

DRAFT
FOR DISCUSSION ONLY

REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 21 – 22, 2014 Drafting Committee Meeting

WITH PRELIMINARY COMMENTS

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March 21, 2014

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REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (201_)

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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. The term includes fees payable to a landlord or a tenant under the terms of the
11 lease for a tenant’s violation of the lease.

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

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

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

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

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

24 (8) “Contact person” means a person designated by a tenant under Section 1003(a) or (b).

1 (9) “Dating violence” means dating violence as defined by [insert reference to definition
2 in other state law].

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

6 (11) “Domestic violence” means domestic violence as defined by [insert reference to
7 definition in other state law]. The term also includes dating violence, stalking, and sexual assault.

8 (12) “Dwelling unit” means property described in a lease that is leased to a tenant for the
9 purpose of being used as a home, residence, or sleeping place by an individual or by two or more
10 individuals who maintain a common household, regardless of their relationship to each other. For
11 purposes of this subsection, property could include:

12 (1) a single family residence, the land on which it is located, and any other
13 structures thereon, and

14 (2) a structure, or the part of the structure, in which the tenant resides, together
15 with the fixtures and appurtenances therein, and any other areas of the land on which the
16 structure is located to which the tenant is given the exclusive right of possession during the term
17 of the lease, such as a designated parking space or storage area.

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

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

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

4 (16) “Funds” means money, checks, bank-account credits, [certificates of deposit], or the
5 like.

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

8 (18) “Immediate family member” means any of the following, other than a perpetrator,
9 who habitually resides in a dwelling unit with a tenant:

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

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

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

16 (19) “Landlord” means an owner of a dwelling unit or the building of which it is a part, a
17 successor in interest to the landlord, and any person that enters into a lease on behalf of an
18 owner. Except for the duties imposed on a landlord under Section 303, the term includes a
19 sublessor.

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

22 (21) “Normal wear and tear” means deterioration that results from the intended use of a
23 dwelling unit, including breakage or malfunction due to age or deteriorated condition. The term
24 does not include deterioration that results from negligence, carelessness, accident, or abuse of the

1 unit, fixtures, equipment, or chattels by the tenant, an immediate family member, or other
2 individual on the premises with the tenant's consent, other than the landlord or the landlord's
3 agent.

4 (22) "Owner" means a person vested with:

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

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

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

12 (24) "Periodic tenancy" means a tenancy created under a lease or arising by operation of
13 law for either month to month or week to week.

14 (25) "Perpetrator" means an individual who commits an act of domestic violence on a
15 tenant or an immediate family member.

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

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

23 (28) "Prepaid rent" means rent paid to a landlord prior to the first day of the rental period
24 to which it is to be applied. Unless the lease otherwise provides, the rental period is determined

1 on a monthly basis beginning with the first day of the month.

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

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

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

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

11 (33) “Sexual assault” means [sexual assault] as defined in [insert reference to definition
12 in other state law].

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

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

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

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

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

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

24 (38) “Tenant” means a person entitled to possession of a dwelling unit under a lease. The

1 term includes an assignee, sublessee, and, if the tenant is not an individual, an individual the
2 tenant has authorized to occupy the unit. If the tenant is an individual, the term excludes a
3 person that neither is a party to the lease nor pays rent but occupies the dwelling unit with the
4 tenant's permission.

5 (39) "Tenant representative" means:

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

7 (B) before the appointment of a personal representative, the contact person
8 designated in Section 1003, or in the absence of a contact person, any person reasonably known
9 to the landlord to be an heir of the tenant under the intestate succession laws of the state.

10 (40) "Unearned rent" means rent, including prepaid rent, that a tenant paid to a landlord
11 for any rental period beyond the date the lease terminates in accordance with its terms or this
12 [act]. The term does not include any amount, including rent, that might be owed to the landlord
13 for any period either prior to or beyond the date the lease terminates during which period the
14 tenant is in actual possession of the premises.

15 (41) "Victim advocate" means an individual, whether paid or serving as a volunteer, who
16 provides services to victims of domestic violence under the auspices or supervision of a victim-
17 services provider or of a court or a law enforcement or prosecution agency.

18 (42) "Victim-services provider" means a person that assists a victim of domestic
19 violence. The term includes a rape crisis center, domestic violence shelter, faith-based
20 organization, or other organization with a documented history of work concerning domestic
21 violence.

22 (43) "Willfully" means a deliberate intent to perform an act prohibited under this [act] or
23 by a lease, a deliberate intent to refrain from performing an act required under this [act] or by a
24 lease, or an indifference to whether the act or failure to act violates this [act] or a lease.

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

Comment

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

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

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

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

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

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

The definition of “unearned rent” contemplates two circumstances where a refund will be due a tenant because the lease terminated. The first circumstance is where “rent” (defined in Section 102(30)) was paid to the landlord on its due date but for any period of time beyond the date the lease terminates. For example, assume a one-year lease with rent payable on the first of each month. The tenant pays rent to the landlord on April 1 for the month of April. However on April 10 the tenant properly terminates the lease. In this case “unearned rent” includes the amount of rent attributable to the period April 11 to April 30. Because rent is apportioned on a daily basis (see Section 201(b)(2)(B), this means that 2/3 of the April 1st payment would be “unearned rent.” The second circumstance is where “prepaid rent” (defined in Section 102(28)) was paid to the landlord for a rental period beyond the date the lease terminates. For example, suppose before the commencement date of the lease a tenant pays the landlord an amount for the

1 last month's rent. Three months into the lease tenant properly terminates the lease. In this case,
2 "unearned rent" includes the prepaid rent for the last month. In both examples, Section 1104
3 requires amounts treated as unearned rent to be returned by the landlord after taking account on
4 any proper charges against the same as set forth in Section 1104.

5
6 The phrase "unearned rent" does not include rent for any period beyond the lease
7 termination during which the tenant is in actual possession of the premises. For example,
8 suppose tenant signs a fixed term lease to end on December 31. The tenant pays the landlord the
9 last month's rent (December rent) at the beginning of the lease term. Because of the tenant's
10 failure to pay rent, the landlord properly terminates the lease on October 1 but the tenant remains
11 in possession until November 5. Unearned rent includes the prepaid rent for December but does
12 not include any rent that might be due the landlord for the first five days of November. Under
13 Section 1104, the landlord is obligated to return the unearned rent (along with any security
14 deposit) to the tenant. However under Section 1104(c), the landlord may reduce the amount
15 returned by amounts of "unfilled obligations" to which the unearned rent was applied and this
16 could include the rent due for the five days in November.

17
18 The date on which a lease terminates is determined by the lease or this act. For example,
19 for a fixed term tenancy or a periodic tenancy the lease terminates on the last day of the term or
20 the period unless the lease or this act allows for an earlier termination date. Under this act, a
21 lease can terminate for any number of reasons. Because termination requires a notice in a record
22 that specifies the termination date, the date of termination is easily determined from the notice.
23 For example, under Section 601 (allowing a landlord to terminate the tenancy for noncompliance
24 by the tenant) the notice must set forth a specified date for termination not less than [30] days
25 after receipt of the notice. If there is any unearned rent due the tenant, it would be for the period
26 following the date of termination in the notice.

27
28 Because unearned rent excludes rent attributable to a period prior to the date the lease
29 terminates and because, under Section 201((b)(2)(B) rent is apportioned on a daily basis, the
30 tenant is not entitled to any refund for rents apportioned to days when the tenant was entitled to
31 possession. For example, suppose tenant pays rent on the first of the month and properly
32 terminates the lease on the 20th day of the month. If the tenant is entitled to a return of unearned
33 rent, the amount does not include rent paid on the first of the month attributable to the first 20
34 days of the month.

35 36 **SECTION 103. SCOPE.**

37 [(a) For purposes of this section "dormitory" means a building with private or semi-
38 private rooms with bathroom facilities in the rooms or in the common areas but without kitchen
39 or dining facilities in the rooms.]

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

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

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

4 Note for Committee: how far do we intend the concept of geriatric living to go—assisted living,
5 chronic care nursing home

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

7 Note for Committee: Up for more discussion]

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

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

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

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

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

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

20 **Comment**

21
22 Subsection (c)(2) has been modified from the 1972 act, which excluded all University-
23 owned housing. Under this act, only traditional university dormitory housing is excluded from
24 the scope of this act. Rentals of university-owned apartments are now subject to the act.

25
26 This act applies to the lease of a mobile home but does not apply to a mere ground lease
27 of land upon which a mobile home is placed. Thus, if O owns a mobile home park and leases
28 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.

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

SECTION 104. ADMINISTRATION OF REMEDIES; ENFORCEMENT; DUTY TO MITIGATE.

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

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

(c) An aggrieved party under this [act] has a duty to mitigate damages.

Comment

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

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

SECTION 106. UNCONSCIONABILITY.

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

(b) If a court finds that a settlement agreement in which a party waives or agrees to

forego a claim or right under this [act] or under a lease was unconscionable when made, the court may refuse to enforce the settlement agreement, enforce the remainder of the settlement agreement without the unconscionable provision, or limit the application of the unconscionable provision to avoid an unconscionable result.

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

SECTION 107. KNOWLEDGE AND NOTICE.

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

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

(1) knows of the fact;

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

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

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

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

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

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

(e) A person receives notification of a fact:

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

2 (2) in the case of "notice in a record" from a landlord to a tenant or a tenant to a
3 landlord, when the record is:

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

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

6 **Comment**

7 A number of sections in this act require either a landlord or a tenant to send the other
8 "notice in a record." When notice in a record is required, it must be given in accordance with
9 subsection (c). In other cases it could be given by other means reasonably calculated to come to
10 the recipient's attention.

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

15
16 **SECTION 108. COMMON LAW AND PRINCIPLES OF EQUITY.** Unless
17 displaced by this [act], the principles of law and equity supplement this [act].

18 **Comment**

19
20 In light of this section, contract principles apply to the construction and interpretation of
21 leases, including provisions relating to mutuality or dependency of lease covenants. By
22 construing leases as contracts, for example, performance of promises the landlord and tenant
23 make to each other are dependent upon the other. Thus, the tenant's promise to pay rent is
24 conditioned upon (dependent upon) the landlord's provision of essential services and compliance
25 with Section 303. However, the landlord's obligation to maintain the dwelling unit as provided in
26 Section 303 is not conditioned upon the tenant's payment of rent.

27
28 **ARTICLE 2**

29 **GENERAL PROVISIONS APPLICABLE TO LEASE**

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

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

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

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

(2) rent is:

(A) payable without demand or notice:

(i) at the address or place the landlord designates under Section 301(b)(1)(C) or, if no designation is made, at the landlord's place of business at the time the lease was made; and

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

(B) uniformly apportioned from day to day.

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

Comment

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

Section 201(b) applies when the lease inadvertently fails to fix the amount of rent as might be the case for oral tenancies.

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

(a) Subject to subsection (b):

(1) if a written lease signed by the tenant is delivered to the landlord and the

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

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

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

(c) In the absence of a written lease signed by 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 [except as permitted by Section 304];

(4) agrees to pay attorney's fees and costs of the landlord other than those provided by this [act] or law of this state other than this [act]; 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 304 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* 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 shall disclose to the prospective tenant

1 in a record the following information:

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

5 (2) whether the premises are in foreclosure; and

6 (3) in the case of prepaid rent, the month or other period of the lease to which the
7 prepaid rent is to be applied.

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

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

10 (A) the name of:

11 (i) the landlord;

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

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

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

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

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

21 (c) A landlord and a tenant must keep current the information required to be given by
22 subsection (b).

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

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

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

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

6 **Comment**
7

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

13 The purpose of subsection (b) is to enable the tenant to proceed with the appropriate legal
14 proceeding, to know to whom complaints must be addressed and, failing satisfaction, against
15 whom the appropriate legal proceedings may be instituted.
16

17 If the landlord failed to make the “foreclosure” disclosure required by subsection (a)(2),
18 subsection (e) would not apply unless the tenant’s use and enjoyment of the premises had been
19 interfered with as a result of the foreclosure. For example, such damages might occur if the
20 premises were sold and the tenant was required to vacate the premises.
21

22 No specific remedies are provided for the failure to provide the information required by
23 subsections (b) and (c). If a tenant fails to provide an address to the landlord, however, the tenant
24 might not receive a refund of a security deposit, and, if a landlord fails to provide an address to
25 the tenant, the landlord might not receive the rent in a timely manner.
26

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

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

30 **Comment**

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

1 **SECTION 303. LANDLORD’S DUTY TO MAINTAIN.**

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

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

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

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

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

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

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

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

21 (8) to the extent they include common areas and other areas under the landlord’s
22 control, have such areas safe for normal and reasonably foreseeable uses consistent with the
23 lease and in good repair and have such areas clean and sanitary, and have reasonable measures in
24 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, if recycling services are provided, 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 close 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.

(b) The tenant's failure to adequately perform the duties as agreed in subsection (a) does not:

(1) discharge the landlord from the performance of the duties imposed on the

landlord by Section 303;

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

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

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

Comment

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

SECTION 305. LIMITATIONS ON LANDLORD'S LIABILITY.

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

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

(2) Except as otherwise provided in Section 1105, the landlord remains liable to the tenant for the amount of any security deposit and unearned rent.

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

1 **Comment**

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

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

14 Under subsection (b), the landlord remains liable for the tenant's security deposit and
15 unearned rent unless the landlord complies with Section 1105 to transfer the funds to the
16 successor landlord or return them to the tenant.
17

18 **SECTION 306. RULES OF LANDLORD.**

19 (a) A landlord may adopt a rule concerning the tenant's use and occupancy of the
20 premises.

21 (b) A rule is not enforceable against the tenant unless:

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

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

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

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

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

31 (6) the tenant receives notice of it prior to the time the tenant enters into the lease
32 or, subject to subsection (c), promptly after it is adopted.

1 (c) After the commencement of a lease, a landlord may adopt or modify a rule concerning
2 a tenant's use and occupancy of the premises, but if the rule or modification substantially
3 modifies the tenant's bargain, it is not enforceable against the tenant unless the tenant consents to
4 it in a record signed by the tenant.

5 **ARTICLE 4**

6 **TENANT'S DUTIES**

7 **SECTION 401. TENANT'S DUTIES.** A tenant shall:

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

10 (2) comply with all obligations imposed on tenants by any applicable building, housing,
11 and health code;

12 (3) except with respect to duties imposed upon the landlord by this [act], by law of this
13 state other than this [act], or by the lease, keep the dwelling unit as safe and sanitary as the
14 conditions of the unit permit;

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

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

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

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

1 would destroy, deface, damage, impair, remove, or render inoperative any safety equipment on
2 the premises, such as smoke alarms, carbon monoxide detectors, and fire extinguishers;

3 (8) not disturb or allow other persons on the premises with the tenant's consent, other
4 than the landlord or the landlord's agent, to disturb other tenants' use and enjoyment of the
5 premises;

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

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

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

13 (12) unless the landlord and tenant otherwise agree, use the dwelling unit only for
14 residential purposes.

15 **Comment**

16
17 Under paragraph (3) the tenant is obligated to keep the dwelling unit in a safe or sanitary
18 condition unless the duty to do so is imposed on another, such as the landlord. For example,
19 because Section 303 imposes a duty on the landlord to conform plumbing fixtures to applicable
20 law, that duty is not shifted to the tenant by this section.

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

1 **ARTICLE 5**

2 **TENANT REMEDIES**

3 **SECTION 501. NONCOMPLIANCE BY LANDLORD; IN GENERAL.**

4 (a) Subject to Section 506, if there is noncompliance by the landlord with the lease or
5 Section 303, the tenant must give the landlord notice in a record of the noncompliance and an
6 opportunity to remedy the noncompliance within the following time periods:

7 (1) If the noncompliance by the landlord involves the failure to provide an
8 essential service or poses an [imminent][serious] threat to the health or safety of the tenant or
9 other occupant of the dwelling unit, the landlord shall remedy the noncompliance promptly, but
10 in no event later than [5] days after the date of the receipt of the notice, and

11 (2) If the noncompliance does not involve the failure to provide an
12 essential service, the landlord must remedy the noncompliance not later than [14] days after the
13 date of the receipt of the notice.

14 (b) Subject to subsection (d), if the landlord's noncompliance with the lease or Section
15 303(a) materially interferes with the tenant's use and enjoyment of the premises and is not
16 remedied during the applicable period in subsection (a), the tenant may:

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

20 (A) the tenant may recover actual damages for the period between the date
21 the tenant gave the landlord the notice specified in subsection (a) and the date of termination
22 specified in subsection (b)(1), including damages based on the diminution in value of the
23 dwelling unit as determined by the court based upon evidence which need not include expert
24 testimony; and

(B) the landlord shall return to the tenant pursuant to Section 1104 the amount of any security deposit and unearned rent to which the tenant is entitled; or

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

(A) subject to Section 505, withhold the rent for the period of noncompliance beginning on the date the tenant gave the landlord the notice specified in subsection (a);

(B) recover actual damages for the period beginning on the date the tenant gave the landlord the notice specified in subsection (a), including damages based on the diminution in value of the dwelling unit as determined by the court based upon evidence which need not include expert testimony;

(C) seek injunctive relief or specific performance;

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

(E) subject to Section 504, secure essential services or comparable substitute housing during the period of noncompliance.

(c) If the landlord's noncompliance with the lease or Section 303(a) does not materially interfere with the tenant's use and enjoyment of the premises, the tenant may obtain the remedies provided in subsection (b)(2)(B), (b)(2)(C), and (b)(2)(D).

(d) If the landlord's noncompliance was caused by circumstances wholly beyond the landlord's control, including the unavailability of materials, labor or utilities, a natural disaster, [or] force majeure, [or the death of the landlord,] the tenant's remedy under subsection (b) is limited to termination of the lease as provided in subsection (b)(1).

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

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

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

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

9 **Comment**

10
11 This section has been modified from the 1972 act to clarify the remedies available to a
12 tenant for a landlord's noncompliance with the warranty provisions in Section 303 or under the
13 lease. If there is a material noncompliance by the landlord with the lease or Section 303(a),
14 Section 501 allows the tenant to elect from among six remedies. However, the tenant's ability to
15 secure essential services or substitute housing under Section 504 is only available for the
16 landlord's material noncompliance in providing essential services. Not all services or obligations
17 of the landlord described in Section 303(a) are "essential services." See Section 102(14).
18

19 This section also clarifies the measurement of damages when a tenant has occupied a
20 dwelling unit in a noncompliant condition. The 1972 Act permitted recovery of the "diminution
21 in the fair rental value" of the dwelling unit. That terminology is modified in this act to permit
22 recovery of damages based upon the "diminution in value of the dwelling unit," which is defined
23 in Section 102(10) as "a reduction from the rent provided in a lease in an amount that reflects the
24 extent to which a noncompliant condition of the premises impairs the tenant's use and enjoyment
25 of the dwelling unit." The intent is to permit a court to consider such factors as the nature and
26 duration of the defect, the proportion of the dwelling unit that is affected, the value of services to
27 which the tenant was deprived, the degree of discomfort imposed by the defect, and the
28 effectiveness of the landlord's remediation efforts. For example, if, as a result of noncompliance,
29 the tenant is deprived only of the use of office space, the diminution in value should be less than
30 if the noncompliance results in the loss of bath and kitchen facilities in the entire dwelling unit.
31

32 Remedies available to the tenant pursuant to Section 501 are not exclusive (see Section
33 109). Thus, to the extent permitted by state law, tort remedies also may be available.
34

35 A duty to mitigate damages exists under Section 104.
36

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

1 **SECTION 502. LANDLORD’S FAILURE TO DELIVER POSSESSION TO**
2 **TENANT.**

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

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

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

11 (b) If a tenant terminates the lease under subsection (a), the landlord shall return to the
12 tenant pursuant to Section 1104 any security deposit and unearned rent. The landlord shall also
13 return to the tenant any fees received from the tenant.

14 (c) In addition to the rights provided to the tenant in subsections (a) and (b), if a
15 landlord’s failure to deliver possession to the tenant pursuant to Section 302 is willful and not in
16 good faith, the court shall award the tenant an amount equal to [three] months’ periodic rent or
17 [triple] the actual damages, whichever is greater, costs, and reasonable attorney’s fees.

18 (d) If the tenant elects under subsection (a)(2) to obtain possession from a person that is
19 wrongfully in possession, the tenant is liable to the landlord for rent and may recover from the
20 person wrongfully in possession the damages provided in Section 803.

21 **Comment**

22 Under subsection (a)(2), a tenant may elect to file an action for possession directly
23 against a holdover tenant or other person in wrongful possession of the dwelling unit. This right
24 parallels, and would take priority over, the landlord’s right to file an action for possession against
25 the holdover tenant under Section 302.

1 If the tenant elects to sue the holdover tenant for possession, the tenant effectively elects
2 to continue the lease with the landlord and thus, under subsection (d), is liable to the landlord for
3 rent for the period beginning with the commencement of the lease.
4

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

6 (a) Except as otherwise provided in this [act], if a landlord fails to comply with the lease
7 or Section 303 the tenant may give notice to the landlord pursuant to Section 501(a) specifying
8 the failure, and if the landlord fails to comply within the time period specified in Section 501(a)
9 and the reasonable cost of compliance is less than [\$500][one month's rent], the tenant may
10 correct the condition at the landlord's expense.

11 (b) [Subject to subsection (d),] after submitting to the landlord an itemized statement,
12 including receipts for purchased items and services, the tenant may deduct from the rent the
13 actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount
14 specified in subsection (a), unless the tenant otherwise has been reimbursed by the landlord.

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

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

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

21 (2) the landlord was unable to remedy the condition within the period in 501(a)
22 because the tenant denied the landlord access to the dwelling unit.

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

25 **Comment**

26 Under subsection (d), the tenant may not repair at a landlord's expense to the extent the

1 damage that was repaired was caused by the tenant, an immediate family member, or another
2 person, other than the landlord, on the premises with the tenant's consent. For example, if the
3 tenant breaks the door lock, the tenant cannot deduct the cost of the repair from the rent, even if
4 the repair was undertaken by the tenant. Subsection (d) would not preclude the tenant from
5 making the repair, but would preclude the deduction of the costs from the rent.

6
7 Subsection (e) is intended to assure the landlord that over any given 12-month period the
8 landlord's costs arising as the result of the tenant's election of this self-help remedy do not
9 exceed [\$500][one month's rent]. The 12-month look back period begins to run 12 months
10 immediately before the completion of the immediate repair for which the tenant has exercised the
11 tenant's rights under this section. For example, suppose the tenant paying monthly rent of \$300
12 properly contracts for a plumber to make a repair that costs \$300. The repair is completed on
13 November 10. The tenant is entitled to be reimbursed the entire \$300 if over the last 12 months,
14 beginning with November 10 of the preceding year, the tenant never used this remedy. If over
15 that period the tenant has previously used the remedy to the extent of \$400, the tenant would
16 only be able to recoup \$100 of the cost of the current \$300 repair. (Fix once we know which
17 bracketed amount the committee selects).

18 **SECTION 504. LANDLORD'S WRONGFUL FAILURE TO PROVIDE**

19 **ESSENTIAL SERVICE.**

20
21 (a) If, contrary to the terms of the lease or Section 303, the landlord willfully or
22 negligently fails to supply an essential service, the tenant may give notice to the landlord
23 pursuant to Section 501(a) specifying the failure and, if the landlord fails to comply within the
24 period specified in Section 501(a), may:

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

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

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

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

1 **Comment**

2
3 Under subsection (a)(3), a tenant's actual damages could include the difference between
4 the rent provided in the lease and the actual and reasonable cost of substitute housing as well as
5 moving expenses.
6

7 **SECTION 505. LANDLORD'S NONCOMPLIANCE AS DEFENSE TO ACTION**
8 **FOR NONPAYMENT OF RENT.**

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

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

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

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

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

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

25 (2) the court determines that the landlord's noncompliance with the lease or
26 Section 303 materially interferes with the tenant's use and enjoyment of the premises, the court
27 may order one or more of the following remedies:

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

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

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

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

7 (iii) other actual damages;

8 (C) that the tenant continue to pay rent into escrow as rent becomes due or
9 abate future rent until the landlord brings the premises into compliance with the lease or Section
10 303; or

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

13 **Comment**

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

19
20 **SECTION 506. FIRE OR CASUALTY DAMAGE.**

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

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

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

5 (3) the landlord may give the tenant [30] days' notice in a record signed by the
6 landlord of the landlord's intent to terminate the lease, in which case the lease terminates as of
7 the expiration of the [30] days' notice period.

8 (b) If a lease is terminated pursuant to subsection (a)(1) or (a)(3), the landlord shall
9 return to the tenant pursuant to Section 1104 the amount of any security deposit and unearned
10 rent to which the tenant is entitled. In calculating the unearned rent, termination of the lease shall
11 be deemed to have occurred as of the date of the fire or other casualty.

12 (c) Nothing in this section precludes a landlord from seeking actual damages from the
13 tenant under other law of this state for damages to the premises caused by the tenant or other
14 person on the premises with the tenant's consent, other than the landlord or the landlord's agent.

15 **SECTION 507. TENANT REMEDIES FOR UNLAWFUL REMOVAL,**
16 **EXCLUSION, OR DIMINUTION OF ESSENTIAL SERVICE.** If a landlord unlawfully
17 removes or excludes the tenant from the premises or attempts to constructively evict the tenant
18 by willfully interrupting or causing the interruption of an essential service to the tenant, the
19 tenant may recover possession or terminate the lease and, in either case, the court shall award the
20 tenant an amount equal to [three] months' periodic rent or [triple] the actual damages, whichever
21 is greater, costs and reasonable attorney's fees. If the lease terminates, the landlord shall return
22 to the tenant pursuant to Section 1104 the amount of any security deposit and unearned rent to
23 which the tenant is entitled.

1 **SECTION 508. EARLY RELEASE OR TERMINATION OF LEASE BECAUSE**
2 **OF AN ACT OF DOMESTIC VIOLENCE.**

3 (a) Subject to subsection (e), if a tenant or immediate family member has been the victim
4 of an act of domestic violence and has a reasonable fear of a further act of domestic violence by
5 continued residence in the dwelling unit, the tenant shall be released from the lease by giving a
6 notice that complies with subsection (b) and one of the following documents:

7 (1) a copy of an outstanding court order which restrains a perpetrator from contact
8 with the tenant or an immediate family member;

9 (2) a copy of the conviction of a perpetrator for an act of domestic violence
10 against the tenant or an immediate family member; or

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

13 (b) The tenant shall give the landlord notice in a record signed by the tenant that:

14 (1) states the tenant's intent to be released from the lease on a date no earlier than
15 [30] days from the date of the notice or, if the perpetrator is a co-tenant of the dwelling unit, any
16 earlier date;

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

19 (3) is given to the landlord

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

21 (B) if the perpetrator was incarcerated or was subject to a court order,
22 other than an ex parte order, preventing access to the tenant because of an act of domestic
23 violence committed by the perpetrator, not later than [90] days after:

24 (i) the tenant learns that the perpetrator is no longer confined, or

1 (ii) the expiration of the court order.

2 (c) If a tenant is the only tenant who is a party to the lease:

3 (1) a release under subsection (a) terminates the lease on the date specified in the
4 notice described in subsection (b) and neither the tenant nor an immediate family member is
5 liable for rent accruing after the lease terminates or other actual damages resulting from the
6 termination of the lease; and

7 (2) the tenant remains liable to the landlord for rents and other amounts owed to
8 the landlord prior to the termination of the lease.

9 (d) If there are multiple tenants that are parties to the lease:

10 (1) the tenant is released as of the date in the notice, but the release of one tenant
11 under this section does not terminate the lease with respect to other tenants;

12 (2) the tenant who is released from the lease is not liable to the landlord or any
13 other person for rent accruing after the tenant's release or actual damages resulting from the
14 tenant's release from the lease;

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

17 (4) the landlord is not required to return to the released tenant or a remaining
18 tenant any security deposit or unearned prepaid rent until the lease terminates with respect to all
19 tenants.

20 (e) This section shall not apply if the tenant seeking the release is the perpetrator.

21 **Comment**

22 Section 508 is self-executing. Upon filing the appropriate documentation the tenant is
23 released from the lease; no additional action is required or expected on the part of the landlord as
24 would be the case where a tenant abandons the dwelling unit and an issue arises regarding the
25 landlord's acceptance of the tenant's surrender.

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

3
4 Under subsection (d)(2), a tenant who is released from the lease is not liable to the
5 landlord or another person for rent or actual damages. Thus, if T and T-1 are co-tenants but T is
6 released from the lease as a result of an act of domestic violence committed by P, T would not be
7 liable for rent to the landlord for the period after the release. Furthermore, T would not be liable
8 to T-1 if, following T's release from the lease, T-1 is liable to the landlord for all of the rent
9 accruing after T's release. Under subsection (d)(3), however, T-1 might have a claim against the
10 perpetrator for the additional rent T-1 owes.

11 12 **SECTION 509. LANDLORD'S OBLIGATIONS IN EVENT OF EARLY**

13 **RELEASE OR TERMINATION.** If a tenant is released from a lease under Section 508, the
14 landlord:

15 (a) except as otherwise provided in Section 508(d), shall return to the tenant
16 pursuant to Section 1104 the amount of any security deposit and unearned rent to which the
17 tenant is entitled after the tenant vacates the dwelling unit;

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

20 (c) may not disclose information required to be reported to the landlord under
21 Section 508 unless:

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

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

26 **SECTION 510. VERIFICATION.**

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

29 (1) from the tenant:

1 (A) the tenant's name and the address of the dwelling unit;
2 (B) the approximate dates during which an act of domestic violence
3 occurred;
4 (C) the approximate date of the most recent act of domestic violence;
5 (D) a statement that because of an act of domestic violence, the tenant or
6 an immediate family member has a reasonable fear that the tenant or the immediate family
7 member will suffer and act of further domestic violence by continued residence in the dwelling
8 unit;
9 (E) the proposed date for the termination of the lease or the tenant's
10 release from the lease; and
11 (F) a statement that the tenant understands that the statements could be
12 used in court and that the tenant could be liable for perjury as well as the damages provided in
13 subsection (b) for making false statements in the verification; and
14 (2) from an attesting third party:
15 (A) the name, business address, and business telephone number of the
16 attesting third party;
17 (B) the capacity in which the attesting third party received the information
18 regarding the act of domestic violence;
19 (C) a statement that the attesting third party has read the tenant's
20 verification and has been advised by the tenant that the tenant or an immediate family member is
21 the victim of an act of domestic violence and has a reasonable fear that the tenant or the
22 immediate family member will suffer a further act of domestic violence by continued residence
23 in the dwelling unit;
24 (D) a statement that the attesting third party, based on the tenant's

1 verification, believes the tenant and understands that the verification may be used as the basis for
2 releasing the tenant from a lease or terminating the tenant's interest under the lease; and

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

6 (b) If a tenant willfully submits a false verification to the landlord under subsection
7 508(a)(2)(C), the court may award the landlord an amount up to [three] months' periodic rent or
8 [triple] actual damages, whichever is greater, costs, and reasonable attorney's fees.

9 **Comment**

10 The following is an example of a verification that would comply with this section.
11

12 **Verification**

13 I, _____[insert name of tenant], state that:
14

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

16 _____[insert address of dwelling unit];

17 (b) I or an immediate family member has been a victim of an act of domestic violence
18 occurring to the best of my knowledge on or over a period

19 _____[insert time period over which acts of one
20 or more act of domestic violence occurred] which acts have created a reasonable fear that I or an
21 immediate family member will suffer a further act of domestic violence by continued residence
22 in the dwelling unit;

23 (c) The most recent act of domestic violence occurred on _____
24 [insert date]; and

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

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

33 _____
34 [Tenant's signature]

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

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

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

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

7 (d) I have read and reasonably believe the preceding statement recounting an act of
8 domestic violence and understand that the tenant who made the statement may use this document
9 as a basis for terminating the tenant's lease for the dwelling unit described in the preceding
10 statement.

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

14
15 _____
16 [Attesting third party's signature]

17 **SECTION 511. PERPETRATOR'S LIABILITY FOR DAMAGES.**

18 (a) A landlord may recover from a perpetrator actual damages resulting from a tenant's
19 exercise of a right under Section 508 and, if the perpetrator is a party to the lease who remains in
20 possession of the dwelling unit, hold the perpetrator liable on the lease for future rent payable
21 under the lease.

22 (b) In addition to any actual damages to which the landlord may be entitled under
23 subsection (a), the court shall award the landlord costs and reasonable attorney's fees.

24 (c) A perpetrator is not entitled to damages resulting from a good faith exercise of a right
25 by a tenant under Section 508 or by a landlord under this section.

26 **SECTION 512. CHANGE OF LOCKS AS RESULT OF AN ACT OF DOMESTIC**
27 **VIOLENCE.**

28 (a) Subject to subsections (b) and (c), if a tenant or immediate family member has been
29 the victim of an act of domestic violence, and the tenant has a reasonable fear that the perpetrator
30 or other person acting on the perpetrator's behalf may attempt to gain access to the dwelling unit:

31 (1) the tenant may, without the landlord's consent, cause the locks or other
32 security devices for the dwelling unit to be changed or re-keyed by a [licensed][qualified] person

1 in a professional manner and shall give a key or other means of access to the new locks or
2 security devices to the landlord and any other tenant, other than the perpetrator, that is a party to
3 the lease; or

4 (2) if the locks or security devices cannot be changed without an act by the
5 landlord, the landlord shall act within a reasonable time after the tenant has requested that the
6 locks or other security devices be changed.

7 (b) If the locks or other security devices are changed under subsection (a)(1), the landlord
8 may change them a second time [, at the tenant's expense,] to ensure compatibility with the
9 landlord's master key or other means of access or otherwise accommodate the landlord's
10 reasonable commercial needs.

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

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

17 **Comment**

18
19 The tenant is not required to comply with Section 508 to cause a change of the locks to
20 the dwelling unit.

21
22 When a perpetrator is a tenant under the lease, subsection (c) would permit a change of
23 locks only if a court has expressly ordered the perpetrator to vacate the residence.

24
25 This section is designed to allow a tenant who is the victim of domestic violence to
26 change the locks or other security devices without first giving the landlord an opportunity to
27 change them, thus allowing the victim to make the change as quickly as possible. Nothing in this
28 section would prohibit the landlord on the landlord's own initiative to change the locks or other
29 security devices on behalf of the tenant at the tenant's expense or for the tenant to contact the
30 landlord for the change.

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

2 (a) Upon issuance of a court order requiring a perpetrator to vacate a dwelling unit, other
3 than an ex parte order, neither a landlord nor tenant has a duty to:

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

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

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

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

13 (d) Subject to subsection (b), a landlord shall return to all tenants, including a perpetrator,
14 pursuant to Section 1104 the amount of any security deposit and unearned rent to which they are
15 entitled following the termination of the lease.

16 **Comment**

17 Because of subsection (c), the landlord cannot increase the tenant-victim's rent or other
18 obligation because the perpetrator who might also have been a tenant on the lease has been
19 ordered to vacate the dwelling unit. For example, suppose V and P are co-tenants on a lease
20 providing monthly rent in the amount of \$500. V is the victim of domestic violence committed
21 by P; P has been ordered to vacate the apartment. V continues to be liable for the monthly rent of
22 \$500, and the landlord cannot increase that rent to take account of the fact that P is no longer a
23 tenant. The landlord also may not increase the tenant's security deposit or require additional
24 prepaid rent even if the landlord believes that the remaining tenant might lack the financial
25 ability to comply with lease because the perpetrator is no longer a party to the lease.

26
27 **SECTION 514. TERMINATION OF PERPETRATOR'S INTEREST UNDER**
28 **LEASE WITHOUT COURT ORDER.**

29 (a) If a tenant is the perpetrator of an act of domestic violence act against any occupant of

1 the premises, the landlord may terminate the perpetrator's interest under a lease by giving the
2 perpetrator a notice in a record signed by the landlord of the landlord's intent to terminate the
3 lease immediately or on a later date specified in the notice and specifying the act of domestic
4 violence motivating the landlord to terminate the perpetrator's interest under the lease.

5 (b) If a perpetrator's interest under the lease is terminated by the landlord, any other
6 tenant under the lease may recover actual damages from the perpetrator resulting from the
7 termination.

8 (c) The termination of a perpetrator's interest under a lease neither terminates the interest
9 of any other tenant under the lease nor alters the obligations of the other tenant under the lease.

10 (d) The landlord is not required to return to the perpetrator whose interest under the lease
11 terminates or any remaining tenant any security deposit or unearned rent until the lease
12 terminates with respect to all tenants.

13 (e) In any action between the landlord and a perpetrator involving the right of the
14 landlord to terminate the perpetrator's interest under this section, the burden is upon the landlord
15 to prove by a preponderance of the evidence that the perpetrator committed an act of domestic
16 violence.

17 **Comment**

18 Under this section, the landlord, upon being advised that a tenant is the perpetrator of an
19 act of domestic violence could terminate the perpetrator's interest under the lease but not
20 terminate the victim's interest under the lease. The landlord's decision to terminate is wholly
21 discretionary. If the landlord chooses to terminate the perpetrator's interest under the lease, the
22 landlord may not alter the obligations of another tenant under the lease. For example, the
23 landlord could not increase the rent of the remaining tenant although, if the lease had treated the
24 perpetrator and the remaining tenant as jointly liable for the rent, the remaining tenant would be
25 liable for all of the remaining rent. In this case, the remaining tenant would have a cause of
26 action for damages against the perpetrator.

27
28 Under this section the landlord could terminate the perpetrator's interest as a tenant even
29 though there is no judicial determination that the perpetrator committed an act of domestic
30 violence. This is entirely consistent with the right of a landlord to terminate the interest of any

1 tenant who engages in other types of criminal activity on the premises in violation of Section 401
2 and Section 601, even though the tenant has not been found guilty of a crime. In either case, of
3 course, if the tenant refuses to surrender possession of the premises to the landlord upon
4 termination of the lease and the landlord sues for possession, the defendant (tenant) could claim
5 a wrongful termination claiming the tenant is not what the landlord claimed. In this case, the
6 landlord would have the burden to prove by a preponderance of the evidence that the landlord
7 had the right to terminate the tenancy. This means the landlord has the burden to prove the
8 defendant was a perpetrator or otherwise committed a criminal act in entitling the landlord to
9 terminate the lease.

10
11 **SECTION 515. LIMITATIONS ON LANDLORD’S CONDUCT WITH**
12 **RESPECT TO VICTIMS OF AN ACT OF DOMESTIC VIOLENCE.**

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

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

21 (1) primarily because the tenant under the lease or an immediate family member
22 is or has been the victim of an act of domestic violence;

23 (2) because of a violation of the lease or this [act] by the tenant if the violation
24 results from an act of domestic violence against the tenant or an immediate family member; or

25 (3) because of an act of domestic violence against the tenant or an immediate
26 family member or any police or emergency response to a good faith complaint of activities
27 relating to an act of domestic violence against the tenant or an immediate family member.

28 (c) A landlord may terminate the lease of a tenant if the landlord gave the tenant a prior
29 notice in a record signed by the landlord regarding a perpetrator’s commission of an act of

domestic violence against the tenant or an immediate family member, and subsequently:

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

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

(d) If a landlord willfully violates subsection (b):

(1) the tenant may:

(A) terminate the lease; or

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

(C) obtain appropriate injunctive relief; and

(2) 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.

ARTICLE 6

LANDLORD REMEDIES

SECTION 601. FAILURE TO PAY RENT; OTHER NONCOMPLIANCE WITH LEASE BY TENANT.

(a) Except as otherwise provided in this [act] or by law of this state other than this [act], landlord may terminate a lease for nonpayment of rent if the rent is unpaid when due and the tenant fails to pay the rent no later than [14] days after the landlord gives the tenant a notice in a record signed by the landlord of the landlord's intent to terminate the lease at the end of the [14] day period if the rent is not paid within that period.

(b) Except as otherwise provided in this [act] or by law of this state other than this [act],

1 if there is a material noncompliance with the lease or this [act] other than the nonpayment of
2 rent, the landlord may give the tenant a notice in a record signed by the landlord specifying the
3 act and omission constituting the noncompliance and that the lease will terminate on a specified
4 date not less than [30] days after receipt of the notice if the noncompliance is not remedied not
5 later than [14] days after receipt of the notice. If the tenant does not adequately remedy the
6 noncompliance during the [14]-day remediation period, the landlord may terminate the lease.

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

9 (1) if the tenant commits any criminal activity on the premises, by giving the
10 tenant notice in a record signed by the landlord that the lease will terminate immediately upon
11 receipt of the notice or upon another date set forth in the notice, or

12 (2) in any of the following circumstances, by giving the tenant notice in a record
13 signed by the landlord that the lease will terminate on a specified date not less than [14] days
14 after receipt of the notice:

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

18 (B) the noncompliance poses an [imminent][serious] threat to the health
19 and safety of other tenants on the premises; and

20 (C) the noncompliance is substantially the same act or omission that
21 constituted a prior noncompliance for which notice under subsection (b) had been sent within the
22 six months preceding the latest noncompliance.

23 (d) Except as otherwise provided in this [act], a landlord may:

24 (1) obtain injunctive relief or specific performance to remedy a tenant's

1 noncompliance with Section 401 that materially affects health or safety or is a material
2 noncompliance with the lease, together with costs, and reasonable attorney's fees, or,
3 (2) regardless of whether the lease terminates as a result of the tenant's
4 noncompliance, recover actual damages, costs and reasonable attorney's fees, or liquidated
5 damages as provided by the lease.

6 **Comment**

7
8 Section 601 gives a landlord the right to terminate a lease for tenant's nonpayment of rent
9 and other noncompliance with the lease or this act. The section should be read in conjunction
10 with Section 801, which gives a landlord the unconditional right to terminate a periodic tenancy
11 upon compliance with the notice provisions in that section.
12

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

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

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

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

26 **SECTION 603. DISTRESS FOR RENT; LIENS.**

27 (a) Distraint for rent is abolished.

28 (b) A landlord may not enforce a lien or security interest on a tenant's personal property
29 if the lien or security interest was to secure the tenant's performance under the lease or this [act]
30 unless the lien or security interest attached before the effective date of this [act].

1 **Comment**

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

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

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

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

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

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

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

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

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

26 (1) accept a tenant's abandonment of a dwelling unit by a notice in a record
27 signed by the landlord accepting the abandonment, in which case:

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

29 (B) the landlord and tenant are liable to each other under the lease only for

1 breaches occurring before acceptance of the abandonment; and

2 (C) the landlord shall return to the tenant pursuant to Section 1104 the
3 amount of any security deposit and unearned rent to which the tenant is entitled; or

4 (2) treat the abandonment as wrongful as provided in subsection (d).

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

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

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

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

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

21 (5) The landlord shall return to the tenant pursuant to Section 1104 the amount of
22 any security deposit and unearned rent to which the tenant is entitled, if any, after deducting the
23 landlord's actual damages.

24 (e) If a tenant wrongfully terminates the lease, the landlord has a claim for possession.

1 The landlord also has a claim for past due rent and, unless the landlord accepts abandonment or
2 fails to mitigate, a separate claim for actual damages for breach of the lease, costs, and
3 reasonable attorney's fees.

4 **Comment**

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

10
11 In light of subsection (d)(1), when at the time the landlord is fulfilling the duty to
12 mitigate the landlord has other vacant units to rent, the landlord can show the other units to
13 prospective tenants before showing the abandoned unit to prospective tenants.

14
15 If a tenant abandons the dwelling unit, the landlord may choose to accept the
16 abandonment, thus agreeing to a termination of the lease. If, at the time of the abandonment the
17 tenant is in arrears on rent, the landlord would still have a cause of action to recover the past due
18 rent. However, by accepting the abandonment the landlord would not have a cause of action for
19 actual damages resulting from the abandonment. If a tenant abandons the dwelling unit and the
20 landlord does not accept the abandonment, the landlord can seek to recover damages from the
21 tenant for anticipatory breach or actual damages as provided in subsection (d)(3).

22
23 **SECTION 605. RECOVERY OF POSSESSION LIMITED; INTERRUPTION OF**
24 **ESSENTIAL SERVICE.** Except in a case of abandonment of a dwelling unit or as permitted
25 by this [act], a landlord may not recover or take possession of a dwelling unit by an action or
26 self-help or by willfully interrupting or causing the interruption of an essential service to the
27 tenant.

28 **ARTICLE 7**

29 **ACCESS**

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

31 (a) A tenant may not unreasonably withhold consent to the landlord to enter into the
32 dwelling unit to inspect it, make a necessary or agreed-to repair, alteration, or improvement,
33 supply a necessary or agreed-to service, or exhibit the dwelling unit to a prospective or actual

1 purchaser, mortgagee, tenant, worker, contractor, or public official responsible for enforcement
2 of a building, housing, or health code.

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

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

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

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

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

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

22 (2) pursuant to a court order; or

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

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

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

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

ARTICLE 8

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

SECTION 801. TERMINATION OF PERIODIC TENANCY.

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

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

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

(2) The landlord or the tenant may terminate a periodic tenancy for month to

1 month by giving not less than [one] month's notice in a record of the intent to terminate the lease
2 at the end of the monthly period signed by the party giving the notice.

3 **Comment**

4
5 Under subsection (b), a month to month tenancy can be terminated by giving one month's
6 notice. The termination date in the notice must coincide with the normal end of the monthly
7 period. Thus, if the tenancy begins on the first of the month, the termination date in the notice
8 must be on the last day of at least the next month or it could be on the last date of any month at
9 least one month after the notice is given. If the month-to-month tenancy begins on the 15th of the
10 month, the one-month notice must have a termination date no earlier than the 14th of the next
11 month but could have a termination date on the 14th for subsequent months. Consistent with
12 common law, this [act] would not require the notice to include a reason for the termination.
13

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

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

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

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

24 (b) Except as otherwise provided in subsections (a) or (c) or law of this state other than
25 this [act], either the landlord or a tenant representative may terminate the lease by notifying the
26 other in a signed record of the intent of the person signing the record to terminate the tenancy on
27 a specified date not less than [30] days after receipt of the notice in the case of a fixed term
28 tenancy or a specified date consistent with Section 801(b) in the case of a periodic tenancy; and

29 (1) if the record is signed by the landlord, it shall be personally delivered to the

1 tenant representative or sent to the tenant representative at the tenant representative's mail or
2 electronic mail address; or

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

5 (c) If the deceased tenant was the sole occupant of a dwelling unit and the landlord has
6 been unable to contact a tenant representative for purposes of termination under subsection (b),
7 the landlord may unilaterally terminate the tenancy without notice if at least [25] days have
8 elapsed since any rent that was due was not paid.

9 **Comment**

10 If a tenant dies during the term of a lease, either the landlord or tenant representative (as
11 defined in Section 102(40)) can elect to terminate the lease under subsection (b) unless subsection
12 (a) or other law would prohibit the termination.

13
14 If the tenant was the sole occupant of the dwelling unit, the landlord may be able to
15 unilaterally terminate the lease if subsection (c) applies. To illustrate the operation of subsection
16 (c), suppose the tenant of a fixed term tenancy to end on December 31 and who is the sole
17 occupant of the dwelling unit dies on March 5 having paid rent on March 1. The landlord learns
18 of the tenant's death on March 10. Because rent was paid for March, the landlord will not be
19 able to terminate this lease in March. If no rent was paid on April 1, however, and the landlord is
20 unable to contact a tenant representative, the landlord would be free to unilaterally terminate the
21 lease on or after April 25. If the landlord has contact with a tenant representative, the landlord
22 could not terminate under subsection (c), but may terminate the lease under subsection (b).

23 24 **SECTION 803. HOLDOVER TENANCY.**

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

31 (b) Except as otherwise provided in subsection (c), if a tenant remains in possession with

1 the landlord's consent after the expiration of a tenancy for a fixed term or the termination of the
2 lease, a periodic tenancy for month to month arises under the same terms as the lease unless the
3 landlord and tenant otherwise agree.

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

8 **Comment**

9 Although subsection (c) recognizes that a lease may provide its own remedy for holding
10 over at the expiration of a term, the provision is subject to Section 106. Thus, a court should
11 refuse to enforce any holdover penalties that are unconscionable.

12 **ARTICLE 9**

13 **RETALIATION**

14 **SECTION 901. RETALIATION PROHIBITED.**

15 (a) A landlord may not retaliate against a tenant by engaging in conduct described in
16 subsection (b) because the tenant has:

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

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

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

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

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

25 (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) Retaliatory conduct by a landlord includes taking or threatening to take any of the following actions [within six months after the tenant's conduct in subsection (a)]:

(1) increasing the rent;

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

(3) bringing an action for possession except for nonpayment of rent;

(4) terminating or refusing to renew the lease; or

(5) conduct prohibited under [the criminal code].

Comment

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

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

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

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

(c) the tenant was in default in the payment of rent at the time the notice of the action for

possession described in Section 901(b)(3) was sent;

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

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

(f) the landlord is seeking to recover possession on the basis of a notice to terminate the lease and the notice was given to the tenant before the tenant engaged in conduct described in Section 901(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; and

(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.

(b) If the lease terminates under subsection (a), the landlord shall return to the tenant pursuant to Section 1104 the amount of any security deposit and unearned rent to which the tenant is entitled.

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

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

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

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

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

12 **Comment**

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

15 **ARTICLE 10**

16 **DISPOSITION OF PERSONAL PROPERTY**

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

18 (a) For purposes of this [article], possession of a dwelling unit is relinquished to the
19 landlord:
20

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

22 (2) when the landlord has regained actual possession pursuant to a court order; or

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

24 (b) If personal property remains on the premises after possession of a dwelling unit has
25 been relinquished to the landlord, the landlord shall give the tenant notice in a record signed by

1 the landlord advising the tenant of the tenant's right to retrieve the personal property. The notice
2 required under this section must:

3 (1) be posted in the dwelling unit and sent to any forwarding address the tenant
4 provided to the landlord;

5 (2) inform the tenant of the right to contact the landlord to claim the property
6 within the period in subsection (c), subject to the payment of the landlord's moving and storage
7 costs; and

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

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

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

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

21 (f) Unless a landlord and tenant otherwise agree, if the tenant fails to contact the landlord
22 as provided in subsection (c) or to retrieve personal property as provided in subsection (d), the
23 personal property shall be deemed abandoned and:

24 (1) if the landlord estimates in good faith the fair market value of the personal

property to be no more than \$[1,000], the landlord may dispose of the property in any manner the landlord considers appropriate; or

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

Comment

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

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

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

(b) If a landlord has unilaterally terminated the lease pursuant to Section 802(c) because the landlord has been unable to contact a tenant representative, the landlord:

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

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

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

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

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

3 (2) may inventory the personal property, remove it from the dwelling unit, and
4 store it in another place for safekeeping. The landlord shall exercise reasonable care in moving
5 and storing the personal property.

6 (c) A tenant representative may retrieve the deceased tenant's personal property from the
7 landlord not later than [60] days after the landlord sent the notice in subsection (b). Before
8 retrieving the property, the tenant representative must pay the landlord's reasonable costs of
9 inventorying, moving, and storing the property.

10 (d) If the deceased tenant's personal property is not retrieved within the time period in
11 subsection (c), the landlord may dispose of the personal property in compliance with Section
12 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 deceased tenant's personal property from the premises.
17 When a tenant who is the sole occupant of the dwelling unit dies, the tenant's representative or
18 the landlord may elect to terminate the lease pursuant to Section 802. If that election is made
19 and the dwelling unit is vacated, possession of the dwelling unit is relinquished to the landlord
20 pursuant to Section 1001(a), triggering the provisions of that section governing the disposition of
21 the deceased tenant's personal property.

22
23 The tenant representative typically will be the personal representative of the deceased
24 tenant's estate, but if no personal representative has been appointed, the tenant representative
25 will be the contact person under Section 1003 or, in the absence of a contact person, an heir of
26 the deceased tenant under the state's intestate succession laws. See Section 102(39). In the latter
27 case, the landlord has no obligation to identify all of the deceased tenant's heirs and may give
28 possession to *any* individual the landlord knows to be an heir of the deceased tenant.

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

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

5
6 **SECTION 1003. CONTACT PERSON.**

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

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

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

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

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

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

21 (4) shall return to the contact person pursuant to Section 1104 the deceased
22 tenant's security deposit and unearned rent to which the tenant would otherwise have been
23 entitled.

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

26 (e) Once a contact person or the landlord knows of the appointment of a personal

1 representative for the deceased tenant's estate, the contact person's authority to act under this
2 [act] terminates.

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

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

8 **Comment**

9
10 The purpose of this section is to authorize a contact person to remove the tenant's
11 personal property and receive the return of the security deposit and unearned rent. Whether the
12 contact person is entitled to keep any of the tenant's personal property or security deposit will
13 depend on law other than this act.

14 **ARTICLE 11**

15 **SECURITY DEPOSITS, FEES, AND UNEARNED RENT**

16 **SECTION 1101. PAYMENTS REQUIRED AT THE COMMENCEMENT OF** 17 **THE LEASE.**

18 (a) Except as otherwise provided in subsections (b) and (c), a landlord may not require a
19 tenant to pay, at or prior to the commencement of the lease, an amount equal to more than [two]
20 months of periodic rent. This amount includes, in any combination, prepaid rent and a security
21 deposit.
22

23 (b) The limitation in subsection (a) does not apply to the first month's rent, application
24 fees, surety bonds, insurance premiums, cleaning fees, or pet fees.

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

1 to the premises.

2 **Comment**

3
4 The intent of subsection (a) is to limit the payments that a landlord may require a tenant
5 to make at the beginning of the lease to the equivalent of the first and last month's rent plus a
6 one-month security deposit. The number of months is bracketed, however, to give legislatures
7 the option to choose a number appropriate for market conditions within their own states.
8

9 Nothing in this section prohibits a tenant from voluntarily making other payments. Thus a
10 tenant may prepay rent for several more months in advance – or even the full term – if the tenant
11 is in the financial position to do so.
12

13 **SECTION 1102. LANDLORD, TENANT, AND THIRD PARTY INTERESTS IN**
14 **SECURITY DEPOSIT.**

15 (a) The following rules apply to a landlord's interest in a security deposit:

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

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

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

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

24 (1) The tenant's interest in a security deposit held in a bank account has priority
25 over any right of set-off that the bank in which the account is maintained may have for
26 obligations owed to the bank by the landlord other than charges normally associated with the
27 bank's maintenance of the account;

28 (2) The tenant's interest is not destroyed if the security deposit is commingled
29 with the security deposits of other tenants in a bank account pursuant to Section 1103(a)(3); and

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

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

(d) Nothing in subsection (a)(3) abrogates generally applicable rules of law enabling a person to whom funds have been paid to take the funds free of competing claims to the funds.

Comment

Subsection (a) intends to clarify the priority of the landlord's interest in security deposits as a security interest if the tenant files for bankruptcy. This prevents creditors of the landlord from obtaining an interest in the security deposit (and similarly protects the tenant if the landlord goes into bankruptcy. If the tenant is in financial stress, subsection (a) is a useful clarification that can benefit the tenant's creditors whether or not the tenant files a bankruptcy petition because it makes clear that the security deposit is an asset of the tenant. *cf. In re Verus Inv. Mgmt., LLC*, 344 B.R. 536, 546 (Bankr. N.D. Ohio 2006) (landlord's assignee was a secured, rather than unsecured, creditor with respect to a perfected security interest in a certificate of deposit that served as a security deposit under a commercial lease); *cf. In re Coomer*, 375 B.R. 800, 804-06 (Bankr. N.D. Ohio 2007) (applying § 541 of the Bankruptcy Code to conclude that bankruptcy trustee was not entitled to a security deposit that landlord was holding to secure the debtor-tenant's obligations under a residential lease). Designating security deposits as a security interest should similarly protect the tenant's interests in the event of the landlord's bankruptcy. *See In re Frempong*, 460 B.R.189, 195 (Bankr. N.D. Ill. 2011) (stating that under Chicago municipal ordinance, tenant security deposits "are held 'in trust' by the landlord and thus are not part of the Bankruptcy Estate of any landlord in a Bankruptcy filing"); *cf. 6 West's Fed. Admin. Prac.* § 7032 (3d ed.) (the bankruptcy estate acquires any security interest held by the debtor and the right to enforce that security interest, but not the property subject to that security interest).

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

Subsection (c) addresses the common misconception of tenants that the security deposit may be used in lieu of paying rent, particularly the last month's rent. The primary purpose of a security deposit is to provide the landlord with funds to reimburse the landlord for the costs incurred in remedying any damages to the dwelling unit by the tenant. If the tenant could

1 withhold rent only to have it charged against the security deposit, the landlord would have no
2 funds to pay for any damages. A tenant that willfully withholds last month's rent is subject to the
3 penalty imposed by this section.
4

5 Under subsection (d), whether a transferee of funds from a bank account maintained for
6 the purpose of holding security deposits takes the funds free from the tenant's interest is
7 governed by other law.
8

9 **SECTION 1103. SAFEKEEPING OF SECURITY DEPOSITS.**

10 (a) With respect to funds constituting a security deposit, the landlord:

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

12 (A) holding the funds in a bank account which is maintained by a bank
13 doing business in this state and is used exclusively for security deposits; and

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

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

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

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

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

27 (d) A bank holding funds pursuant to subsection (a) has no duty to assure the proper
28 application of the funds.

1 **Comment**

2
3 Section 1103 introduces a new requirement that landlords segregate security deposits
4 from the landlord's other funds. Imposing the safekeeping requirements ensures that the funds
5 are available for return as required under various provisions in the act.
6

7 The segregation requirement does not apply to prepaid rent. By definition, rent payments
8 made by or on behalf of the tenant for future dates, even if required by the terms of the lease or
9 as a condition of entering into the lease, are not security deposits. Rather, they are payment for
10 those future dates, discharging, to the extent of the payment, the obligation to pay rent for those
11 dates. Accordingly, unlike security deposits, the tenant no longer owns the funds paid as rent.
12 Several provisions of this act require a landlord to return to the tenant the amount of unearned
13 rent. If a landlord fails to comply with such a requirement, the aggrieved tenant would have a
14 right to a money judgment but would have no in rem claim.
15

16 Subsection (b) does not preclude the landlord or tenant from recovering other damages to
17 which the landlord or tenant may be entitled under this [act].
18

19 **SECTION 1104. RETURN OF SECURITY DEPOSIT AND UNEARNED RENT.**

20 (a) At the termination of a lease, the tenant is entitled to the amount by which the security
21 deposit and any unearned rent exceeds the amount that the landlord is owed for unpaid rent due
22 under the lease and for the tenant's noncompliance with the terms of the lease or this [act].

23 (b) No later than [30] days after the lease terminates and a tenant vacates the premises, a
24 landlord shall make a good-faith determination of the amount to which the tenant is entitled
25 under subsection (a) and shall send that amount to the tenant or to a contact person designated
26 pursuant to Section 1003, postage or cost of transmission provided for, to an address provided by
27 the tenant or, in the absence of that address, to the address specified in Section 301(b)(2).

28 (c) If a landlord sends the tenant less than the entire amount of the security deposit and
29 unearned rent that the landlord received from the tenant, the landlord shall provide the tenant
30 with a record specifying the property damage or other unfulfilled obligations of the tenant to
31 which the security deposit or unearned rent was applied and the amount applied to each item.

32 (d) Regardless of whether a landlord complies with subsections (b) and (c), a tenant may
33 recover the difference between the amount to which the tenant is entitled under subsection (a)

1 and the amount sent to the tenant or a contact person under subsection (b).

2 (e) If the landlord fails to comply with subsection (b) or subsection (c), the court may
3 award, as a penalty, an additional \$250 or [two] times the amount recoverable under subsection
4 (d), whichever is greater, costs, and reasonable attorney's fees, provided the court may not
5 award a penalty under this subsection if the landlord's noncompliance with subsection (b) and (c)
6 is limited to the landlord's failure to pay the cost of postage or transmission or to use the proper
7 address.

8 (f) Notwithstanding law of this state other than this [act], any security deposit or
9 unearned rent to which the tenant is entitled but is unclaimed by the tenant for more than [180]
10 days after the tenancy has ended, including the amount of any check that remains outstanding at
11 the end of the [180]-day period, is treated as unclaimed property under [cite to state unclaimed
12 property act]].

13 (g) If the amount of the security deposit and unearned rent that exceeds the amount that
14 the landlord is owed for unpaid rent under the lease is insufficient to reimburse the landlord for
15 damage to the premises caused by the tenant or another individual, other than the landlord or the
16 landlord's agent, the landlord may recover from the tenant actual damages, costs, and reasonable
17 attorney's fees.

18 Subsection (e) provides a penalty when the landlord fails to comply with any of the
19 requirements of subsections (b) and (c), including the failure to act within the applicable time
20 period, the failure to provide a record to explain why the security deposit was not returned in
21 full, and the failure to return an amount equal to the landlord's good faith calculation of the sum
22 to which the tenant is entitled. If the landlord has acted in good faith, but merely erred in
23 determining the amount owed, subsection (d) permits the tenant to recover the amount to which
24 the tenant is entitled and subsection (e) would not apply.

25
26 The time frame set forth in subsection (f) may supersede the time limits for other forms
27 of unclaimed property provided in other law of the state.

1 **SECTION 1105. DISPOSITION OF SECURITY DEPOSITS AND UNEARNED**
2 **RENT UPON TERMINATION OF LANDLORD'S INTEREST IN PREMISES.**

3 (a) Not later than [30] days after the termination of a landlord's interest in the premises by
4 sale, assignment, appointment of receiver, or otherwise, or [30] days after the appointment of a
5 personal representative when the landlord's interest is terminated by death, the landlord or the
6 personal representative of the landlord's estate shall:

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

11 (2) if the lease terminates as a result of the sale, assignment, death, appointment
12 of receiver or otherwise, return the security deposits and an amount equal to the unearned rent to
13 the tenant pursuant to the terms of Section 1104.

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

17 (c) Subject to subsection (d), the person succeeding to the landlord's interest in the
18 premises has all of the rights and obligations of a landlord under this [article] with respect to any
19 security deposits and unearned rent held by the predecessor landlord that has not been returned to
20 the tenant under subsection (a)(2), whether or not the security deposits and unearned rent were
21 sent to the successor.

22 (d) If the landlord's interest is terminated by foreclosure, the successor's liability under
23 subsection (c) is limited to the amount of a security deposit or unearned rent received by the
24 successor.

1 **Comment**

2
3 Section 1105 is a new section that provides for disposition of security deposits and
4 unearned rent after a transfer of the landlord's interest in the premises.
5

6 **ARTICLE 12**

7 **MISCELLANEOUS PROVISIONS**

8 **SECTION 1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

9 applying and construing this uniform act, consideration must be given to the need to promote
10 uniformity of the law with respect to its subject matter among states that enact it.

11 **SECTION 1202. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
12 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
13 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,
14 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
15 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
16 U.S.C. Section 7003(b).

17 **SECTION 1203. REPEALS.** The following are repealed: . . .

18 **SECTION 1204. EFFECTIVE DATE.** This [act] takes effect