

D R A F T

FOR DISCUSSION ONLY

REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

~~NOVEMBER 2013~~ MARCH 2014 COMMITTEE DRAFT

REDLINE DRAFT WITH PRELIMINARY COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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~~November~~ March 21, 2014

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REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (201_)

TABLE OF CONTENTS

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE.	1
SECTION 102. DEFINITIONS.	1
SECTION 103. SCOPE.	11
SECTION 104. ADMINISTRATION OF REMEDIES; ENFORCEMENT; DUTY TO MITIGATE.	12
SECTION 105. OBLIGATION OF GOOD FAITH.	13
SECTION 106. UNCONSCIONABILITY.	13
SECTION 107. KNOWLEDGE AND NOTICE.	13
SECTION 108. COMMON LAW AND PRINCIPLES OF EQUITY.	15

ARTICLE 2

GENERAL PROVISIONS APPLICABLE TO LEASE

SECTION 201. TERMS AND CONDITIONS OF LEASE.	15
SECTION 202. EFFECT OF UNSIGNED, UNDELIVERED LEASE; IMPLIED LEASE.	16
SECTION 203. PROHIBITED PROVISIONS IN LEASE.	17
SECTION 204. SEPARATION OF RENT FROM DUTY TO MAINTAIN PREMISES.	18

ARTICLE 3

LANDLORD'S DUTIES

SECTION 301. REQUIRED DISCLOSURES BY LANDLORD AND TENANT.	18
SECTION 302. DELIVERY OF POSSESSION OF DWELLING UNIT TO TENANT.	20
SECTION 303. LANDLORD'S DUTY TO MAINTAIN.	21
SECTION 304. DUTIES OF LANDLORD PERFORMED BY TENANT.	22
SECTION 305. LIMITATIONS ON LANDLORD'S LIABILITY.	23
SECTION 306. RULES OF LANDLORD.	24

ARTICLE 4

TENANT'S DUTIES

SECTION 401. TENANT'S DUTIES.	25
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ARTICLE 5

TENANT REMEDIES

SECTION 501. NONCOMPLIANCE BY LANDLORD; IN GENERAL	27
SECTION 502. LANDLORD’S FAILURE TO DELIVER POSSESSION TO TENANT	31
SECTION 503. SELF-HELP FOR MINOR DEFECTS	32
SECTION 504. LANDLORD’S WRONGFUL FAILURE TO PROVIDE ESSENTIAL SERVICE.....	33
SECTION 505. LANDLORD’S NONCOMPLIANCE AS DEFENSE TO ACTION FOR NONPAYMENT OF RENT.	34
SECTION 506. FIRE OR CASUALTY DAMAGE.....	36
SECTION 507. TENANT REMEDIES FOR UNLAWFUL REMOVAL, EXCLUSION, OR DIMINUTION OF ESSENTIAL SERVICE.....	37
SECTION 508. EARLY RELEASE OR TERMINATION OF LEASE BECAUSE OF AN ACT OF DOMESTIC VIOLENCE.	38
SECTION 509. LANDLORD’S OBLIGATIONS IN EVENT OF EARLY RELEASE OR TERMINATION.....	41
SECTION 510. VERIFICATION.	42
SECTION 511. PERPETRATOR’S LIABILITY FOR DAMAGES.....	45
SECTION 512. CHANGE OF LOCKS AS RESULT OF AN ACT OF DOMESTIC VIOLENCE.	46
SECTION 513. EFFECT OF COURT ORDER TO VACATE.	48
SECTION 514. TERMINATION OF PERPETRATOR’S INTEREST UNDER LEASE WITHOUT COURT ORDER.	49
SECTION 515. LIMITATIONS ON LANDLORD’S CONDUCT WITH	50
RESPECT TO VICTIMS OF AN ACT OF DOMESTIC VIOLENCE.....	50

ARTICLE 6

LANDLORD REMEDIES

SECTION 601. FAILURE TO PAY RENT; OTHER NONCOMPLIANCE WITH LEASE BY TENANT	52
SECTION 602. WAIVER OF LANDLORD’S RIGHT TO TERMINATE	54
SECTION 603. DISTRESS FOR RENT; LIENS.....	54
SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION.	55
SECTION 605. RECOVERY OF POSSESSION LIMITED; INTERRUPTION OF ESSENTIAL SERVICE.....	60

ARTICLE 7

ACCESS

SECTION 701. LANDLORD’S ACCESS TO DWELLING UNIT.	60
SECTION 702. LANDLORD AND TENANT REMEDIES FOR ABUSE OF ACCESS.	62

ARTICLE 8

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

SECTION 801. TERMINATION OF PERIODIC TENANCY	62
SECTION 802. TERMINATION UPON DEATH OF TENANT.....	63
SECTION 803. HOLDOVER TENANCY	65

ARTICLE 9

RETALIATION

SECTION 901. RETALIATION PROHIBITED.	66
SECTION 902. ACTS NOT CONSIDERED RETALIATORY.	67
SECTION 903. TENANT REMEDIES FOR RETALIATORY CONDUCT.	68
SECTION 904. PRESUMPTION OF RETALIATORY CONDUCT.....	68

ARTICLE 10

DISPOSITION OF PERSONAL PROPERTY

SECTION 1001. TENANT’S RIGHT TO RETRIEVE PERSONAL PROPERTY.....	69
SECTION 1002. DISPOSITION OF PERSONAL PROPERTY ON TENANT’S DEATH.....	71
SECTION 1003. CONTACT PERSON.	73

ARTICLE 11

SECURITY DEPOSITS, FEES, AND UNEARNED RENT

SECTION 1101. PAYMENTS REQUIRED AT THE COMMENCEMENT OF THE LEASE. .	78
SECTION 1102. LANDLORD, TENANT, AND THIRD PARTY INTERESTS IN SECURITY DEPOSIT.	79
SECTION 1103. SAFEKEEPING OF SECURITY DEPOSITS.....	81
SECTION 1104. RETURN OF SECURITY DEPOSIT AND UNEARNED RENT.	82
SECTION 1105. DISPOSITION OF SECURITY DEPOSITS AND UNEARNED RENT UPON TERMINATION OF LANDLORD’S INTEREST IN PREMISES.	85

ARTICLE 12

MISCELLANEOUS PROVISIONS

SECTION 1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION.	86
SECTION 1202. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.	87

SECTION 1203. REPEALS.....	87
SECTION 1204. EFFECTIVE DATE.....	87

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) “Assignment” means the transfer of the remaining balance of the term of a lease to an~~
15 ~~assignee by the assignor.~~

16 ~~(54)~~ (54) “Attesting third party” means a law enforcement official, licensed health-care
17 professional, victim’s advocate, or victim-services provider that has had contact with a tenant or
18 an immediate family member who is a victim of an act of domestic violence. ~~domestic violence,~~
19 ~~sexual assault, or stalking.~~

20
21 ~~(65)~~ (65) “Bank” means an organization that is engaged in the business of banking. The term
22 includes a savings bank, savings and loan association, credit union, and trust company.

23 ~~(76)~~ (76) “Bank account” means a checking, demand, time, savings, passbook, or similar

1 account maintained at a bank.

2 (87) “Building, housing, or health code” includes any law, ordinance, and governmental
3 regulation concerning fitness for habitation or the construction, maintenance, operation,
4 occupancy, use, or appearance of the premises.

5 (98) “Contact person” means a person designated by a tenant under Section 1003(a) ~~for~~
6 ~~(b).~~

7 ~~-(9) “Dating violence” means dating violence as defined by [insert reference to definition~~
8 ~~in other state law].~~

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

12
13 ~~(4+11)~~ “Domestic violence” means domestic violence as defined by [insert reference to
14 definition in other state law]. ~~When used in this fact], the~~ ~~The~~ ~~term~~ ~~also includes dating~~
15 ~~violence, stalking, and sexual assault.~~

16 ~~(4212)~~ “Dwelling unit” means property described in a lease that is leased to a tenant for
17 the purpose of being used as a home, residence, or sleeping place by an individual or by two or
18 more individuals who maintain a common household, regardless of their relationship to each
19 other. For purposes of this subsection, property could include:

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

22 (2) a structure, or the part of the structure, in which the tenant resides, together
23 with the fixtures and appurtenances therein, including and any other areas of the land on which

1 the structure is located to which the tenant is given the exclusive right of possession during the
2 term of the lease, such as a designated parking space or storage area.

3 as a home, residence, or sleeping place

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

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

17 (1313) “Electronic” means relating to technology having electrical, digital, magnetic,
18 wireless, optical, electromagnetic, or similar capabilities.

19 (1414) “Essential services” means heat, hot and cold running water, plumbing, and
20 electricity. The term also includes gas, air conditioning, or other services if required to be
21 supplied to a tenant by the lease or by law which, if not supplied to the tenant, would create a
22 [serious][substantial] threat to the health, safety, or property of the tenant or an immediate family
23 member.

(1515) “Fees” means amounts payable by a tenant to a landlord for which the landlord has no obligation to account or return to the tenant. The term does not include a security deposit or ~~unearned~~ rent.

(1616) “Funds” means money, checks, bank-account credits, certificates of deposit, or the like.

(1717) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(1818) “Immediate family member” means any of the following, other than a perpetrator, who habitually resides in a dwelling unit with a tenant:

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

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

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

(1919) “Landlord” ~~means an~~means an owner or owner of a dwelling unit or the building of which it is a part, a successor in interest to the landlord, and any person that enters into a lease on behalf of an owner. Except for the duties imposed on a landlord under Section 303, the term includes ~~an assignor to whom section 1103(a) does not apply and~~ a sublessor.

(2020) “Lease” means a contract between a landlord and tenant in which the landlord rents to the tenant a dwelling unit for a tenancy for a fixed term or ~~a~~ periodic tenancy.

(2121) “Normal wear and tear” means deterioration that results from the intended use of a dwelling unit, including breakage or malfunction due to age or deteriorated condition. The term

1 does not include deterioration that results from negligence, carelessness, accident, or abuse of the
2 unit, fixtures, equipment, or chattels by the tenant, an immediate family member, or other
3 individual on the premises with the tenant's consent, other than the landlord or the landlord's
4 agent.

5 (2222) "Owner" means a person vested with:

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

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

9 (2323) "Periodic rent" means the amount of rent payable each month under a tenancy for
10 a fixed term or a periodic tenancy for month to month or payable each week under a periodic
11 tenancy for week to week. If rent is payable annually, periodic rent is the amount of the annual
12 rent divided by 12.

13 (2424) "Periodic tenancy" means a tenancy created under a lease or arising by operation
14 of law for either month to month or week to week.

15 (2525) "Perpetrator" means an individual who commits an act of domestic violence on a
16 tenant or an immediate family member. ÷

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

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

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

21 (2626) "Person" means an individual, estate, business or nonprofit entity, public
22 corporation, government or governmental subdivision, agency, or instrumentality, or other legal
23 entity.

1 (2727) “Premises” means a dwelling unit and the structure of which it is a part, ~~if the~~
2 ~~structure has two or more units to be leased.~~ The term also includes all areas associated with the
3 structure, whether exterior or interior to it, that are excluded from the definition of dwelling unit,
4 including the fixtures, facilities, and appurtenances thereto, which areas are held out for the use
5 of tenants generally.

6 (2828) “Prepaid rent” means rent paid to a landlord prior to the first day of the rental
7 period to which it is to be applied. ~~For this purpose and unless~~ Unless the lease otherwise
8 provides, the rental period is determined on a monthly basis beginning with the first day of the
9 month.

10 (2929) “Record” means information that is inscribed on a tangible medium or that is
11 stored in an electronic or other medium and is retrievable in perceivable form.

12 (3030) “Rent” means the payments to be made to or for the benefit of the landlord for the
13 use and occupation of a dwelling unit. The term does not include a security deposit or fees.

14 (3131) “Security deposit” means funds, and the identifiable proceeds thereof, provided to
15 a landlord to secure payment or performance of a tenant’s obligations under a lease or this [act],
16 regardless of how the funds are denominated. The term does not include ~~unearned~~ rent and fees.

17 (3232) “Security interest” means an interest in personal property that secures payment or
18 performance of a tenant’s obligations under a lease or this [act].

19 (3333) “Sexual assault” means [sexual assault] as defined in [insert reference to
20 definition in other state law].

21 (3434) “Sign” means, with present intent to authenticate or adopt a record:

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

23 (B) to attach to or logically associate with the record an electronic symbol,

1 electronic mail address or other identifying header, sound, or process.

2 | (3535) “Stalking” means [stalking] as defined in [insert reference to definition in other
3 state law].

4 | (3636) “State” means a state of the United States, the District of Columbia, Puerto Rico,
5 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
6 of the United States.

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

12 ~~——— (A) an individual related to the sublessor by blood, adoption, marriage, [civil~~
13 ~~union] or domestic partnership;~~

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

16 ~~——— (C) a foster child, stepchild, or [ward] of the tenant or of an individual named in~~
17 ~~subparagraphs (A) or (B).~~

18 ~~-(3837)~~ “Tenancy for a fixed term” means a tenancy under a lease for a fixed or
19 computable period, regardless of the length of the period.

20 | (3938) “Tenant” means a person entitled to possession of a dwelling unit under a lease.

21 The term includes an assignee, sublessee, and, if the tenant is not an individual, an individual the
22 tenant has authorized to occupy the unit. If the tenant is an individual, the term excludes a
23 person that neither is a party to the lease nor pays rent but occupies the dwelling unit with the

tenant's permission.

(4039) "Tenant representative" means:

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

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

(4140) "Unearned rent" means rent, including and prepaid rent, that a tenant paid to a landlord for any rental period of time beyond the date the lease terminates in accordance with its terms or this [act]. beyond the termination date of the tenancy The term does not include :

(A) rent attributable to any period prior to the date on which the lease terminates,
or

(B) any amount, including rent, that might be owed to the landlord for any period either prior to or beyond the date the lease terminates during which period the tenant is in actual possession of the premises. -

(4241) "Victim advocate" means an individual, whether paid or serving as a volunteer, who provides services to victims of domestic violence~~domestic violence, sexual assault, or stalking under~~ the auspices or supervision of a victim-services provider or of a court or a law enforcement or prosecution agency.

(4342) "Victim-services provider" means a person that assists a victims of domestic of domestic violence. violence, sexual assault, or stalking. The term includes a rape crisis center, domestic violence shelter, faith-based organization, or other organization with a documented history of work concerning domestic violence.

(4443) "Willfully" means a deliberate intent to perform an act prohibited under this [act]

1 or by a lease, a deliberate intent to refrain from performing an act required under this [act] or by
2 a lease, or an indifference to whether the act or failure to act violates this [act] or a lease.

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

10 11 Comment

12
13 The definition of “abandonment” is broadly written to include any situation in which the
14 tenant relinquishes the right to possession with intent to terminate the lease before the end of the
15 term. Section 604(b) identifies specific circumstances in which the court may presume that the
16 tenant has abandoned the lease.

17
18 The definition of fees includes nonrefundable payments made by the tenant to the
19 landlord. Common examples include application fees, cleaning fees, short-term lease fees, late-
20 payment fees, dishonored check fees, credit card or other payment processing fees, abandonment
21 fees, special amenities fees, pet fees, or fees assessed for violating pet policies or other rules
22 governing the tenancy.

23
24 The definitions of rent and security deposit have been included or updated from the 1972
25 act to reflect important distinctions in how these payments are handled under Article ~~12~~11.

26
27 The definition of landlord includes both the owner of the dwelling unit and any agent of
28 that owner, such as a management company. Where a dwelling unit is leased by a management
29 company on behalf of the owner, both would be landlords under this act.

30
31 The definition of “owner” includes a mortgagee in possession. It would not include a
32 mortgagee in a title theory state unless the mortgagee became entitled to possession.

33
34 ~~The definition of “sublease” includes both the traditional definition of that term as~~
35 ~~well as a transfer of the entire balance of the lease term where the sublessor is also entitled to~~
36 ~~possession of the dwelling unit. For example, if landlord leases an apartment to a college student~~
37 ~~who in turn relets to another college student for the duration of the original term and both~~
38 ~~students are entitled to live in the dwelling unit, the re-letting is characterized as a sublease, not~~
39 ~~an assignment, even though it is for the duration of the original term.~~

40
41 _____ The definition of “tenant” recognizes that some leases are entered into by business
42 entities for their employees or by a trust on behalf of a beneficiary. For example, an LLC might
43 rent an apartment for a member or a manager. Both the LLC and the member or manager are
44 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 ~~was properly~~ terminated. The first circumstance is ~~where that~~ “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. the termination of the date. 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 ~~10-11~~ to April 30. Because rent is apportioned on a daily basis (~~See-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 that~~ “prepaid rent” (defined in Section 102(28)) was paid to the landlord ~~before its monthly due date~~ for any a rental period ~~of time~~ beyond the date the lease terminates. termination of the date. For example, suppose before the commencement date of the lease a tenant pays the landlord an amount for the last month’s rent. Three months into the lease tenant properly terminates~~ed~~ the lease. In this case, “unearned rent” includes the prepaid rent for the last month. In both examples, ~~under~~ Section ~~12041104~~ requires amounts treated as unearned rent ~~must to~~ be returned ~~to by~~ the landlord after taking account on any proper charges against the same as set forth in Section ~~12041104~~.

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

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

Because unearned rent excludes rent attributable to a period prior to the date the lease terminates and because, under Section 201((b)(2)(B) rent is apportioned on a daily basis, the tenant is not entitled to any refund for rents apportioned to days when the tenant was entitled to possession. For example, suppose tenant pays rent on the first of the month and properly

1 [terminates the lease on the 20th day of the month. If the tenant is entitled to a return of unearned](#)
2 [rent, the amount does not include rent paid on the first of the month attributable to the first 20](#)
3 [days of the month.](#)

4 5 **SECTION 103. SCOPE.**

6 [\[\(a\) For purposes of this section “dormitory” means a building with private or semi-](#)
7 private rooms with bathroom facilities in the rooms or in the common areas but without kitchen
8 or dining facilities in the rooms.]

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

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

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

14 [Note for Committee: how far do we intend the concept of geriatric living to go—assisted living,](#)
15 [chronic care nursing home](#)

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

17 [Note for Committee: Up for more discussion\]](#)

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

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

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

25 (6) occupancy by an employee of a landlord when the employee's right to

1 occupancy is conditioned on employment in or about the premises;
2 (7) occupancy by a holder of a proprietary lease in a cooperative; and
3 (8) occupancy under a lease covering premises used by the occupant for
4 agricultural purposes.

5 **Comment**

6
7 Subsection (c)(2) has been modified from the 1972 act, which excluded all University-
8 owned housing. Under this act, only traditional university dormitory housing is excluded from
9 the scope of this act. Rentals of university-owned apartments are now subject to the act.

10
11 This act applies to the lease of a mobile home but does not apply to a mere ground lease
12 of land upon which a mobile home is placed. Thus, if O owns a mobile home park and leases
13 space to T, that ground lease is not subject to this act. However, if T brings a mobile home onto
14 O's land and later leases the home to X, the T-X lease is subject to this act.

15
16 This act applies to roomers and boarders but is not intended to apply to transient
17 occupancy. In some jurisdictions, transient hotel operations are subject to special taxes and
18 regulations and, where available, determinations made under such authority constitute
19 appropriate criteria for identifying transient occupancy.
20

21 **SECTION 104. ADMINISTRATION OF REMEDIES; ENFORCEMENT; DUTY** 22 23 **TO MITIGATE.**

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

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

28 (c) An aggrieved party under this [act] has a duty to mitigate damages.
29
30
31

32 **Comment**

33
34 Under the common law a landlord had no duty to mitigate damages. The no-mitigation
35 rule was abrogated by the 1972 version of this act, and this act is consistent with that policy
36 choice and the conceptualization of the lease as a contract. Unlike the 1972 act, however, this act

1 provides a safe harbor in Section 604 for a landlord who makes reasonable efforts to relet the
2 dwelling unit following a tenant's abandonment.

3
4 **SECTION 105. OBLIGATION OF GOOD FAITH.** Every duty under this [act] and
5 every act that must be performed as a condition precedent to the exercise of a right or remedy
6 under this [act] impose an obligation of good faith in its performance or enforcement.

7 **SECTION 106. UNCONSCIONABILITY.**

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

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

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

20 **SECTION 107. KNOWLEDGE AND NOTICE.**

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

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

23 (1) knows of the fact;

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

25 (3) has reason to know the fact exists from all of the facts known to the person at

1 the time in question.

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

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

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

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

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

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

13 (2) in the case of “notice in a record” from a landlord to a tenant or a tenant to a
14 landlord, when the record is:

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

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

17 **Comment**

18 A number of sections in this act require either a landlord or a tenant to send the other
19 “notice in a record.” ~~(See, Sections 508 and Section 511 relating to domestic violence, sexual~~
20 ~~assault, or stalking, Section 601 relating to terminations for nonpayment of rent, Section 801~~
21 ~~relating to termination of a periodic tenancy, and Section 1001 relating to retrieval of personal~~
22 ~~property.~~ When notice in a record is required, it must be given in accordance with subsection (c).
23 In other cases it could be given by other means reasonably calculated to come to the recipient’s
24 attention.

25
26 Under subsection (e)(1), a person ~~knows of a fact~~ receives notice when the fact comes to
27 the person’s attention. A fact might come to the person’s attention as the result of face-to-face
28 conversation, the telephone, or by a receipt of a record.
29

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

Comment

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

ARTICLE 2

GENERAL PROVISIONS APPLICABLE TO LEASE

SECTION 201. TERMS AND CONDITIONS OF LEASE

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

(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)(3)~~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 ~~the~~ 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 ~~303(b)~~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*, ~~the consideration for the contract is not tied to the tenant's rent,~~ and the

1 tenant's failure to perform under the contract does not discharge the landlord's duties under
2 Section 303.

3
4 The duty to mitigate is one of the rights and remedies that may not be waived under
5 subsection (a).

6 7 **SECTION 204. SEPARATION OF RENT FROM DUTY TO MAINTAIN**

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

12 **Comment**

13
14 The mere assignment of rent as security does not subject the assignee to the landlord's
15 obligations to maintain the premises. However, if the assignee actually receives the rent, then
16 that obligation would arise.

17 18 **ARTICLE 3**

19 **LANDLORD'S DUTIES**

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

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

25 ~~(1) all rules and conditions which govern the tenancy;~~
26 ~~_____~~ (21) any condition of the premises which would breach ~~a~~ duty owed to a tenant
27 under Section 303 and of which the prospective landlord knows or had the prospective landlord
28 done a reasonable inspection of the premises should have known;

29 ~~(32) whether the premises are in foreclosure or the landlord is knowingly in~~

~~default on any obligation to pay money or perform another obligation that could result in~~
~~foreclosure~~; and

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

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

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

(A) the name of:

(i) the landlord;

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

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

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

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

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

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

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

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

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

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

Comment

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

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

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

No specific remedies are provided for the failure to provide the information required by subsections (b) and (c). Nonetheless, these provisions should positively affect the information exchange between landlords and tenants. Furthermore, if a tenant fails to provide an address to the landlord, however, the tenant might not receive a refund of a security deposit, and, if a landlord fails to provide an address to the tenant, the landlord might not receive the rent in a timely manner.

SECTION 302. DELIVERY OF POSSESSION OF DWELLING UNIT TO

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

Comment

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

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

2 (a) A landlord has ~~the~~a duty to make all repairs, and to do or refrain from doing whatever
3 is 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

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, rubbish,~~ and, if recycling services are provided, recyclable material;

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

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

(12) have in good working order locks or other security devices on all exterior doors and windows that open and ~~shut~~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, ~~subject to the following rules:~~

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

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

_____ (1A) discharge the landlord from the performance of the duties imposed on the landlord by Section 303;

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

_____ (C3) diminish or affect the obligations of the landlord under this [act] to the tenant or to other tenants in the premises.

(bc) 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

~~Section 304~~ 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) a) Except to the extent ~~Unless~~ the landlord and tenant otherwise agree in a record signed by the landlord and the tenant, ~~if and except as otherwise provided in subsection (b), a~~ landlord ~~that~~ 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 the notice in a record to the tenant of the conveyance or the conveyance to the purchaser.

_____ (2) Except (b) Unless the landlord and tenant otherwise agree in a record signed

1 | ~~by the landlord and the tenant or~~ as otherwise provided in Section ~~1205~~1105, the landlord
2 | remains liable to the tenant for the amount of any security deposit and unearned rent.

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

7 | **Comment**

8 |
9 | The effect of ~~Section 305~~subsection (a), which first appeared in the 1972 act, is to sever
10 | both privity of contract and privity of estate between the assigning landlord and the tenant.

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

20 | ~~[Insert comment showing relationship to section 1205]~~Under subsection (b), the landlord
21 | remains liable for the tenant's security deposit and unearned rent unless the landlord complies
22 | with Section 1105 to transfer the funds to the successor landlord or return them to the tenant.
23 |

24 | **SECTION 306. RULES OF LANDLORD.**

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

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

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

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

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

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

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

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

7 (bc) After the commencement of a lease, a landlord may adopt or modify a rule
8 concerning a tenant's use and occupancy of the premises, but if the new rule or modification
9 substantially modifies ~~at the tenant's bargain, it is not enforceable against the tenant unless the~~
10 ~~tenant consents to it . If the tenant does not consent in a record signed by the tenant, the rule is~~
11 ~~not enforceable against the tenant if it substantially modifies~~ If after a tenant enters into a lease, a
12 rule is adopted that results in a substantial modification of the tthe tenant's bargain, the rule is
13 not enforceable against the tenant for the balance of the term of the lease unless the tenant
14 consents to it in a record signed by the tenant.

15 ARTICLE 4

16 TENANT'S DUTIES

17 SECTION 401. TENANT'S DUTIES. A tenant shall:

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

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

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

1 conditions of the unit permit;

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

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

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

9 (7) in the absence of the landlord's consent, refrain and require other persons on the
10 premises with the tenant's consent, other than the landlord or the landlord's agent, to refrain
11 from an act that would destroy, deface, damage, impair, or remove any part of the premises or
12 would destroy, deface, damages, impair, remove, or render inoperative any safety equipment on
13 the premises, such as smoke alarms, ~~and~~ carbon monoxide detectors, and fire extinguishers;

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

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

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

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

(12) unless the landlord and tenant otherwise agree, ~~occupy~~use the dwelling unit only as ~~a dwelling unit~~for residential purposes.

Comment

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

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

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

ARTICLE 5

TENANT REMEDIES

SECTION 501. NONCOMPLIANCE BY LANDLORD; IN GENERAL.

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

(1) ~~Subject to subparagraph (2),~~

~~(A)~~ If the noncompliance by the landlord involves the failure to provide an essential service or poses an [imminent][serious] threat to the health or safety of the tenant or other occupant of the dwelling unit, the landlord shall remedy the noncompliance promptly, but in no event~~not~~ later than [5] days after the date of the receipt of the notice, and

1 ~~——(2) (B)~~ If the noncompliance does not involve the failure to provide an
2 essential service, the landlord must remedy the noncompliance not later than [14] days after the
3 date of the receipt of the notice.

4
5 ~~——(2) If the noncompliance poses an [imminent][serious] threat to the health or safety of the~~
6 ~~tenant or other occupant of the dwelling unit, the landlord must remedy the noncompliance as~~
7 ~~promptly as the conditions require.~~

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

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

14 ~~——(A) the tenant and [except in cases of a natural disaster] may~~ recover
15 actual damages for the period between the date the tenant gave the landlord the notice specified
16 in subsection (a) and the date of termination specified in subsection (b)(1), before termination,
17 including damages based on the diminution in value of the dwelling unit as determined by the
18 court based upon evidence which need not include ~~expert testimony;~~ and

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

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

23 (A) subject to Section 505, withhold the rent for the period of

1 noncompliance beginning on the date the tenant gave the landlord the notice specified in
2 subsection (a);

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

7 (C) seek injunctive relief or specific performance;

8 (D) subject to Section 503, make repairs and deduct the cost from the
9 rent; as provided in Section 503; or

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

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

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

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

22 ~~—~~ (de) A tenant may not seek remedies under this section to the extent:

23 (1) the noncompliance was caused by the act or omission of the tenant, an

1 immediate family member, or a person on the premises with the tenant's consent, other than the
2 landlord or the landlord's agent; or

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

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

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

10 **Comment**

11
12 This section has been modified from the 1972 act to clarify the remedies available to a
13 tenant for a landlord's noncompliance with the warranty provisions in Section 303 or under the
14 lease. If there is a substantial material noncompliance by the landlord with the lease or Section
15 303(a), Section 501 allows the tenant to elect from among six remedies. However, the tenant's
16 ability to secure essential services or substitute housing under Section 504 is only available for
17 the landlord's substantial material noncompliance in providing essential services. Not all services
18 or obligations of the landlord described in Section 303(a) are "essential services." See Section
19 102(14).

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

34
35 Remedies available to the tenant pursuant to Section 501 are not exclusive (see Section
36 109). Thus, to the extent permitted by state law, tort remedies also may be available.
37

1 A duty to mitigate damages exists under Section 104.

2
3 If the dwelling unit or premises are substantially damaged or destroyed as the result of a
4 fire or other casualty to which Section 506 would apply, then the remedies in Section 506 rather
5 than this section apply.
6

7
8
9 **SECTION 502. LANDLORD'S FAILURE TO DELIVER POSSESSION TO**
10 **TENANT.**

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

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

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

19 (b) If a tenant terminates the lease under subsection (a), the landlord ~~must~~ shall return to
20 the tenant pursuant to Section 1104 any security deposit ~~and~~ and unearned rent. The landlord shall
21 also return to the tenant any fees, and fees received from the tenant.

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

26 (d) If the tenant elects under subsection (a)(2) to obtain possession from a person that is
27 wrongfully in possession, the tenant is liable to the landlord for rent and may recover from the

1 person wrongfully in possession the damages provided in Section ~~802~~803.

2 **Comment**

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

7
8

9
10 If the tenant elects to sue the holdover tenant for possession, the tenant effectively elects
11 to continue the lease with the landlord and thus, under subsection (d), is liable to the landlord for
12 rent for the period beginning with the commencement of the lease.

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

14
15 (a) Except as otherwise provided in ~~subsection (d)~~this [act], if a landlord fails to comply
16 with the lease or Section 303 the tenant may give notice to the landlord pursuant to Section
17 501(a) specifying the failure, and if the landlord fails to comply within the time period specified
18 in Section 501(a) and within the time period provided in Section 501(a) and the reasonable cost
19 of compliance is less than [\$500][one month's rent], the tenant may ~~notify give the landlord~~
20 notice in a record of the tenant's intent to correct the condition at the landlord's expense.

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

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

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

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

(2) the landlord was unable to remedy the condition within the period in 501(a) because the tenant denied the landlord access to the dwelling unit, ~~or because of a circumstance beyond the landlord's control.~~

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

Comment

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

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

SECTION 504. LANDLORD'S WRONGFUL FAILURE TO PROVIDE ESSENTIAL SERVICE.

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

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

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

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

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

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

Comment

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

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

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

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

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

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

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

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

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

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

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

16 (i) a repair made by the tenant in compliance with Section 503;
17 (ii) damages based on the diminution in value of the dwelling unit
18 as determined by the court based upon evidence which need not include expert testimony; or

19 (iii) other actual damages;

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

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

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

2 **Comment**

3
4 Under subsection (b), if either party seeks a court order seeking for the escrow of rent, the
5 court, in its discretion, will determine whether to order an escrow of rent. If the court orders rent
6 to be escrowed, it shall also order specify the amount to be escrowed. This amount could be all
7 of the rent or merely some portion thereof.
8

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

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

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

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

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

24 ~~(3) if continued occupancy of the unit is lawful, the tenant may vacate any part of~~
25 ~~the unit rendered unusable by the fire or other casualty, in which case the tenant's liability for~~
26 ~~rent is reduced by the diminution in value of the unit as determined by the court based upon~~

1 ~~evidence which need not include expert testimony.~~

2 (b) If a lease is terminated pursuant to subsection (a)(1) or (a)(3), the landlord shall
3 return to the tenant pursuant to Section 1104 the amount of any security deposit and unearned
4 rent to which the tenant is entitled. In calculating the unearned rent, termination of the lease shall
5 be deemed to have occurred as of the date of the fire or other casualty. ~~If a lease is terminated, the~~
6 ~~landlord shall return to the tenant the amount of any security deposit and unearned rent to which~~
7 ~~the tenant is entitled. Accounting for rent in the event of termination or apportionment of the rent~~
8 ~~shall be made as of the date of the fire or other casualty.~~

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

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

1 **SECTION 508. EARLY RELEASE OR TERMINATION OF LEASE -BECAUSE**
2 **OF AN ACT OF DOMESTIC VIOLENCE~~VIOLENCE, SEXUAL ASSAULT, OR~~**
3 **STALKING.**

4 (a) Subject to subsection (e), if a tenant or immediate family member has been the victim
5 of as the result of result of an act of domestic violence, sexual assault, or stalking an act of
6 domestic violence against a tenant or an immediate family member a tenant or an immediate
7 family member has and ahas a reasonable fear of fear of a further act of domestic violenceacts of
8 domestic violence, sexual assault, or stalking by continued residence in the dwelling unit, the
9 tenant ~~may~~ shall be released from the lease by giving a notice that complies with subsection (b)
10 and one of the following documents:

11 (1) a copy of an ~~valid~~ outstanding court order which restrains a perpetrator from
12 contact with the tenant or an immediate family member;

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

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

17 (b) The tenant shall give the landlord notice in a record signed by the tenant that:
18 tenant shall be released from a lease if the tenant gives the landlord:

19 (1) a:

20 (1) notice in a record signed record signed by the tenant of states the tenant's
21 intent to be released from the lease on a date no earlier than [30] days from the date of the notice
22 or, if the perpetrator is a co-tenant of the dwelling unit, any earlier date;

23 (2) the tenant's intent to be released from the lease not lease and specifying states

facts giving rise to the fear of an act of further domestic violence by continued residence in the dwelling unit; and

_____ (3) is given to the landlord

_____ (A) not later than

_____ (A) not later than the first to occur of the following:

_____ (i) [90] days after [90] days after the an act of domestic violence; act of domestic violence, sexual assault, or stalking or

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

_____ (ia) the tenant's learns that the perpetrator is no longer confined, or

_____ (iib) the expiration of the court order, and,

_____ (B) at least [1430] days before the release date specified in the notice, or any earlier date specified in the notice if the perpetrator is a co-tenant of the dwelling unit, specifying facts giving rise to the fear; and

_____ (2) one of the following documents:

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

_____ (B) a copy of the conviction of a perpetrator for an act of domestic violence domestic criminal act against the tenant or an immediate family member; or

_____ (C) a verification in a record signed by the tenant and an attesting third

1 ~~party which complies with Section 510.~~

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 ~~(a)(1)(b)(1)(B)(b)~~ and neither the tenant nor an immediate family
5 member is liable for rent accruing after the lease terminates or other actual damages resulting
6 from the 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) ~~Except as otherwise provided in Section 511(a)(2)If~~, if there are multiple tenants that
10 are parties to the lease:

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

13 ~~the release of one tenant under this section does not terminate the lease with respect to other~~
14 ~~tenants~~ (2) the ~~The~~ tenant who is released from the lease is not liable to the landlord or

15 any other person for rent accruing after the tenant's release or actual damages resulting from the
16 tenant's release from the lease;

17 (3) any other tenant under the lease may recover ~~actual damages from the~~
18 perpetrator ~~actual damages resulting from the termination~~; and

19 (4) ~~after the tenant is released from the~~ ~~The~~ the landlord is not required to return to
20 the released tenant or a remaining tenant any security deposit or unearned prepaid rent until the
21 lease terminates with respect to all tenants.

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

23 **Comment:**

1 Section 508 is self-executing. In other words, upon filing the appropriate
2 documentation the tenant is released from the lease; no. No additional action is required or
3 expected on the part of the landlord as would be the case where a tenant abandons the dwelling
4 unit and an issue arises regarding the landlord's acceptance of the tenant's surrender.
5

6 Under subsection (b)~~(2)(a), (3)~~, the court order could be issued by a state or federal court,
7 a tribal court order, or a court of a foreign jurisdiction.
8

9 Under subsection (d)(2), a tenant who is released from the lease is not liable to the
10 landlord or another person for rent or actual damages. Thus, if T and T-1 are co-tenants but T is
11 released from the lease as a result of an act of domestic violence committed by P, T would not be
12 liable for rent to the landlord for the period after the release. Furthermore, T would not be liable
13 to T-1 if, following T's release from the lease, T-1 is liable to the landlord for all of the rent
14 accruing after T's release. Under subsection (d)(3), however, T-1 might have a claim against the
15 perpetrator for the additional rent T-1 owes.
16

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

19 ~~(a)~~ If a tenant is released from a lease under Section 508 ~~complies with Section 508~~, the
20 landlord:

21 ~~(1a)~~ except as otherwise provided in Section 508(d), shall return to the tenant
22 pursuant to Section 1104 the amount of any security deposit and unearned rent to which the
23 tenant is entitled after the tenant vacates the dwelling unit;

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

26 ~~(3c)~~ may not disclose information required to be reported to the landlord under
27 Section 508 unless:

28 ~~(A1)~~ the tenant provides specific, time-limited, and contemporaneous
29 consent to the disclosure in a record signed by the tenant; or

30 ~~(B2)~~ the information is required to be disclosed by a court order or other
31 law.

(b) ~~If a landlord willfully refuses to release a tenant who under Section 508 is entitled to be released from the lease, the court shall award the tenant an amount equal to [three] months' periodic rent or [triple] actual damages, whichever is greater, costs, and reasonable attorney's fees.~~

SECTION 510. VERIFICATION.

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

(1) from the tenant:

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

(B) the approximate dates during which an act of the domestic violence occurred; curred;

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

(D) a statement that because of an act of domestic violence, the, acts of domestic violence, sexual assault, or stalking, the tenant or an immediate family member has a reasonable fear that the tenant or the immediate family member will suffer and act of further domestic violences acts of domestic violence, sexual assault, or stalking by continued residence in the dwelling unit;

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

(F) a statement that the tenant understands that the statements could be used in court and that the tenant could be liable for perjury as well as the damages provided in

subsection (b) for making false statements in the verification; and

(2) from an attesting third party:

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

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

(C) a statement that the attesting third party has read the tenant's verification and has been advised by the tenant that the tenant or an immediate family member is the victim of an act of domestic violence; ~~domestic violence, sexual assault, or stalking~~ and has a reasonable fear that the tenant or the immediate family member will suffer a further act of domestic violence; ~~acts of domestic violence, sexual assault, or stalking~~ by continued residence in the dwelling unit;

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

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

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

Comment

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

Verification

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

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

_____ [insert address of dwelling unit];

(b) I or an immediate family member has been a victim of an act of domestic violence~~acts of [domestic violence,] [sexual assault,] or [stalking]~~ occurring to the best of my knowledge on or over a period _____ [insert time period over which acts of one or more act of domestic violence ~~domestic violence, sexual assault, or stalking~~ occurred] which acts have created a reasonable fear that I or an immediate family member will suffer a further act of domestic violence~~acts of domestic violence, sexual assault, or stalking~~ by continued residence in the dwelling unit;

(c) The most recent act of domestic violence~~act of that violence~~ occurred on

_____ [insert date]; and

(d) The date in the notice accompanying this verification that I have specified as the date on which I am released from the lease is less than 90 days after -The- the date of the most recent act of domestic violence. time since the most recent act of [domestic violence,] [[sexual assault,] or [stalking] is less than [90] days from _____, the date specified as the termination date in the notice accompanying this statement.

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

[Tenant's signature]

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

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

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

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

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

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

[Attesting third party's signature]

SECTION 511. ~~EFFECT ON PERPETRATOR'S~~ LIABILITY FOR DAMAGES.

(a) A landlord may recover from a perpetrator actual damages resulting from a tenant's exercise of a right under Section 508 and, if the perpetrator is a party to the lease ~~, may:~~
~~_____ (1) except as otherwise provided in Section 513(b), allow the perpetrator to who~~
remains in possession of the dwelling unit, ~~and hold~~ hold the perpetrator liable on the lease for future rent payable under the lease. ~~;~~ ~~or~~

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

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

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

Comment

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

1 **SECTION 512. CHANGE OF LOCKS AS RESULT OF AN ACT OF**
2 **DOMESTIC VIOLENCE. DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR**
3 **STALKING.**

4 (a) Subject to subsections (b) and (c), if a tenant ~~or immediate~~ immediate family
5 member, ~~other than a perpetrator,~~ has been the victim of an act of domestic violence, domestic
6 violence, sexual assault, or stalking, and the tenant has a reasonable fear that the perpetrator or
7 other person acting on the perpetrator's behalf may attempt to gain access to the dwelling unit,
8 ~~the tenant may, without the landlord's consent:~~

9 (1) the tenant may, without the landlord's consent, cause the locks or other
10 security devices for the dwelling unit to be changed or re-keyed by a [licensed][qualified] person
11 in a workmanlike professional manner and shall give a key or other means of access to the new
12 locks or security devices to the landlord and -any other tenant, other than the perpetrator, that is a
13 party to the lease; or

14 (2) if the locks or security devices cannot be changed without ~~action~~an act by the
15 landlord, the landlord shall ~~take such action~~act within a reasonable time after the tenant has
16 requested that the locks or other security devices be changed.

17 (b) If ~~but~~

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

22 ~~ask the landlord to change the locks or other security devices for the dwelling unit.~~

23 ~~(b) Not later than [three] days after receiving a request under subsection (a), or sooner if~~

commercially reasonable to do so, the landlord shall change the locks or security devices at the tenant's expense. If the landlord fails to act in a timely manner:

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

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

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

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

Comment

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

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

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

1 | [landlord for the change.](#)

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

4 (a) Upon issuance of a court order requiring a perpetrator to vacate a dwelling unit, [other](#)
5 | [than an ex parte order](#), neither a landlord nor tenant has a duty to:

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

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

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

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

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

18 **Comment**

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

27
28 | ——— ~~If a perpetrator's interest under a lease is terminated, the landlord may not increase the~~
29 | ~~obligations of the remaining tenant under the lease~~ even if the landlord believes that the
30 remaining tenant might lack the financial ability to comply with lease [because the perpetrator is](#)

1 no longer a party to the lease. Thus, if the perpetrator and the spouse of the perpetrator sign a
2 lease with monthly rent of \$1,000 for which they are jointly and severally liable, the termination
3 of the perpetrator's interest does not affect the spouse's obligation to continue to pay rent of
4 \$1,000. And, the landlord cannot increase that rent or security deposit to take account of the fact
5 the perpetrator is no longer a party to the lease.

6
7 **SECTION 514. TERMINATION OF PERPETRATOR'S INTEREST UNDER**
8 **LEASE WITHOUT COURT ORDER.**

9 (a) If a tenant is the perpetrator of an act of domestic violence act against any occupant of
10 the premises, the landlord may terminate the perpetrator's interest under a lease by giving the
11 perpetrator a notice in a record signed by the landlord of the landlord's intent to terminate the
12 lease immediately or on a later date specified in the notice and specifying the act of domestic
13 violence motivating the landlord to terminate the perpetrator's interest under the lease.

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

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

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

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

26 **Comment**

1 Under this section, the landlord, upon being advised that a tenant is the perpetrator of an
2 act of domestic violence could terminate the perpetrator's interest under the lease but not
3 terminate the victim's interest under the lease. The landlord's decision to terminate is wholly
4 discretionary. If the landlord chooses to terminate the perpetrator's interest under the lease, the
5 landlord may not alter the obligations of another tenant under the lease. For example, the
6 landlord could not increase the rent of the remaining tenant although, if the lease had treated the
7 perpetrator and the remaining tenant as jointly liable for the rent, the remaining tenant would be
8 liable for all of the remaining rent. In this case, the remaining tenant would have a cause of
9 action for damages against the perpetrator.

10
11 Under this section the landlord could terminate the perpetrator's interest as a tenant even
12 though there is no judicial determination that the perpetrator committed an act of domestic
13 violence. This is entirely consistent with the right of a landlord to terminate the interest of any
14 tenant who engages in other types of criminal activity on the premises in violation of Section 401
15 and Section 601, even though the tenant has not been found guilty of a crime. In either case, of
16 course, if the tenant refuses to surrender possession of the premises to the landlord upon
17 termination of the lease and the landlord sues for possession, the defendant (tenant) could claim
18 a wrongful termination claiming the tenant is not what the landlord claimed. In this case, the
19 landlord would have the burden to prove by a preponderance of the evidence that the landlord
20 had the right to terminate the tenancy. This means the landlord has the burden to prove the
21 defendant was a perpetrator or otherwise committed a criminal act in entitling the landlord to
22 terminate the lease.

23
24 **SECTION ~~514~~515. LIMITATIONS ON LANDLORD'S CONDUCT WITH**
25 **RESPECT TO VICTIMS OF AN ACT OF DOMESTIC VIOLENCE~~DOMESTIC~~**
26 **~~VIOLENCE, SEXUAL ASSAULT, OR STALKING.~~**

27 (a) In this section, the word "tenant" includes an applicant seeking to enter into a lease
28 with a landlord.

29 (b) Except as provided in subsection (c), a landlord may not increase or threaten to
30 increase the rent, security deposit, or fees payable under a lease, decrease or threaten to decrease
31 services due under the lease or this [act], terminate or threaten to terminate a lease, refuse to
32 renew a lease, serve or threaten to serve a notice to terminate a periodic tenancy, bring or
33 threaten to bring an action for possession, refuse to let a dwelling unit, or impose different rules
34 or selectively enforce the landlord's rules:

35 (1) primarily because the tenant under the lease or an immediate family member

1 is or has been the victim of ~~an~~An act of domestic violence; domestic violence, sexual assault, or
2 stalking;

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

6 (3) because of ~~criminal activity relating to an act of domestic violence~~domestic
7 violence, sexual assault, or stalking against the tenant or an immediate family member or any
8 police or emergency response to a good faith complaint of activities relating to an act of
9 domestic violence ~~domestic violence, sexual assault, or stalking~~ against the tenant or an
10 immediate family member.

11 (c) A landlord may terminate the lease of a tenant if the landlord gave the tenant a prior
12 notice in a record signed by the landlord regarding a perpetrator's commission of an behavior
13 relating to act of domestic violence ~~domestic violence, sexual assault, or stalking~~ against the
14 tenant or an immediate~~ly~~ family member, and subsequently:

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

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

20 (d) If a landlord willfully violates ~~this section~~subsection (b):

21 (1) the tenant may:

22 (A) terminate the lease; or

23 (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; ~~FAILURE TO PAY RENT.~~

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

(bc)- Unless otherwise provided in the lease, aA landlord may terminate a lease;

without giving the tenant an opportunity to remedy a noncompliance~~;~~

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

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

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

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

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

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

(1) -obtain injunctive relief or specific performance to remedy a tenant's noncompliance with Section 401 that materially affects health or safety or is a material noncompliance with the lease, together with costs, and reasonable attorney's fees, or,

(2) regardless of whether the lease terminates as a result of the tenant's noncompliance, recover actual damages, ~~and costs and reasonable attorney's fees., or liquidated damages as provided by the lease.~~

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Comment

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

_____ If any of the provisions of subsection ~~(b)~~(c) applies, the tenant has no right to cure the noncompliance to avoid termination of the lease.

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

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

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

SECTION 603. DISTRESS FOR RENT; ~~LANDLORD~~-LIENS.

(a) Distraint for rent is abolished.

(b) ~~[Except as otherwise permitted under Article 1211,] a~~landlord may not enforce a lien or security interest on a tenant's personal property if the lien or security interest was to secure the tenant's performance under the lease or this [act] unless the lien or security interest attached before the effective date of this [act].

Comment

This section prohibits the landlord from seizing the tenant's personal property to satisfy the landlord's claims against the tenant or filing a lien against the tenant's personal property to secure the tenant's obligations under the lease. It also prohibits a landlord from taking a security interest in any of the tenant's personal property to secure the tenant's performance. On the other hand, it would not preclude a landlord taking a lien or security interest to secure performance of a tenant's contractual promises unrelated to the lease. For example, suppose the landlord also

1 owned an appliance store from which tenant purchased an appliance “on time.” A landlord’s lien
2 on the appliance to secure tenant’s payment of the debt is not prohibited by this act.

3
4 **SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION.**

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

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

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

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

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

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

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

18 (1) accept a tenant’s abandonment of a dwelling unit by a notice in a record
19 signed by the landlord accepting the abandonment, in which case:

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

21 (B) the landlord and tenant are liable to each other under the lease only for
22 breaches occurring before acceptance of the abandonment; and

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

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

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

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

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

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

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

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

20 (e) If a tenant wrongfully terminates the lease, the landlord has a claim for possession.
21 The landlord also has a claim for past due rent and, unless the landlord accepts abandonment or
22 fails to mitigate, a separate claim for actual damages for breach of the lease, costs, and
23 reasonable attorney's fees.

Comment

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

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

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

~~SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION.~~

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

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

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

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

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

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

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

~~_____ (1), accept a tenant's abandonment of a dwelling unit by a notice in a record
signed by the landlord accepting the abandonment, in which case:
_____ (A) the lease terminates as of the date of the abandonment;;
_____ (B) the landlord and tenant are liable to each other under the lease only for
breaches occurring before acceptance of the abandonment; and
_____ (C) 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) treat the abandonment as wrongful, in which case the tenant remains liable
under the lease and the landlord has a duty to mitigate by making in fulfilling the duty to
mitigate, shall make reasonable efforts to rent the unit.
_____ (d) A landlord's duty under subsection (c)(2) does not take priority over the landlord's
right to first rent any of the landlord's other dwelling units that are available to rent.
_____ (e) If a landlord rents a dwelling unit wrongfully abandoned by a tenant to another tenant
for a term beginning before the expiration of the abandoning tenant's lease, the abandoning
tenant's lease terminates as of the date of the new tenancy and the landlord may recover actual
damages from the abandoning tenant. 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.
_____ (f) If a landlord uses reasonable efforts to rent a dwelling unit wrongfully abandoned by
the tenant but is unable to rent the dwelling unit or unable to is able to rent the dwelling unit only
for an amount less than the secure rent infor an amount equal to the rent rent payable by the
abandoning tenant, the landlord may recover actual damages from the abandoning tenant. 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.~~

1 ~~—— (g) If a landlord fails to use reasonable efforts to rent a dwelling unit wrongfully~~
2 ~~abandoned by a tenant, the lease terminates as of the date of the abandonment and the landlord~~
3 ~~and tenant are liable to each other under the lease only for breaches occurring before the date of~~
4 ~~the abandonment. The landlord shall return to the tenant pursuant to Section 1104 the amount of~~
5 ~~any security deposit and unearned rent to which the tenant is entitled. ——~~

6 ~~—— (h) A landlord may accept a tenant's abandonment of a dwelling unit only by a notice in a~~
7 ~~record signed by the landlord accepting the abandonment. If the landlord accepts the~~
8 ~~abandonment, the lease terminates as of the date of the abandonment, and the landlord and tenant~~
9 ~~are liable to each other under the lease only for breaches occurring before acceptance of the~~
10 ~~abandonment. The landlord shall return to the tenant the amount of any security deposit and~~
11 ~~unearned rent to which the tenant is entitled~~

12 ~~—— (ih) If a tenant wrongfully terminates the lease, the landlord has a claim for possession.~~
13 ~~The landlord also has a claim for past due rent and, unless the landlord accepts abandonment or~~
14 ~~fails to mitigate, a separate claim for actual damages for breach of the lease, costs, and~~
15 ~~reasonable attorney's fees.~~

16 ~~Comment~~

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

22 ~~—— In light of subsection (d), when at the time the landlord is fulfilling the duty to mitigate~~
23 ~~the landlord has other vacant units to rent, the landlord can show the other units to prospective~~

tenants before showing the abandoned unit to prospective tenants.

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

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

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

ARTICLE 7

ACCESS

SECTION 701. LANDLORD'S ACCESS TO DWELLING UNIT.

(a) A tenant may not unreasonably withhold consent to the landlord to enter into the dwelling unit to inspect it, make a necessary or agreed-to repair, alteration, or improvement,

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

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

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

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

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

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

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

1 (2) pursuant to a court order; or

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

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

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

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

15 **ARTICLE 8**

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

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

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

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

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

Comment

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

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

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

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

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

(b) Except as otherwise provided in subsections (a) or (c) or law of this state other than this [act], either the landlord or a tenant representative may terminate the lease by notifying the other in a signed record of the intent of the person signing the record to terminate the tenancy on;

1 a specified date not less than [30] days after receipt of the notice in the case of a fixed term
2 tenancy or a specified date consistent with Section 801(b) in the case of a periodic tenancy; and

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

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

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

12 ~~———— (1) the landlord has received notice of the tenant's death,~~

13 ~~———— (2) the landlord has not been contacted by a tenant representative to request the~~
14 ~~landlord not to terminate the tenancy, and~~

15 ~~———— (3) and the landlord has been unable to contact a tenant representative for~~
16 ~~purposes of termination under subsection (b)~~

17 Comment

18 If a tenant dies during the term of a lease, either the landlord or tenant representative (as
19 defined in Section 101(40)102(40) can elect to terminate the lease under subsection (b) unless
20 subsection (a) or other law would prohibit the termination.

21
22 If the tenant was the sole occupant of the dwelling unit, the landlord may be able to
23 unilaterally terminate the lease if subsection (c) applies. To illustrate the operation of subsection
24 (c), suppose the tenant of a fixed term tenancy to end on December 31 and who is the sole
25 occupant of the dwelling unit dies on March 5 having paid rent on March 1. The landlord learns
26 of the tenant's death on March 10. Because rent was paid for March, the landlord will not be
27 able to terminate this lease in March because of subsection (c)(3). Suppose further, If no rent was
28 paid on April 1, however, and the landlord is unable to contact a tenant representative,
29 requested the landlord not to terminate the lease. In this case the landlord would be free to

1 unilaterally terminate the lease on or after April 25. If a tenant representative had contacted the
2 landlord requesting the landlord not terminate the lease the landlord has contact with a tenant
3 representative, the landlord could not terminate under subsection (c), although the landlord but
4 may terminate the lease under sSubsection (b).
5
6

7 **SECTION 803. HOLDOVER TENANCY.**

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

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

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

22 **Comment**

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

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- (2) decreasing services, increasing the tenant's obligations, or otherwise
substantially-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

1 illegal purpose;

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

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

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

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

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

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

15 (b) And

16 ~~(3) If~~ (3) If the lease terminates under subsection (a), the landlord shall return to the
17 tenant pursuant to Section 1104 the amount of any security deposit and unearned rent to which
18 the tenant is entitled.

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

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

22 (a) Except as otherwise provided in subsection (b), evidence that a tenant has engaged in
23 any conduct described in Section 901(a) within [six months] before the landlord's alleged

1 retaliatory conduct creates a presumption that the dominant purpose of the landlord's conduct
2 was retaliation.

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

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

9 **Comment**

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

12 **ARTICLE 10**

13 **DISPOSITION OF PERSONAL PROPERTY**

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

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

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

19 (2) when the landlord has regained actual possession pursuant to a court order~~an~~
20 ~~order that entitles the landlord to possession has been executed~~; or

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

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

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

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

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

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

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

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

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

(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, sexual assault, or stalking. 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.

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

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 in compliance with pursuant to Section 802(c) because the landlord has been unable to contact a tenant representative, the landlord is unable to contact a tenant representative not later than [10] days after the landlord learns of the tenant's death, the landlord [shall inventory the personal property in the dwelling unit] and:

(1) shall mail a copy of a notice [with the inventory] 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 ~~last date of publication of the~~ notice was sent; and

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

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

~~_____ (e)(2) Not earlier than [15] days after the last date of publication of the notice, a landlord may inventory the personal property, remove the personal property it from the dwelling unit, and store it in another place for safekeeping. The landlord shall exercise reasonable care in moving or and storing the personal property.~~

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

1 ~~(e)(d)~~ If the deceased tenant's personal property is not retrieved a tenant representative is
2 not identified not less than [30] days after the last date of publication of the notice within the time
3 period in subsection (c), the landlord may dispose of the personal property in compliance with
4 Section 1001(f).

5 **Comment**

6
7 Subsection (a) permits a tenant's representative to exercise a deceased tenant's rights and
8 responsibilities regarding removal of the deceased tenant's personal property from the premises.
9 When a tenant who is the sole occupant of the dwelling unit dies, either the tenant's
10 representative or the landlord may elect to terminate the lease pursuant to Section 802. If that
11 election is made and the dwelling unit is vacated, possession of the dwelling unit is relinquished
12 to the landlord pursuant to Section 1001(a), triggering the provisions of that section governing
13 the disposition of the deceased tenant's personal property.

14
15 ~~Sections 1001 and 1002 do not govern the ultimate disposition of the personal property~~
16 ~~removed from the property by a tenant representative; those rights are determined under the~~
17 ~~state's law governing decedents' estates. Thus, the tenant representative takes possession of the~~
18 ~~personal property subject to those other laws.~~

19
20 The tenant representative typically will be the personal representative of the ~~decedent's~~
21 deceased tenant's estate, but if no personal representative has been appointed, the tenant
22 representative will be the contact person under Section 1003 or, in the absence of a contact
23 person, an heir of the deceased tenant under the state's intestate succession laws. See Section
24 ~~102(40)~~102(39). In the latter case, the landlord has no obligation to identify all of the deceased
25 tenant's heirs and may give possession to *any* individual the landlord knows to be an heir of the
26 deceased tenant.

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

32
33 ~~Sections 1001 and 1002 do not govern the ultimate disposition of the personal property~~
34 ~~removed from the property by a tenant representative; those rights are determined under the~~
35 ~~state's law governing decedents' estates. Thus, the tenant representative takes possession of the~~
36 ~~personal property subject to those other laws.~~

37 **SECTION 1003. CONTACT PERSON.**

38
39 (a) At a landlord's request, the tenant shall designate a contact person to act for the tenant

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

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

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

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

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

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

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

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

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

23 (f) A landlord that complies with this section in good faith is not liable to another person

1 that has a claim or interest in the personal property removed from the premises or the security
2 deposit or unearned rent.

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

5 **Comment**

6
7 The purpose of this section is to authorize a contact person to remove the tenant's
8 personal property and receive the return of the security deposit and unearned rent. Whether the
9 contact person is entitled to keep any of the tenant's personal property or security deposit will
10 depend on law other than this act.

11 **ARTICLE 11**

12 **ASSIGNMENTS AND SUBLEASES**

13 ~~SECTION 1101. COMMERCIALLY REASONABLE OBJECTION.~~

14 ~~For the purpose of this article, a commercially reasonable objection includes the~~
15 ~~following:~~

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

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

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

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

25 ~~(e) the landlord's good faith reliance on information from third parties of inappropriate~~
26 ~~conduct of the proposed assignee or sublessee;~~
27

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

~~_____ (g) the tenant's refusal to pay a reasonable fee as provided for in the lease for the landlord's costs related to a proposed assignment or sublet.~~

Comment

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

~~_____ SECTION 1102. TENANT'S RIGHT TO SUBLEASE OR ASSIGN.~~

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

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

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

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

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

~~_____ (d) If a landlord's consent to an assignment or sublease is required under the terms of a~~

1 ~~lease or this [act], the landlord is deemed to have consented if the landlord:~~

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

3 ~~_____ (2) not later than [30] days after acquiring such knowledge fails to take~~
4 ~~commercially reasonable steps to cause the assignee or sublessee to vacate the dwelling unit.~~

5 ~~**SECTION 1103. RIGHTS FOLLOWING ASSIGNMENT OR SUBLEASE.**~~

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

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

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

16 **ARTICLE 1211**

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

18 **~~Reporters' Note to the Drafting Committee~~**
19

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

28
29 ~~_____ Secondly, the prior draft treated security deposits and prepaid rent alike in that it required~~

~~the funds be placed in safekeeping accounts in which the landlord essentially had only a security interest. Thus, the funds would be protected (assuming the landlord complies with the safekeeping requirement) and the tenant would have preference to the funds if later a dispute arose among the tenant and other creditors or transferees of the landlord. Additionally, funds in the account would not be subject to the claims of the tenant's creditors or transferees. This draft preserves this approach for the security deposit but not the prepaid rent.~~

SECTION ~~1204~~1101. PAYMENTS REQUIRED AT THE COMMENCEMENT OF THE LEASE.

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

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

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

Comment

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

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

1 **SECTION ~~12021102~~. LANDLORD, TENANT, AAND THIRD PARTY**
2 **INTERESTS IN SECURITY DEPOSIT.**

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

4 (a1) A landlord's interest in a tenant's security deposit is limited to a security
5 interest~~;-~~.

6 (2b) Notwithstanding law other than this [act], a landlord's security interest in a
7 tenant's security deposit is effective against and has priority over all creditors and transferees of
8 the tenant~~; and-~~.

9 (e3) Subject to subsection (~~fd~~), creditors and transferees of a landlord can acquire
10 no greater interest in a security deposit than the interest of the landlord.

11 (~~db~~) The following rules apply to a tenant's interest in the a-tenant's security deposit:

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

16 (2) The tenant's interest is not destroyed if the security deposit is commingled
17 with the security deposits of other tenants in a bank account pursuant to Section ~~12031103~~12031103(a)(3);
18 and

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

21 (~~ec~~) Unless a landlord and tenant otherwise agree [in a signed record], if a tenant fails to
22 pay rent when due and the landlord applies ~~uses~~ the whole or any portion of a security deposit
23 to ward the payment of ~~pay the~~ rent that is due, a court shall award the landlord an amount equal

1 to the amount of the security deposit applied ~~towards the payment of rent~~ and may award the
2 landlord an additional amount up to [twice] the periodic rent, ~~and~~ costs and reasonable attorney's
3 fees.

4 (fd) Nothing in subsection (a)(3)(e) abrogates ~~the~~ generally applicable rules of law
5 enabling a person to whom funds have been paid to take the funds free of competing claims to
6 the funds.

7 Comment

8
9 Subsection (a) intends to clarify the priority of the landlord's interest in security deposits
10 as a security interest if the tenant files for bankruptcy. This prevents creditors of the landlord
11 from obtaining an interest in the security deposit (and similarly protects the tenant if the landlord
12 goes into bankruptcy. If the tenant is in financial stress, subsection (a) is a useful clarification
13 that can benefit the tenant's creditors whether or not the tenant files a bankruptcy petition
14 because it makes clear that the security deposit is an asset of the tenant. See cf. In re Verus Inv.
15 Mgmt., LLC, 344 B.R. 536, 546 (Bankr. N.D. Ohio 2006) (landlord's assignee was a secured,
16 rather than unsecured, creditor with respect to a perfected security interest in a certificate of
17 deposit that served as a security deposit under a commercial lease); cf. In re Coomer, 375 B.R.
18 800, 804-06 (Bankr. N.D. Ohio 2007) (applying § 541 of the Bankruptcy Code to conclude that
19 bankruptcy trustee was not entitled to a security deposit that landlord was holding to secure the
20 debtor-tenant's obligations under a residential lease). Designating security deposits as a security
21 interest should similarly protect the tenant's interests in the event of the landlord's bankruptcy.
22 See In re Frempong, 460 B.R.189, 195 (Bankr. N.D. Ill. 2011) (stating that under Chicago
23 municipal ordinance, tenant security deposits "are held 'in trust' by the landlord and thus are not
24 part of the Bankruptcy Estate of any landlord in a Bankruptcy filing"); cf. 6 West's Fed. Admin.
25 Prac. § 7032 (3d ed.) (the bankruptcy estate acquires any security interest held by the debtor and
26 the right to enforce that security interest, but not the property subject to that security interest).

27
28 Under subsection (b)(3), the effect of commingling not permitted by this [act], as, for
29 example, when the landlord commingles the landlord's personal funds with the security deposit,
30 is governed by law other than this act.

31
32 Subsection (c) addresses the common misconception of tenants that the security deposit
33 may be used in lieu of paying rent, particularly the last month's rent. The primary purpose of a
34 security deposit is to provide the landlord with funds to reimburse the landlord for the costs
35 incurred in remedying any damages to the dwelling unit by the tenant. If the tenant could
36 withhold rent only to have it charged against the security deposit, the landlord would have no
37 funds to pay for any damages. A tenant that willfully withholds last month's rent is subject to the
38 penalty imposed by this section.

39
40 Under subsection ~~(b)~~,(fd), whether a transferee of funds from a bank account maintained

1 for the purpose of holding security deposits takes the funds free from the tenant's interest is
2 governed by other law.

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

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

15
16 **SECTION ~~1203~~1103. SAFEKEEPING OF SECURITY DEPOSITS.**

17 (a) With respect to funds ~~received~~ constituting a security deposit, ~~by a landlord as~~
18 ~~security deposits~~, the landlord:

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

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

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

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

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

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

1 attorney's fees.

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

4 (d) A bank holding funds pursuant to subsection (a) ~~has shall have~~ no duty to assure the
5 proper application of the funds.

6 Comment

7
8 Section ~~1203-1103~~ introduces a new requirement that landlords segregate security
9 deposits from the landlord's other funds. Imposing the safekeeping requirements ensures that the
10 funds are available for return as required under various provisions in the act.

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

20
21 Subsection (b) does not preclude the landlord or tenant from recovering other damages to
22 which the landlord or tenant may be entitled under this [act].

23
24 The segregation requirement does not apply to prepaid rent. Rent payments made by or
25 on behalf of the tenant for future dates, even if required by the terms of the lease or as a
26 condition of entering into the lease, are not security deposits. Rather, they are payment for those
27 future dates, discharging, to the extent of the payment, the obligation to pay rent for those
28 dates. Accordingly, unlike security deposits, the tenant no longer owns the funds paid. But see
29 Section ~~1204-1104~~ relating to the landlord's duty to refund unearned rent in situations in which
30 the tenancy terminates before a date for which rent has been paid. While the tenant no longer
31 owns the funds, to the extent the landlord fails to return them when under this [act] the tenant has
32 a right to them, the tenant would have a cause of action to recover them.

33 34 35 SECTION ~~1204-1104~~. RETURN OF SECURITY DEPOSITS AND-OR 36 UNEARNED RENT.

37 (a) Not later than [30] days after a tenancy ends a lease terminates and the tenant vacates
38 the premises, At the termination of a lease, the tenant is entitled to a landlord shall send to a the

~~tenant~~ the amount by which the security deposit and any unearned rent exceeds the amount,
~~based upon the landlord's good faith calculation,~~ that the landlord is owed for unpaid rent due
under the lease and for the tenant's noncompliance with the terms of the lease or this [act].

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

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

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

(d) ~~Subject to subsection (e), Regardless of whether if~~ If a landlord complies fails to
comply with subsections ~~(a) and (b) and (c), the court~~

~~(1) shall award~~ the tenant may recover the difference between the amount to
which the tenant is entitled under subsection (a) and the amount sent to the tenant or a contact
person under subsection (b).

1 (e) If the landlord fails to comply with subsection (b) or subsection (c), the court may
2 award, the amount of the security deposit and unearned rent to which the tenant is entitled, and
3 ~~_____ (2) may award, as a penalty, an additional the tenant in addition \$250 or the~~
4 ~~greater of [two] times the amount recoverable under subsection (d), in paragraph (1), whichever~~
5 ~~is greater, and and \$[250], -costs, and reasonable attorney's fees, provided the -court may not~~
6 award a penalty under this subsection if the landlord's noncompliance with subsection (b) and (c)
7 is limited to the landlord's failure to pay the cost of postage or transmission or to use the proper
8 address.

9 ~~_____ (e) The landlord's liability is limited to the amount provided subsection (d)(1), in the~~
10 ~~following circumstances:~~

11 ~~_____ (1) If if the landlord complied with subsections (a) and (b) but the tenant did not~~
12 ~~receive the security deposit and any record because the landlord failed to comply with subsection~~
13 ~~(e) or the items were misdelivered or undeliverable; and~~

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

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

21 (g) If the amount of the security deposit and unearned rent that exceeds the amount that
22 the landlord is owed for unpaid rent under the lease is insufficient to reimburse the landlord for
23 damage to the premises caused by the tenant, an immediate family member, or another

individual, other than the landlord or the landlord's agent, the landlord may recover from the tenant actual damages from the tenant, costs, and reasonable attorney's fees.

Comment

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

Subsection ~~(d)(2)~~(e) provides a penalty when the landlord fails to comply with any of the requirements of subsections (a) and (b), including the failure to act within the applicable time period, the failure to provide a record to explain why the security deposit was not returned in full, and the failure to return an amount equal to the landlord's good faith calculation of the sum to which the tenant is entitled. If the landlord has acted in good faith, but merely erred in ~~calculating~~ determining the amount owed, subsection (e) permits the tenant to recover the amount to which the tenant is entitled and subsection (e) would not apply. ~~but does not impose an additional penalty upon the landlord.~~

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

SECTION ~~1205~~1105. DISPOSITION OF SECURITY DEPOSITS AND UNEARNED RENT UPON TERMINATION OF LANDLORD'S INTEREST IN PREMISES.

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

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

(2) if the lease terminates as a result of the sale, assignment, death, appointment
or receiver or otherwise, return the security deposits and an amount equal to the unearned rent
to the tenant pursuant to the terms of Section ~~1204~~1104.

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

(c) ~~On receipt of any portion of the security deposits and unearned rent under subsection~~
~~(a), Subject to subsection (d),~~ the person succeeding to the landlord's interest in the premises has
all of the rights and obligations of a landlord under this [article] with respect to ~~those funds~~any
security deposits and unearned rent held by the predecessor landlord that has not been returned to
the tenant under subsection (a)(2), whether or not the security deposits and unearned rent were
sent actually transferred to the successor.

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

Comment

Section ~~1205~~1105 is a new section that provides for disposition of security deposits and
unearned rent after a transfer of the landlord's interest in the premises.

ARTICLE ~~13~~12

MISCELLANEOUS PROVISIONS

SECTION ~~1301~~1201. UNIFORMITY OF APPLICATION AND
CONSTRUCTION. In applying and construing this uniform act, consideration must be given
to the need to promote uniformity of the law with respect to its subject matter among states that

1 enact it.

2 | **SECTION ~~1302~~1202. RELATION TO ELECTRONIC SIGNATURES IN**
3 | **GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes
4 | the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001,
5 | et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section
6 | 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that
7 | act, 15 U.S.C. Section 7003(b).

8 | **SECTION ~~1303~~1203. REPEALS.** The following are repealed: . . .

9 | **SECTION ~~1304~~1204. EFFECTIVE DATE.** This [act] takes effect