before a date for which rent has been paid. While the tenant no longer owns the funds, to the extent the landlord fails to return them when under this [act] the tenant has a right to them, the tenant would have a cause of action to recover them.

### **SECTION 1204. RETURN OF SECURITY DEPOSITS OR UNEARNED RENT.**

(a) Not later than [30] days after a tenancy ends, a landlord shall send to a tenant the amount by which the security deposit and any unearned rent exceeds the amount, based upon the landlord's good faith calculation, that the landlord is owed for unpaid rent due under the lease and for the tenant's noncompliance with the terms of the lease or this [act].

(b) If a landlord sends the tenant less than the entire amount of the security deposit that the landlord received from the tenant, the landlord shall provide the tenant with a signed record specifying the items to which the security deposit is being applied and the amount of the security deposit being applied to each item.

(c) The landlord shall send the amount required by subsection (a) and any record required by subsection (b), postage or cost of transmission provided for, to an address provided by the tenant or, in the absence of that address, to the address specified in Section 301(b)(2).

1 (d) If a landlord fails to comply with subsections (a) and (b), the court

2 (1) shall award the tenant the amount of the security deposit and unearned rent to  
3 which the tenant is entitled, and

4 (2) may award the tenant in addition the greater of [two] times the amount in  
5 paragraph (1) and \$[250], costs, and reasonable attorney's fees.

6 (e) The landlord's liability is limited to the amount provided subsection (d)(1), in the  
7 following circumstances:

8 (1) If the landlord complied with subsections (a) and (b) but the tenant did not  
9 receive the security deposit and any record because the landlord failed to comply with subsection  
10 (c) or the items were misdelivered or undeliverable; and

11 (2) if the landlord complied with subsections (a) and (b) but returned an amount  
12 less than the sum to which a court determines the tenant was entitled.

13 (f) Notwithstanding law of this state other than this [act], any security deposit or  
14 unearned rent unclaimed by the tenant for more than [180] days after the tenancy has ended,  
15 including the amount of any check that remains outstanding at the end of the [180]-day period,  
16 are [forfeited by the tenant][treated as unclaimed property under [cite to state unclaimed  
17 property act]].

## 18 **Comment**

19  
20 Section 1204 provides new procedural requirements for withholding or returning security  
21 deposits and unearned rent. These rules are triggered automatically by the termination of the  
22 lease, rather than requiring the tenant to make a demand for the payment as was required under  
23 the 1972 act.  
24

25 Subsection (d)(2) provides a penalty when the landlord fails to comply with any of the  
26 requirements of subsections (a) and (b), including the failure to act within the applicable time  
27 period, the failure to provide a record to explain why the security deposit was not returned in  
28 full, and the failure to return an amount equal to the landlord's good faith calculation of the sum  
29 to which the tenant is entitled. If the landlord has acted in good faith, but merely erred in

1 calculating the amount owed, subsection (e) permits the tenant to recover the amount to which  
2 the tenant is entitled but does not impose an additional penalty upon the landlord.

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

6  
7 **SECTION 1205. DISPOSITION OF SECURITY DEPOSITS AND UNEARNED**  
8 **RENT UPON TERMINATION OF LANDLORD'S INTEREST IN PREMISES.**

9 (a) Not later than [30] days after the termination of the landlord's interest in the premises,  
10 whether by sale, assignment, death, appointment of receiver, or otherwise, the landlord or the  
11 personal representative of the landlord's estate shall:

12 (1) send any security deposit being held by the landlord and an amount equal to  
13 the unearned rent to the person succeeding to the landlord's interest in the premises and notify  
14 the tenant [in a signed record] of the amount sent to the successor [and of any claims previously  
15 made against the security deposits or unearned rent] and of the successor's name and address; or

16 (2) if the lease terminates as a result of the sale, assignment, death, appointment  
17 or receiver or otherwise, return the security deposits and an amount equal to the unearned rent to  
18 the tenant pursuant to the terms of Section 1204.

19 (b) If a landlord or the personal representative of the landlord's estate complies with  
20 subsection (a), the landlord or the landlord's estate is relieved from further liability with respect  
21 to the security deposits and unearned rent.

22 (c) On receipt of any portion of the security deposits and unearned rent under subsection  
23 (a), the person succeeding to the landlord's interest in the premises has all of the rights and  
24 obligations of a landlord under this [article] with respect to those funds.

25  
26 **Comment**

27  
28 Section 1205 is a new section that provides for disposition of security deposits and



1 unearned rent after a transfer of the landlord's interest in the premises.

2  
3 **ARTICLE 13**

4 **MISCELLANEOUS PROVISIONS**

5 **SECTION 1301. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
6 applying and construing this uniform act, consideration must be given to the need to promote  
7 uniformity of the law with respect to its subject matter among states that enact it.

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

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

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