

DRAFT
FOR DISCUSSION ONLY

REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (2015)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

April 17 – 18, 2015 Drafting Committee Meeting

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April 6, 2015

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REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (2015)

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1 **REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (2015)**

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 (2015).

6 **Comment**

7 The provisions of this act are largely non-default rules. Thus, they apply unless the
8 provision stating the rule expressly provides that it may be varied by other law or by agreement
9 of parties. For example, Section 104(b) provides that a party seeking relief under this [act] has a
10 duty to mitigate damages. This provision cannot be waived by the mutual agreement of the
11 landlord and tenant. [This provision to be relocated once preamble is written.]
12

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

14 (1) “Action” means an action for damages, possession, ejectment, or quiet title, or any
15 other judicial proceeding in which rights under a lease or this [act] are determined.

16 (2) “Actual damages” means compensation for direct, consequential, or incidental
17 injuries or losses. The term includes:

18 (A) amounts payable to a landlord or tenant under the lease for a violation of the
19 lease; and

20 (B) diminution in the value of a dwelling unit.

21 (3) “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 (4) “Building, housing, fire, or health code” includes any law, ordinance, or
24 governmental regulation concerning fitness for habitation or the construction, maintenance,
25 operation, occupancy, use, or appearance of the premises.

26 (5) “Contact person” means a person designated by a tenant under Section 109(b).

1 (6) “Criminal act” or “criminal activity” means:

2 (A) the criminal manufacture, sale, distribution, use, or possession of a controlled
3 substance as defined by law other than this [act]; or

4 (B) activity that is criminal under law other than this [act] and threatens the health
5 or safety of an individual on the premises, the landlord, or the landlord’s agents.

6 (7) “Diminution in the value of a dwelling unit” means a reduction from rent that reflects
7 the extent to which a noncompliant condition of the premises impairs the tenant’s use and
8 enjoyment of the unit as determined by a court based upon evidence that need not include expert
9 testimony.

10 (8) “Dwelling unit” means property leased to a tenant for use as a home, residence, or
11 sleeping place by an individual or two or more individuals who maintain a common household,
12 regardless of their relationship to each other. The term includes:

13 (A) a single family residence, together with fixtures and appurtenances, the land
14 on which it is located, and any other structure on the land; and

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

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

21 (10) “Essential service” means heat, hot and cold running water, and electricity. The term
22 includes gas or air conditioning if required to be supplied to a tenant by the lease or by law other
23 than this [act] which, if not supplied to the tenant, would create a serious threat to the health,

1 safety, or property of the tenant or an immediate family member.

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

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

7 (13) “Guest” means a person, other than the landlord or the landlord’s agent, invited on
8 the premises by a tenant or an immediate family member.

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

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

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

15 (B) an individual having an intimate relationship with the tenant; or

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

18 (16) “Landlord” means:

19 (A) the owner of a dwelling unit rented to a tenant;

20 (B) a successor in interest to the landlord;

21 (C) a sublessor only if the landlord did not consent to the sublease; and

22 (D) a person that manages a dwelling unit or enters a lease on behalf of the owner
23 of a dwelling unit and fails to comply with Section 108(b) and (c), but such person shall not be a

landlord as to events occurring after:

(1) the tenant has been given a notice in a record that complies with Sections 108(b) and (c); or

(2) the date of termination of the person's authority to act on behalf of the owner if that authority is terminated.

(17) "Lease" means a contract, oral or in a record, between a landlord and tenant in which the landlord rents a dwelling unit to the tenant for a tenancy for a fixed term or a periodic tenancy subject to the terms and conditions set forth in the lease. The term includes all amendments and modifications to the lease and all rules adopted by the landlord which were disclosed to the tenant under Section 108(a)(4) and, subject to Section 304(b), rules adopted by the landlord after the commencement of the lease.

Legislative Note: This act uses the term "lease" rather than "rental agreement", which was used in the 1972 Act, because in many states the lawyers and courts prefer the word lease. However, the mere use of the term "lease" is not meant as a substantive change. If a state prefers "rental agreement," the term can be substituted in place of the word "lease."

(18) "Notice in a record" means notice that complies with the requirements of Section 107(b).

(19) "Owner" means a person vested with all or part of:

(A) the legal title to the premises; or

(B) the beneficial ownership and a right to present use and enjoyment of the premises.

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

1 (21) “Periodic tenancy” means a tenancy created under a lease or arising by operation of
2 law for either month to month or week to week.

3 (22) “Person” means an individual, estate, trust, business or nonprofit entity, public
4 corporation, government or governmental subdivision, agency, or instrumentality, or other legal
5 entity.

6 (23) “Premises” means a dwelling unit and, to the extent owned by the landlord, any
7 structure of which the unit is a part. The term includes all areas and other structures owned by
8 the landlord that are associated with the structure in which the dwelling unit is located and are
9 held out by the landlord for the use of tenants generally.

10 (24) “Prepaid rent” means rent paid to a landlord before the first day of the rental period
11 to which it is to be applied.

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

14 (26) “Rent” when used as a noun means a payment for the possession, use, and
15 enjoyment of a dwelling unit. The term does not include a security deposit or fees.

16 (27) “Repairs” includes remediations.

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

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

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

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

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

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

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

(33) “Tenant” means:

(A) a person who is a party to a lease entitled to possession of a dwelling unit;

(B) an assignee or sublessee of the person described in paragraph (A) who enters
into possession of the unit with the landlord’s consent;

(C) an individual authorized to occupy the unit by a person described in paragraph
(A) who is not an individual; and

(D) a roommate of a person described in paragraphs (A), (B) or (C) who occupies
the unit with that person with the landlord’s consent and contributes towards the payment of rent
but who is not a party to the lease.

(34) “Tenant representative” means:

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

(B) before the appointment of a personal representative, a contact person, or in the
absence of a contact person, a person the landlord reasonably believes to be an heir of the tenant
under the applicable intestate succession law.

(35) “Unearned rent” means rent, including prepaid rent, that a tenant paid to a landlord
for the right to occupy the dwelling unit for any period after the date the lease terminates in

1 accordance with its terms or this [act]. The term does not include any amount, including rent,
2 owed to the landlord for a period before or after the date the lease terminates during which the
3 tenant is in physical possession of the premises.

4 (36) “Willful” means the intentional performance of an act the actor knows to be
5 prohibited under this [act] or by a lease, an intentional failure to perform an act the actor knows
6 to be required under this [act] or by a lease, or a deliberate indifference to whether the
7 performance or failure to perform violates this [act] or a lease. Willfully has a corresponding
8 meaning.

9 **Comment**

10
11 The definition of “actual damages” (paragraph (2)) was revised in this act to include fees
12 payable to a landlord or tenant under a lease for a violation of the lease. The definition also
13 includes “diminution in the value of a dwelling unit.” This latter phrase is defined in paragraph
14 (7), which emphasizes that diminution in value is to be “determined by a court based upon
15 evidence that need not include expert testimony.” As a result, landlord and tenants are not
16 required to hire real estate appraisers or other experts to give an expert opinion regarding the
17 value of a dwelling unit; they instead may testify as to their own opinions regarding the dwelling
18 unit’s value in light of the landlord’s noncompliance.
19

20 The definition of criminal act (paragraph (6)) includes certain defined activities relating
21 to controlled substances “as defined by law other than this [act].” Such law could include federal
22 law even if that law conflicts with state law. This is appropriate because of the risk of forfeiture
23 of the landlord’s property if the landlord permits such activities on the premises.
24

25 The definition of “fees” (paragraph (11)) includes nonrefundable payments made by the
26 tenant to the landlord. Common examples include application fees, cleaning fees, short-term
27 lease fees, late-payment fees, dishonored check fees, credit card or other payment processing
28 fees, abandonment fees, special amenities fees, pet fees, or fees assessed for violating pet
29 policies or other rules governing the tenancy.
30

31 The definition of “landlord” (paragraph (16)) includes not only the owner of the dwelling
32 unit, but also any person -- such as a management company -- that enters into a lease on behalf of
33 a landlord without making all of the disclosures required by Section 108. In that situation, the
34 management company qualifies as a “landlord” and has all of the rights and responsibilities of a
35 landlord under the act. Conversely, if a management company has disclosed the owner and the
36 other information required by Section 108 to the tenant, only the owner is the “landlord” and the
37 management company is merely the landlord’s agent for purposes of this act. Subparagraphs
38 (16)(D)(1) and (2) provide the procedures for a person in that situation to be relieved of liability

1 under the act. For example, if after entering into the lease on behalf of the undisclosed owner the
2 identity of the owner is disclosed, the manager would no longer be the landlord as to events
3 occurring after the tenant received a notice in a record disclosing the landlord's identity and the
4 other information required by Sections 108(b) and (c), such as the landlord's addresses.

5
6 The definition of "lease" (paragraph (17)) includes all rules of the landlord disclosed
7 under Section 108(a)(4) prior to the landlord's acceptance of funds from the tenant or before
8 entering into the lease as well as later adopted rules of the landlord adopted under Section 304.
9 Rules of other persons that apply to the dwelling unit, such as rules of a condominium
10 association or a homeowner's association, are not part of the lease even though they affect the
11 tenant's use and enjoyment of the premises. See Section 305 for the rights of a tenant whose use
12 and enjoyment of the dwelling unit is affected by the rules of persons other than the landlord,
13 including homeowners, cooperative, or condominium associations.

14
15 The definition of "owner" (paragraph (19)) includes a mortgagee in possession. It would
16 not include a mortgagee in a title theory state unless the mortgagee became entitled to
17 possession.

18
19 The definition of "premises" (paragraph (23)) includes a tenant's dwelling unit and the
20 structure of which it is a part, as well as any areas associated with the structure held out for the
21 use of tenants generally. The definition was broadly written to cover both the exterior and
22 interior of a structure and any fixtures, facilities, and appurtenances to it, such as parking areas.

23
24 Portions of a structure not owned by the landlord are not part of the "premises." For
25 example, if the dwelling unit is a condominium located in a 40-story building, the premises do
26 not include the common areas of the building. If the landlord owned an assigned parking space in
27 the structure that is leased to the tenant, then the space would be included within the term
28 "premises."

29
30 Prepaid rent (paragraph (24)) is rent paid before the first day of the rental period to which
31 it is to be applied. For example, assume on November 1 a landlord and tenant agree to the lease
32 of a dwelling unit with the term to begin the following January 1 at a monthly rent of \$500.
33 Tenant gives the landlord a check for \$1,000 to cover the January rent and the security deposit of
34 \$500. From November 1 until January 1, the \$500 for January's rent is "prepaid rent." After,
35 January 1 it is not prepaid rent.

36
37 The definition of "tenant" (paragraph (33)) recognizes that some leases are entered into
38 by business entities for their employees or by a trust on behalf of a beneficiary. For example, an
39 LLC might rent an apartment for a member or a manager. Both the LLC and the member or
40 manager are tenants, the latter because the member or manager has been authorized to occupy
41 the dwelling unit by the LLC; the former because it is legally entitled to possession under the
42 lease. In addition the definition treats as the tenant any assignee or sublessee who enters
43 possession with the landlord's consent. By doing so, the definition makes clear that duties are
44 owed from the landlord to the assignee and sublessee and vice versa.

45
46 The term tenant also includes a roommate who occupies with the landlord's consent and

1 pays rent but is not a party to the lease. Thus, if a landlord rents to a tenant, who in turn allows
2 someone to share possession of the unit with the tenant, that individual is a tenant if the criteria
3 in the definition of “roommate” are met. If the roommate occupies the unit without the
4 landlord’s consent or does not pay rent, the roommate is not a tenant under this act. On the other
5 hand, the individual could be a “guest” and the tenant would be responsible for violations of the
6 lease or this act caused by the guest. See, e.g., Section 501(7)-(9), (11).

7
8 The definition of “unearned rent” (paragraph (35)) contemplates two circumstances
9 where a refund will be due a tenant because the lease terminated. The first circumstance is
10 where “rent” (defined in Section 102(26)) was paid to the landlord on its due date but for any
11 period of time beyond the date the lease terminates. For example, assume a one-year lease with
12 rent payable on the first of each month. The tenant pays rent to the landlord on April 1 for the
13 month of April. However on April 10 the tenant properly terminates the lease. In this case
14 “unearned rent” includes the amount of rent attributable to the period April 11 to April 30.
15 Because rent is apportioned on a daily basis (see Section 201(b)(2)(B)), this means that two-
16 thirds of the April 1st payment would be “unearned rent.” The second circumstance is where
17 “prepaid rent” (defined in Section 102(24)) was paid to the landlord for a rental period beyond
18 the date the lease terminates. For example, suppose before the commencement of the lease a
19 tenant pays the landlord an amount for the last month’s rent. Three months into the lease tenant
20 properly terminates the lease. In this case, “unearned rent” includes the prepaid rent for the last
21 month. In both examples, Section 1204 requires amounts treated as unearned rent to be returned
22 by the landlord to the tenant after taking account of any proper charges against the unearned rent
23 as set forth in Section 1204.

24
25 The phrase “unearned rent” does not include rent for any period beyond the lease
26 termination during which the tenant is in physical possession of the premises. For example,
27 suppose tenant signs a fixed term lease to end on December 31. The tenant pays the landlord the
28 last month’s rent (December rent) at the beginning of the lease term. Because of the tenant’s
29 failure to pay rent, the landlord properly terminates the lease on October 1 but the tenant remains
30 in possession until November 5. Unearned rent includes the prepaid rent for December but does
31 not include any rent that might be due the landlord for October and the first five days of
32 November. Under Section 1204, the landlord is obligated to return the unearned rent (along with
33 any security deposit) to the tenant. However under Section 1204(a) and (d), the landlord may
34 reduce the amount returned by amounts of “unfilled obligations” to which the unearned rent was
35 applied and this could include the rent due for October and the five days in November if not
36 already paid.

37
38 The date on which a lease terminates is determined by the lease or this act. For example,
39 for a fixed term tenancy or a periodic tenancy, the lease terminates on the last day of the term or
40 the period unless the lease or this act allows for an earlier termination date. Under this act, a
41 lease can terminate for any number of other reasons. Because termination requires a notice in a
42 record that specifies the termination date, the date of termination is easily determined from the
43 notice. For example, under Section 601(a)(2) (allowing a landlord to terminate the tenancy for a
44 material noncompliance by the tenant, other than the nonpayment of rent) the notice must set
45 forth a specified date for termination not earlier than [30] days after the giving of the notice. If
46 there is any unearned rent due the tenant, it would be for the period following the date of

1 termination in the notice assuming the tenant timely vacated the premises.

2
3 **SECTION 103. SCOPE.**

4 (a) In this section:

5 (1) “transient occupancy” means occupancy in a room or suite of rooms that has
6 the following characteristics:

7 (A) the cost of occupancy is charged on a daily basis;

8 (B) the operator of the room provides housekeeping and linen service as
9 part of the regularly charged cost of the occupancy; and

10 (C) the occupancy does not exceed [30] days.

11 (2) “occupancy as a vacation rental” means occupancy that has the following
12 characteristics:

13 (A) the tenant rents the dwelling unit for vacation purposes only and has a
14 principal residence other than the unit;

15 (B) the unit is furnished with personal property necessary to make the unit
16 ready for immediate occupancy by the tenant; and

17 (C) occupancy does not exceed [30] days.

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

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

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

23 (2) residence at an institution, public or private, if incidental to detention;

24 (3) occupancy under a contract of sale of, or an option to purchase, a dwelling

unit or the building of which it is a part, if the occupant is the purchaser or optionee or an individual who has succeeded to the interest of the purchaser or optionee;

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

(5) transient occupancy;

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

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

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

(9) occupancy as a vacation rental; and

(10) leasing of real property by its owner to another person who owns a manufactured or mobile home sited on the real property.

Comment

This act applies to the lease of a manufactured or factory-built home but does not apply to a mere ground lease of land upon which the home is placed. Thus, if O owns a land-lease community (a/k/a mobile home park) and leases space to T who places a manufactured or factory-built home on the space, that ground lease is not subject to this act. However, if T later leases the home to X, the T-X lease is subject to this act. Likewise, if the owner of the land-lease community sites a manufactured home on the space and leases the home to another person, that lease would be subject to this act.

Paragraph (10) refers to a manufactured or mobile home. A manufactured home is a home defined by the federal Manufactured Housing Act, 42 U.S.C. § 5402(6) and Uniform Commercial Code § 9-102(a)(53). A mobile home refers to a manufactured or factory-built home built before June 15, 1976, which was the effective date of HUD's construction standards for manufactured homes.

SECTION 104. ENFORCEMENT; DUTY TO MITIGATE.

(a) A right or obligation under this [act] is enforceable by an action unless the provision

1 creating the right or obligation provides otherwise.

2 (b) A party seeking relief under this [act] has a duty to mitigate damages.
3

4 **Comment**
5

6 Under the common law a landlord had no duty to mitigate damages. The no-mitigation
7 rule was abrogated by the 1972 version of this act, and this act is consistent with that policy
8 choice and the conceptualization of the lease as a contract. Unlike the 1972 act, however, this act
9 provides a safe harbor in Section 604 for a landlord who makes reasonable efforts to relet the
10 dwelling unit following a tenant's abandonment.
11

12 **SECTION 105. OBLIGATION OF GOOD FAITH.** Every duty under a lease or this
13 [act] and every act that must be performed as a condition to the exercise of a right or remedy or
14 entitlement to a defense under the lease or this [act] must be performed in good faith.

15 **Comment**

16 The ability to seek a remedy, exercise a right, or claim a defense under this act requires
17 that the individual seeking the right, remedy, or defense have acted in good faith. Good faith as
18 defined by Section 102(14) means "honesty in fact and the observance of reasonable commercial
19 standards of fair dealing." By way of example, a tenant under Section 901 may have the right to
20 complain of a retaliatory termination of a periodic tenancy if the notice to terminate follows on
21 the heels of the tenant's complaint to a governmental agency. However, the tenant would have
22 no such right if the tenant's complaint was not in good faith. Similarly, Section 1001 requires a
23 landlord to store a tenant's personal property under the circumstances set forth in that section. If
24 the landlord complies with that section, the landlord has a defense against another person who
25 claims an interest in that property. But, in light of Section 105, that defense is available only if
26 the landlord acted in good faith.
27

28 **SECTION 106. UNCONSCIONABILITY.**

29 (a) If a court as a matter of law finds a lease or any provision of the lease is
30 unconscionable at the time it was made, the court may refuse to enforce the lease, enforce the
31 remainder of the lease without the unconscionable provision, or limit application of the
32 unconscionable provision to avoid an unconscionable result.

33 (b) If a court as a matter of law finds a settlement agreement in which a party waives or
34 agrees to forego a claim or right under this [act] or under a lease was unconscionable at the time

1 it was made, the court may refuse to enforce the agreement, enforce the remainder of the
2 agreement without the unconscionable provision, or limit application of the unconscionable
3 provision to avoid an unconscionable result.

4 (c) If a party or the court puts unconscionability in issue under subsection (a) or (b), the
5 court shall allow the parties to present evidence as to the setting, purpose, and effect of the lease
6 or settlement agreement to aid the court in making the determination of unconscionability.

7 **SECTION 107. KNOWLEDGE AND NOTICE.**

8 (a) In this [act], a person has notice of a fact if the person:

9 (1) has actual knowledge of the fact;

10 (2) has received notice of the fact in accordance with subsection (d); or

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

13 (b) Except as otherwise provided in Section 1001(c), when this [act] specifically requires
14 notice in a record to a landlord or tenant, the notice must be signed by the person giving it and:

15 (1) delivered personally to the landlord or tenant;

16 (2) deposited in the mail with proper postage and, if sent to the landlord, properly
17 addressed to the mailing address specified in Section 108, and if sent to the tenant, properly
18 addressed to the mailing address specified in Section 109, or if there is no address specified, to
19 an address reasonable under the circumstances; or

20 (3) unless the landlord or tenant notifies the other at any time that the notice may
21 be given only by personal delivery or by mail as provided in paragraph (2), delivered by another
22 means of communication with cost of transmission provided for and, if sent to the landlord,
23 properly addressed to an address specified in Section 108, and if sent to the tenant to an address

1 specified in Section 109, or if there is no address specified, to an address reasonable under the
2 circumstances.

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

6 (d) In this [act], a person receives notice of a fact:

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

8 (2) in the case of notice in a record, when the notice is:

9 (A) personally delivered under subsection (b)(1); or

10 (B) sent or delivered in accordance with subsection (b)(2) or (b)(3).

11 **Comment**

12 A number of sections in this act require either a landlord or a tenant to give the other
13 notice in a record. When "notice in a record" is required, it must be given in accordance with
14 subsection (b).
15

16 Subsection (b) provides that notice shall be given by personal delivery, through the mail,
17 or "by another means of communication." This latter phrase is broadly worded so that it would
18 include electronic transmissions and other forms of communication that may emerge in the
19 future.
20

21 Under subsection (d)(1), a person receives notice when the fact comes to the person's
22 attention. A fact might come to the person's attention as the result of face-to-face conversation,
23 the telephone, or by a receipt of a record.
24

25 **SECTION 108. REQUIRED DISCLOSURES BY LANDLORD.**

26 (a) Before accepting funds to be applied to a security deposit, prepaid rent, or fees, or
27 before entering into a lease, a prospective landlord shall disclose to the prospective tenant in a
28 record the following:

29 (1) any condition of the premises that would constitute a noncompliance under
30 Section 302 and would materially interfere with the health or safety of the tenant or an

1 immediate family member or would materially interfere with the use and enjoyment of the
2 premises by the tenant or the immediate family member and of which the landlord knows or on a
3 reasonable inspection of the premises should have known;

4 (2) whether a foreclosure action has been commenced against the premises, if
5 known to the landlord;

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

8 (4) the rules affecting the tenant's use and enjoyment of the premises whether
9 adopted by the landlord or another person; and

10 (5) the criteria the landlord uses to determine the landlord's willingness to enter
11 into a lease with a tenant.

12 (b) At or before the commencement of the term of a lease, the landlord shall give the
13 tenant notice in a record specifying:

14 (1) the name of:

15 (A) the landlord;

16 (B) a person authorized to manage the premises;

17 (C) the owner of the premises; and

18 (D) a person authorized to act for the owner for service of process and
19 receiving a notice or demand;

20 (2) the mailing address and any address to be used for the receipt of electronic
21 communications by the landlord or a person designated by the landlord to which a notice or
22 demand must be sent; and

23 (3) the address or place to which the tenant must send rent.

1 (c) A landlord shall keep current the information required to be given by subsection (b).

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

5 ***Legislative Note:*** *In jurisdictions with non-judicial foreclosure, insert in Section 108(a)(1)(2)*
6 *appropriate substitute language.*

7 **Comment**
8

9 Subsection (a)(1) imposes upon the landlord a duty to inform a prospective tenant of any
10 conditions that would make the premises uninhabitable or present an unreasonable risk of harm.
11 These conditions would include the standards for uninhabitability enumerated in Section 302 as
12 well as additional hazards.
13

14 Subsection (a)(4) requires the landlord to disclose to a prospective tenant any rules
15 affecting the tenant's use and enjoyment of the premises whether adopted by the landlord or
16 others. For example, the rented unit may be subject to externally imposed rules of a homeowners
17 or condominium association.
18

19 The purpose of subsection (b) is to enable the tenant to proceed with the appropriate legal
20 proceeding, to know to whom complaints must be addressed and, failing satisfaction, against
21 whom the appropriate legal proceedings may be instituted.
22

23 If the landlord failed to make the "foreclosure" disclosure required by subsection (a)(2),
24 subsection (d) would not apply unless the tenant's use and enjoyment of the premises had been
25 interfered with as a result of the foreclosure. For example, such damages might occur if the
26 premises were sold and the tenant was required to vacate the premises.
27

28 No specific remedies are provided for the failure to provide the information required by
29 subsections (b) and (c). If a landlord fails to provide an address to the tenant, however, the
30 landlord might not receive the rent in a timely manner.
31

32 **SECTION 109. REQUIRED DISCLOSURES BY TENANT.**

33 (a) At or before the commencement of the term of a lease, the tenant shall give the
34 landlord a notice in a record specifying the tenant's mailing address and any address to be used
35 by the tenant for the receipt of electronic communications.

36 (b) At the landlord's request, the tenant shall designate a contact person to act for the
37 tenant on the tenant's death by giving the landlord a record specifying the name of the contact

1 person and, if known, the mailing address, any address to be used for the receipt of electronic
2 communications, and telephone number of the contact person. Absent a request by the landlord,
3 a tenant may designate a contact person in the same manner.

4 (c) A tenant shall keep current the information required in subsections (a) and (b). On
5 termination of a lease, the tenant shall provide the landlord with a forwarding address to which
6 the landlord shall send the tenant's security deposit or other communications.

7 **Comment**

8 No specific remedies are provided for the failure to provide the information required by
9 this section. If a tenant fails to provide an address to the landlord, however, the tenant might not
10 receive timely notices or the refund of a security deposit.

11 **SECTION 110. COMMON LAW AND PRINCIPLES OF EQUITY.** Unless
12
13 displaced by this [act], the principles of law and equity supplement this [act].

14 **Comment**

15
16 In light of this section, contract principles generally apply to the construction and
17 interpretation of leases, including provisions relating to mutuality or dependency of lease
18 covenants. By construing leases as contracts, for example, performance of promises the landlord
19 and tenant make to each other are dependent upon one another. Thus, the tenant's promise to pay
20 rent is conditioned upon (dependent upon) the landlord's compliance with Section 302.

21 **ARTICLE 2**

22 **GENERAL PROVISIONS APPLICABLE TO LEASE**

23
24 **SECTION 201. TERMS AND CONDITIONS OF LEASE; DELIVERY OF LEASE**
25 **TO TENANT.**

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

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

29 (1) the tenant shall pay rent for the dwelling unit for the term of the lease in an

1 amount comparable to the rent paid for other dwelling units of similar size and condition in the
2 same or a comparable location, determined at the commencement of the lease;

3 (2) rent is:

4 (A) payable without demand or notice:

5 (i) at the address or place the landlord designates under Section
6 108(b)(3) or, if no designation is made, at the landlord's place of business at the time the lease
7 was made; and

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

10 (B) uniformly apportioned from day to day; and

11 (3) the rental period is determined on a monthly basis beginning with the first day
12 of the month for a tenancy for a fixed term of more than one month or a periodic tenancy of
13 month to month and, for all other tenancies, the rental period begins on the first day rent is paid.

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

17 (d) A landlord shall provide the tenant with a copy of any lease that has been signed by
18 them or, if the lease is enforceable under Section 202, signed by either one of them.

19 (e) If a landlord willfully fails to comply with subsection (d), a tenant may recover actual
20 damages or [one month's] periodic rent, whichever is greater.

21 **Comment**

22
23 Under subsection (c), tenancies at will are effectively abolished; the only recognized
24 tenancies, other than a tenancy for a fixed term, are a periodic tenancy for month to month or the
25 less common periodic tenancy for week to week.
26

1 Subsection (b) applies when the lease inadvertently fails to fix the amount of rent as
2 might be the case for oral leases.

3
4 Subsection (d) requires the landlord to provide the tenant with a copy of an enforceable
5 lease whether signed by both of them or only one of them. Obviously the subsection does not
6 apply to oral leases which can be given effect under Section 202.

7 8 **SECTION 202. EFFECT OF UNSIGNED LEASE; IMPLIED LEASE.**

9 (a) Subject to subsection (b):

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

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

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

20 (c) In the absence of a lease signed by the landlord or tenant which is delivered to the
21 other, if the tenant accepts possession and pays rent to the landlord without reservation of rights
22 and the landlord accepts rent from the tenant without reservation of rights, the tenancy created is
23 a periodic tenancy for week to week in the case of a tenant that pays rent weekly and in all other
24 cases a periodic tenancy for month to month.

25 **SECTION 203. PROHIBITED PROVISIONS IN LEASE.**

26 (a) A lease may not require the tenant to:

27 (1) waive or forego a right or remedy under this [act];

(2) authorize a person to confess judgment on a claim arising out of the lease or this [act];

(3) perform a duty imposed on the landlord by Section 302;

(4) agree to pay attorney's fees and costs of the landlord other than those provided by this [act] or law of this state other than this [act]; or

(5) agree 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 seeks to enforce a provision in the lease which is unenforceable under this section or accepts the tenant's voluntary compliance with the provision, a court may award the tenant an amount not to exceed [three] times the periodic rent.

Comment

Under Section 1001 a landlord has the obligation to take possession of a tenant's personal property on the premises when the tenant vacates the dwelling unit. In light of subsection (a)(1) this obligation cannot be waived in the lease. However, under Section 1001(b), the landlord and tenant could otherwise agree if their agreement was made at the time of the relinquishment of the dwelling unit.

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

A landlord might inadvertently use a standard form lease that had not been revised after enactment of this act which includes a prohibited provision. Under subsection (b), the landlord, in such case, would only be liable for damages if the landlord sought to enforce the unenforceable provision or accepts the tenant's voluntarily compliance with it.

SECTION 204. SEPARATION OF RENT FROM LANDLORD DUTY TO MAINTAIN PREMISES. Notwithstanding any other law of this state, a lease, assignment, sublease, conveyance, trust deed, or security instrument may not authorize a person to receive

1 the payment of rent without assuming the duties imposed on the landlord by the lease or Section
2 302.

3 **Comment**

4
5 The mere assignment of rent as security does not subject the assignee to the landlord's
6 obligations to maintain the premises. However, if the assignee actually receives the rent, then
7 that obligation would arise. Section 204 is inconsistent with Section 13 of the Uniform
8 Assignment of Rents Act. Because Section 13 of the UARA is more appropriately applied to
9 commercial rather than residential leases, Section 204 of this act expressly provides that it
10 supersedes other law, including other statutes and prior case law of the state that would have
11 allowed a person, such as a mortgagee, to collect rents free of the obligation to maintain the
12 premises.

13 14 **SECTION 205. ATTORNEY'S FEES AND COSTS.**

15 (a) In this section, "prevailing party" means a party that:

16 (1) initiated the enforcement of a right or remedy under a lease or this [act] and
17 substantially prevailed on the right or remedy asserted; or

18 (2) substantially prevailed in defending against a right or remedy asserted by the
19 other party.

20 (b) In an action to enforce a right or remedy arising under the lease or this [act], the court
21 shall award the prevailing party costs and may award the prevailing party reasonable attorney's
22 fees if the court determines that the other party did not act in good faith, willfully performed an
23 act prohibited by the lease or this [act], or willfully refrained from performing an act required by
24 the lease or this [act].

25 [(c) A landlord may not be awarded attorney's fees or costs in an uncontested action to
26 recover possession of a dwelling unit.]

1 **ARTICLE 3**

2 **LANDLORD’S DUTIES**

3 **SECTION 301. DELIVERY OF POSSESSION OF DWELLING UNIT TO**

4 **TENANT.** A landlord shall deliver physical possession of the dwelling unit to the tenant at the
5 commencement of the term of the lease.

6 **Comment**

7 This section, like the 1972 act before it, adopts the position that actual possession, as
8 distinguished from a mere legal right to possession, must be delivered to the tenant at the
9 commencement of the term of the lease. In this act, however, the word “physical” is substituted
10 for the word “actual” because physical is more descriptive.

11
12 The term of the lease commences on the date the tenant is first entitled to possession.
13 Thus, if a lease is signed on July 1 for a term to begin on August 1, the commencement date is
14 August 1. The landlord’s obligation to deliver physical possession, therefore, begins on August
15 1.

16 **SECTION 302. LANDLORD’S DUTY TO MAINTAIN PREMISES IN**

17 **HABITABLE CONDITION.**

18 (a) A landlord has a non-waivable duty to maintain the premises in a habitable condition,
19 including making all necessary repairs. The duty requires the landlord to ensure that the
20 premises:

21 (1) comply with all obligations imposed on the landlord by any applicable
22 building, housing, fire, or health code, or other law;

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

25 (3) have plumbing facilities that conform to applicable law and are maintained in
26 good working order;

27 (4) have access to a water supply approved under applicable law which can

1 provide hot and cold running water;

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

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

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

9 (8) to the extent the premises include a common area or other areas under the
10 landlord's control, have the area safe for normal and reasonably foreseeable use consistent with
11 the lease and in good repair, have the area clean and sanitary, and have reasonable measures in
12 place to control the presence in the area of debris, filth, rubbish, garbage, and the items listed in
13 paragraph (7);

14 (9) have an adequate number of appropriate receptacles in clean condition for
15 garbage, rubbish, and, if recycling service is provided or required by law, recyclable material;

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

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

20 (12) have in good repair locks or other security devices on all exterior doors and
21 windows that open and close, including those of the dwelling unit and other parts of the
22 premises; and

23 (13) have safety equipment required by applicable law which is maintained in

1 good working order.

2 (b) A landlord has the duty to ensure the dwelling unit and the premises of which the unit
3 is a part have access to essential services but the lease may provide that:

4 (1) an account with a utility provider of an essential service to the dwelling unit
5 be titled in the name of the tenant; and

6 (2) the tenant pay the periodic cost for the essential service to the dwelling unit, in
7 which case if the service is not provided because the tenant fails to pay for the service, the
8 landlord has not failed to comply with the duty under this subsection.

9 (c) If a sublessor is a landlord for purposes of this [act], the sublessor has the duty to
10 comply with subsection (a) except for duties that would require the sublessor to access portions
11 of the premises beyond the sublessor's control.

12 **Comment**

13 Consistent with the practice of nearly every state, Section 302 recognizes that modern
14 conditions require the proper maintenance and operation of rental housing. Subsection (a) begins
15 with the statement that there is a non-waivable duty to maintain premises in a habitable
16 condition. Thus, the duty can neither be waived nor shifted to the tenant by an agreement
17 between the landlord and tenant to have the tenant perform any of the landlord's duties relating
18 to habitability. The 1972 act contained several provisions that permitted the landlord and tenant
19 to enter into an agreement in which the tenant would assume some of the landlord's duties in
20 limited situations or agree to do some specified repairs. Those provisions have been removed
21 from this revised act; thus, this act does not regulate such agreements beyond providing that the
22 landlord's Section 302(a) duties are non-waivable. In other words, the landlord by a separate
23 agreement with the tenant cannot shift the landlord's duties under Section 302(a) to the tenant.

24
25 Section 302(a) sets out a number of obligations to be met by the landlord for the landlord
26 to discharge the duty to maintain premises in a habitable condition. This list is not intended to be
27 exhaustive. The more elastic "habitability" requirement in the first sentence of Section 302(a)
28 allows for expansion of this list over time if the law expands to include other matters in the
29 habitability standard. Section 501 imposes corresponding duties of cleanliness and proper use
30 within the dwelling unit upon the tenant.

31
32 Because many jurisdictions do not have building, housing, or health codes applicable to
33 rental housing, it is appropriate that this statute incorporate minimum standards of maintenance.
34 A lease could impose other maintenance obligations on the landlord. It could also impose other

1 maintenance obligations on the tenant so long as those obligations do not absolve the landlord of
2 the landlord's obligations under this section. *See* Section 203(a)(3).

3
4 If a tenant subleases a dwelling unit with the landlord's consent then the sublessor is not a
5 landlord under this act. *See* Section 102(16). If the tenant subleases the dwelling unit without the
6 landlord's consent, however, the sublessor is a landlord under this act. As a landlord, the
7 sublessor is obligated to comply with the provisions of this act, including this section. However,
8 under subsection (c), the sublessor is not required to perform duties imposed on a landlord by
9 this section if performance of the duties would require the sublessor to access parts of the
10 dwelling unit or premises which are beyond the sublessor's control. For example, if a subtenant's
11 furnace ceased working but repairs would require access to a furnace outside of the dwelling
12 unit, the sublessor would not be required to repair the furnace.

13
14 Under subsection (a), the landlord has a duty to provide and maintain facilities on the
15 premises necessary for the provision of essential services, typically heat, water, plumbing and
16 electricity. Under subsection (b), the landlord has the duty to ensure the tenant has access to
17 essential services, but the costs of these services and the acquisition of these services could be
18 shifted to the tenant by the lease. For example, the lease might require the tenant to contact the
19 electric company and obtain electric services in the tenant's name alone. In such circumstance, a
20 tenant cannot seek a court order for the landlord to provide the service for which the tenant has
21 failed to pay the utility company. Likewise, the landlord is not in noncompliance with this act if
22 the tenant fails to pay the utility bill and an essential service is discontinued.

23
24 Under subsection (a)(13) the landlord must maintain safety equipment required by
25 applicable law in good working order. Safety equipment might include smoke alarms, carbon
26 monoxide detectors, and fire extinguishers.

27 **SECTION 303. LIMITATIONS ON LANDLORD'S LIABILITY.** Except to the
28 extent a landlord and tenant otherwise agree in a signed record, if the landlord conveys in a
29 good-faith sale to a bona fide purchaser premises that include a dwelling unit subject to the lease,
30 the following rules apply:

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

34 (2) Except as otherwise provided in Section 1205, the landlord remains liable to the
35 tenant for the amount of any security deposit and unearned rent.

1 **Comment**

2 The effect of this section, which first appeared in the 1972 act, is to sever both privity of
3 contract and privity of estate between the assigning landlord and the tenant.
4

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

14 Under paragraph (2), the landlord remains liable for the tenant's security deposit and
15 unearned rent unless the landlord complies with Section 1205 to transfer the funds to the
16 successor landlord or return them to the tenant.
17

18 **SECTION 304. RULES OF LANDLORD GOVERNING USE AND ENJOYMENT.**

19 (a) Except as otherwise provided in Section 305(a) or as required by law other than this
20 [act], a landlord may enforce a rule of the landlord in existence at the time the lease commenced
21 only if the rule was disclosed to the tenant under Section 108.

22 (b) Subject to subsections (c) and (d), after commencement of a lease, a landlord may
23 adopt or modify a rule concerning a tenant's use and enjoyment of the premises, but the rule or
24 modification shall take effect no earlier than [30] days after the landlord gives the tenant a notice
25 in a record of the rule or modification.

26 (c) In the case of a periodic tenancy for month to month, a rule or modification adopted
27 under subsection (b) shall take effect no earlier than the expiration of the period in Section
28 801(b)(2) during which the tenant or landlord could have exercised the right to terminate the
29 periodic tenancy.

30 (d) In the case of a tenancy for a fixed term, if the rule or modification substantially
31 modifies the tenant's bargain and is not required by law other than this [act], the rule is not

1 enforceable against the tenant unless the tenant consents to it in a signed record.

2 **Comment**

3 Rules as commonly understood apply to the manner in which the tenant may use the
4 premises such as rules relating to noise, the presence of animals, and the disposal of garbage. A
5 rule would not include agreements with respect to the length of a tenancy or the amount of rent
6 payable by a tenant.

7
8 This section governs rules adopted by the landlord. A companion section, Section 305,
9 governs rules adopted by a third party, such as a homeowner or condominium association, that
10 may apply to the leased property.

11
12 [Reporters and chair will expand this comment regarding periodic tenants].

13 14 **SECTION 305. RULES OF THIRD PARTIES GOVERNING USE AND** 15 **ENJOYMENT.**

16 (a) If, before the commencement of a lease, a landlord fails to disclose a rule adopted by a
17 person, other than the landlord, which substantially modifies the tenant's bargain and is not
18 required by law other than this [act] and the rule is enforced against the tenant, the tenant may:

19 (1) recover actual damages from the landlord; or

20 (2) terminate the lease by giving the landlord notice in a record that the lease will
21 terminate on a date specified in the notice which is not earlier than [30] days after the notice is
22 given.

23 (b) Except as otherwise provided in subsection (c), if, after the commencement of the
24 lease, a person, other than the landlord, adopts or modifies a rule that substantially modifies the
25 tenant's bargain which is not required by law other than this [act] and the rule is enforced against
26 the tenant, the tenant of a tenancy for a fixed term may terminate the lease by giving the landlord
27 notice in a record that the lease will terminate on a date specified in the notice which is not
28 earlier than [30] days after the notice is given, or, in the case of a periodic tenancy, terminate the
29 tenancy in accordance with Section 801.

1 (c) A tenant may not terminate a lease under subsection (b) if the lease provides that the
2 dwelling unit is subject to rules of a person, other than the landlord, and that the rules may be
3 modified by the person after the commencement of the lease.

4 **Comment**

5 This section addresses rules adopted by persons other than the landlord, such as
6 homeowners and condominium associations, that may affect how the tenant can use the
7 premises. If the landlord does not disclose such rules in existence when the lease commences,
8 the tenant can seek damages or terminate the lease but only if the rule is enforced against the
9 tenant and enforcement substantially modifies the tenant's bargain. If the rule is adopted after
10 the lease commences, it is inappropriate to hold the landlord liable for damages. At the same
11 time, if the rule substantially modifies the tenant's bargain and it is enforced against the tenant, it
12 is appropriate to allow the tenant to terminate the lease.

14 **ARTICLE 4**

15 **TENANT REMEDIES**

16 **SECTION 401. NOTICE AND OPPORTUNITY TO REMEDY.** Subject to Section
17 409, if a landlord fails to comply with the lease or Section 302, the tenant has the remedies under
18 Section 402 if the tenant gives the landlord:

19 (1) notice in a record of the noncompliance; and

20 (2) an opportunity to remedy the noncompliance within the following periods:

21 (A) subject to subparagraph (B), not later than [14] days after the tenant gave the
22 landlord the notice; and

23 (B) if the noncompliance by the landlord involves failure to provide an essential
24 service or the noncompliance materially interferes with the health or safety of the tenant or an
25 immediate family member, the landlord shall remedy the noncompliance as soon as practicable
26 but not later than [five] days after the tenant gave the landlord the notice.

27 **SECTION 402. NONCOMPLIANCE BY LANDLORD; IN GENERAL**

28 (a) Subject to Section 409, if a landlord's noncompliance with the lease or Section 302

1 results in the tenant not receiving an essential service or materially interferes with the health or
2 safety of the tenant or an immediate family member or materially interferes with the use and
3 enjoyment of the premises by the tenant or an immediate family member and is not remedied
4 during the applicable period specified in Section 401, the tenant may:

5 (1) terminate the lease as provided in Section 403; or

6 (2) except as otherwise provided in Section 404, continue the lease and elect one
7 or more of the following remedies:

8 (A) subject to Section 408, withhold the rent for the period of
9 noncompliance beginning on the date the tenant gave the landlord the notice under Section 401;

10 (B) recover actual damages;

11 (C) seek injunctive relief, specific performance, or other equitable relief;

12 (D) make repairs and deduct the cost from the rent as provided in Section
13 406; or

14 (E) secure an essential service that the landlord is obligated to provide or
15 comparable substitute housing during the period of noncompliance as provided in Section 407.

16 (b) If a landlord's noncompliance with the lease or Section 302 does not materially
17 interfere with the health and safety of the tenant or an immediate family member or does not
18 materially interfere with the use and enjoyment of the premises by the tenant or an immediate
19 family member, the tenant has the remedies provided in subsection (a)(2)(B), (C), and (D).

20 (c) A tenant may not seek a remedy under this section to the extent:

21 (1) the landlord's noncompliance was caused by the act or omission of the tenant,
22 an immediate family member, or a guest; or

23 (2) the tenant prevented the landlord from having access to the dwelling unit to

1 make repairs for the act or omission described in the tenant's notice under Section 401.

2 **Comment**

3 This section has been modified from the 1972 act to clarify the remedies available to a
4 tenant for a landlord's noncompliance with the provisions in Section 302 or under the lease. If
5 the tenant does not receive an essential service the landlord has a duty to provide under Section
6 302(b) or there is a material noncompliance by the landlord with the lease or Section 302(a)
7 affecting the health or safety of the tenant or an immediate family member or that materially
8 interferes with their use and enjoyment of the premises, the tenant can elect from among the
9 numerous remedies under this section. Under Section 302(b), the landlord has the duty to ensure the
10 dwelling unit has access to essential services, such as water. However, if the lease shifts the cost of
11 providing an essential service to the tenant and the tenant fails to pay the cost of the service, the failure of
12 the tenant to receive the essential service is not the result of the landlord's noncompliance. Conversely, if
13 the landlord fails to assure the dwelling unit has access to an essential service and the cost thereof has not
14 been shifted to the tenant, the landlord would be in breach of a duty under Section 302(b) for which a
15 remedy could be available under this section.

16
17 To illustrate this point, under Section 302(a)(3), the landlord has the duty to provide
18 plumbing services that conform to applicable law and are maintained in good working order.
19 The plumbing facilities are separate from the provision of water, which under Section 302(b) the
20 landlord may have a duty to provide as an essential service. Thus, if the dwelling unit has access
21 to water which under Section 302(b) the landlord was obligated to provide but the toilets within
22 the unit are not functioning, the tenant's remedy under Section 402 relates to whether the
23 noncompliance materially affects health and safety, not whether the landlord discharged the duty
24 to ensure the unit had access to an essential service. Whether a noncompliance "materially
25 interferes with the health and safety" of a tenant or "materially interferes with the use and
26 enjoyment of the premises" is a determination that depends upon the totality of the
27 circumstances. Assume, for example, the plumbing problem affected the operation of only one
28 toilet. If that is the only toilet in the dwelling unit, the inability to use that toilet would
29 materially interfere with the use and enjoyment of the unit and constitute a health and safety
30 issue. Conversely, if there were other toilets in the unit that were operating, the mere inability to
31 use one toilet would not necessarily materially impair the use and enjoyment of the unit or
32 present a health and safety issue.

33
34 Under this section the tenant may be entitled to "actual damages." Actual damages could
35 include diminution in the value of the dwelling unit. See Section 102(2) and (7). Under this
36 section such damages would be for the period beginning on the date the tenant gave the landlord
37 notice under Section 401 and ending on the date the noncompliance was remediated. The
38 concept of diminution in value of the dwelling unit was also in the 1972 act although slightly
39 different. The phrase is defined in paragraph 102(7) as "a reduction from the rent provided in a
40 lease that reflects the extent to which a noncompliant condition of the premises impairs the
41 tenant's use and enjoyment of the dwelling unit." The intent is to permit a court to consider,
42 without the need for expert testimony, such factors as the nature and duration of the defect, the
43 proportion of the dwelling unit that is affected, the value of services to which the tenant was
44 deprived, the degree of discomfort imposed by the defect, and the effectiveness of the landlord's
45 remediation efforts.

1 Remedies available to the tenant pursuant to Section 402 are not exclusive (see Section
2 110). For example, a tenant may have tort remedies for the landlord's noncompliance with the
3 lease or this act.

4
5 A duty to mitigate damages exists under Section 104(b).
6

7 If the dwelling unit or premises are substantially damaged or destroyed as the result of a
8 fire or other casualty to which Section 409 would apply, then the remedies in Section 409 rather
9 than this section apply.
10

11 The remedies in subsection (a)(2) are not available when the landlord's inability to
12 remedy a noncompliance is caused by reasons beyond the landlord's control. Thus Section 404
13 provides that the tenant's remedy under those circumstances is limited to termination of the
14 lease.
15

16 **SECTION 403. MATERIAL NONCOMPLIANCE BY LANDLORD;**
17 **TERMINATION OF LEASE.**

18 (a) If a landlord's noncompliance with the lease or Section 302 materially interferes with
19 the health or safety of the tenant or an immediate family member and the noncompliance has not
20 been remedied within the period provided in Section 401(2)(B), the tenant may terminate the
21 lease by giving the landlord notice in a record of the tenant's intent to terminate the lease
22 immediately or on a later date specified in the notice.

23 (b) If a landlord's noncompliance with the lease or Section 302 materially interferes with
24 the use and enjoyment of the premises unrelated to the health and safety of the tenant or an
25 immediate family member and the noncompliance has not been remedied within the period of
26 Section 401(2)(A), the tenant may terminate the lease by giving the landlord notice in a record of
27 the tenant's intent to terminate the lease on a date specified in the notice which is not earlier than
28 [14] days after the expiration of the period allowed under Section 401 for the noncompliance to
29 be remedied by the landlord.

30 (c) In addition to terminating the lease as provided in subsection (a) or (b), the tenant may
31 recover actual damages.

(d) If a tenant terminates a lease under this section, the landlord shall return the amount of any security deposit and unearned rent to which the tenant is entitled under Section 1204.

Comment

This section provides the notice procedures for terminating a lease. In the usual case, where the landlord's noncompliance materially interferes with the tenant's use and enjoyment of the premises, the tenant may terminate no earlier than [14] days after the notice period in 401 has expired. When the situation is of some urgency – i.e., when the noncompliance involves the failure to receive an essential service or materially interferes with the health and safety of the tenant or an immediate member, the tenant could terminate the lease immediately without the landlord having any time to cure the noncompliance. [Note that if the inability to receive essential services was due to the tenant's failure to pay for the service as provided under Section 302(b), this section would not apply.]

Under subsection (c), the tenant could recover actual damages that could include diminution in the value of the dwelling unit. Given that this remedy is in addition to terminating the lease, where the tenant has terminated the lease damages for the diminution in value should be for the period beginning on the date the tenant gave the landlord the Section 401 notice and the date the lease terminates.

SECTION 404. CIRCUMSTANCE BEYOND LANDLORD CONTROL. If a landlord's noncompliance with the lease or Section 302 materially interferes with the health and safety of a tenant or an immediate family member or the use and enjoyment of the premises by the tenant or an immediate family member and the landlord is unable to remedy the noncompliance within the applicable period specified in Section 401 because of a circumstance beyond the landlord's control, including the unavailability of materials, labor, or utilities, fire or other casualty, a natural disaster, or the death of the landlord, the tenant may terminate the lease as provided in Section 403(a), or if the tenant does not terminate the lease, may recover actual damages limited to diminution in the value of the dwelling unit.

Comment

This section recognizes that circumstances beyond the landlord's control may make it difficult or impossible for a landlord to make the repairs within the time limits set forth in Section 401.

1 This subsection refers to a number of circumstances that could excuse the landlord's
2 timely performance in remedying a noncompliance. Included among these are casualties such as
3 tornados, hurricanes, earthquakes, etc. See Section 165(c)(3) of the Internal Revenue Code. In
4 those situations, Section 409(a)(2) of this act generally provides the tenant with the option of
5 terminating the lease or, to the extent the dwelling unit remains habitable, remaining in
6 possession and seeking one of the remedies under Section 402(a)(2)(A), (B), (C), or (D).
7 However, the latter rights are subject to this Section 404. Thus, the tenant would not have all of
8 the remedies under 402(a)(2) if the landlord is unable to remedy a noncompliance within the
9 time period of Section 401 because of the continuing effects of a natural disaster or other
10 circumstance beyond the landlord's control. Assume, for example, that an electrical storm
11 damages the wiring in a portion of the dwelling unit but the rest of the unit remains habitable. In
12 many cases, Section 409(a)(2) would permit the tenant to remain in the unit and seek damages,
13 withhold rent, perform self-repairs under Section 406, or seek an injunction or specific
14 performance to have the landlord make the repairs. Section 404 provides a safe harbor for the
15 landlord, however, if the effects of the electrical storm were so widespread that the landlord is
16 unable to get an electrician to repair the wiring within the time period of Section 401. In that
17 case, the tenant's remedy would be limited to terminating the lease or if the tenant remains in
18 possession, say because the landlord did not elect to terminate the lease under Section 409(b),
19 actual damages limited to diminution in the value of the dwelling unit. Of course, diminution in
20 value damages are limited to the period that the premises were in noncompliance.

21
22 If a tenant is obligated to pay for utilities under Section 302(b) and tenant's failure to do
23 so causes the tenant not to receive an essential service, this section would not apply. However, if
24 the tenant was paying for the essential service but could not receive the service because of
25 circumstances beyond the landlord's control, the tenant could exercise the right to terminate the
26 lease or stay in possession and obtain damages.

27
28 **SECTION 405. LANDLORD FAILURE TO DELIVER POSSESSION TO**
29 **TENANT.**

30 (a) Except as otherwise provided in subsection (d), if a landlord does not deliver physical
31 possession of the dwelling unit to the tenant under Section 301, the tenant is not required to pay
32 rent until possession is delivered and may:

33 (1) terminate the lease by giving a notice in a record to the landlord at any time
34 before the landlord delivers possession of the unit to the tenant; or

35 (2) demand performance of the lease by the landlord and:

36 (A) recover actual damages and obtain possession of the unit from the
37 landlord; or

(B) obtain possession of the unit from any person wrongfully in possession, by any lawful means that could have been used by the landlord.

(b) If a tenant terminates the lease under subsection (a)(1), the landlord shall return to the tenant any amounts received from the tenant prior to the commencement of the lease.

(c) In addition to the rights provided to a tenant in subsections (a) and (b), if a landlord's failure to deliver possession to the tenant under Section 301 is willful, the tenant may recover [three] times periodic rent or [triple] the actual damages, whichever is greater.

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

Comment

Under subsection (a) the tenant can terminate the lease if the landlord fails to deliver physical possession of the dwelling unit to the tenant at the commencement of the lease. Under the prior 1972 act the phrase "actual possession" was used in lieu of "physical possession." In this act, the latter phrase was used as it is more descriptive of the landlord's duty. Legally, however, there should be no distinction between actual and physical possession. See also comments to Section 301.

Under subsection (a)(2), a tenant may elect to file an action for possession directly against a holdover tenant or other person in wrongful possession of the dwelling unit. If the tenant elects to sue the holdover tenant for possession, the tenant effectively elects to continue the lease with the landlord and thus, under subsection (d), is liable to the landlord for rent for the period beginning with the commencement of the term of the lease.

SECTION 406. REPAIR BY TENANT.

(a) Subject to subsection (d), if a landlord fails to comply with the lease or Section 302, the tenant may give notice to the landlord under Section 401 specifying the failure. If the landlord fails to comply within the applicable period specified in Section 401 and the reasonable cost of compliance does not exceed one month's periodic rent, the tenant may repair the condition at the landlord's expense.

1 (b) A tenant that makes repairs under subsection (a), after submitting to the landlord an
2 itemized statement, accompanied by receipts for purchased items and services, may deduct from
3 the rent the actual and reasonable cost incurred or the reasonable value of the work performed to
4 repair the condition, not exceeding one month's periodic rent, unless the tenant has been
5 reimbursed by the landlord.

6 (c) A repair by a tenant must be made in a professional manner and in compliance with
7 applicable law.

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

10 (1) the condition was caused by an act or omission of the tenant, an immediate
11 family member, or a guest; or

12 (2) the landlord was unable to remedy the condition within the applicable period
13 specified in Section 401 because the tenant denied the landlord access to the dwelling unit.

14 (e) A tenant's use of the remedy under this section is limited to one month's periodic rent
15 during any 12-month period.

16 **Comment**

17 Under subsection (b) if a tenant hires another person to perform a repair the landlord
18 should have made, the tenant recovers the actual and reasonable cost incurred by the tenant to
19 have the repair made. If the tenant is able to personally do the repair, the tenant may recover the
20 fair and reasonable value of the work performed to repair.

21
22 Under subsection (d), the tenant may not repair at a landlord's expense to the extent the
23 damage that was repaired was caused by the tenant, an immediate family member, or a guest.
24 For example, if the tenant breaks the door lock, the tenant cannot deduct the cost of the repair the
25 tenant makes from the rent. Subsection (d) would not preclude the tenant from making the repair,
26 but would preclude the deduction of the costs from the rent.

27
28 Subsection (e) is intended to assure the landlord that over any given 12-month period the
29 landlord's costs arising as the result of the tenant's election of this self-help remedy do not
30 exceed one month's rent. The 12-month look back period begins to run 12 months immediately

1 before the completion of the immediate repair for which the tenant has exercised the tenant's
2 rights under this section. For example, suppose the tenant paying monthly rent of \$500 properly
3 contracts for a plumber to make a repair that costs \$300. The repair is completed on November
4 10. The tenant is entitled to be reimbursed the entire \$300 if over the last 12 months, beginning
5 with November 10 of the preceding year, the tenant never used this remedy. If over that period
6 the tenant has previously used the remedy to the extent of \$400, the tenant would be able to
7 recoup only \$100 of the cost of the current \$300 repair.

8 9 **SECTION 407. WRONGFUL FAILURE TO PROVIDE ESSENTIAL SERVICE**

10 **BY LANDLORD.**

11 (a) If a tenant fails to receive an essential service the landlord has a duty to provide under
12 Section 302(b), the tenant may give notice to the landlord under Section 401 specifying the
13 failure. If the landlord fails to comply within the applicable period specified in Section 401, the
14 tenant may:

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

17 (2) procure comparable substitute housing at the landlord's expense during the
18 period of the noncompliance.

19 (b) In addition to the remedy provided in subsection (a)(2), a tenant may recover actual
20 damages.

21 (c) This section does not apply if the tenant's failure to receive the essential service was
22 caused by an act or omission of the tenant, an immediate family member, or a guest.

23 **Comment**

24
25 This section applies when the tenant fails to receive an essential service but decides to
26 continue the lease rather than to terminate it. See Section 402(a)(2)(E). It would not apply if the
27 tenant terminates the lease.

28
29 Under subsection (b), a tenant's actual damages could include the difference between the
30 rent provided in the lease and the actual and reasonable cost of substitute housing as well as
31 moving expenses. It also could include diminution in the value of the dwelling unit. See Section
32 102(2) and (7).

1 This section is inapplicable if the reason the tenant failed to receive an essential service
2 was the tenant's failure to pay the utility bill the tenant was obligated to pay. See Section
3 302(b)(2).
4

5 **SECTION 408. LANDLORD NONCOMPLIANCE AS DEFENSE TO ACTION**
6 **FOR POSSESSION OR NONPAYMENT OF RENT.**

7 (a) A tenant may defend an action by the landlord based on nonpayment of rent on the
8 ground that no rent was due because of the landlord's noncompliance with the lease or Section
9 302 and [counterclaim] for any amount the tenant may recover under the lease or this [act].

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

14 (c) If rent has been paid into escrow under this section and the court determines that the
15 landlord fully complied with the lease and Section 302, the court shall order the immediate
16 release to the landlord of rent held in escrow and direct the tenant to pay the landlord any
17 remaining rent owed.

18 (d) If rent is paid into escrow under this section and the court determines that the
19 landlord's noncompliance with the lease or Section 302 materially interferes with the health or
20 safety of the tenant or an immediate family member or with the use and enjoyment of the
21 premises by the tenant or an immediate family member, the court may order one or more of the
22 following:

23 (1) release to the landlord of all or part of the rent held in escrow to be used only
24 to bring the premises into compliance with the lease or Section 302;

25 (2) return to the tenant of all or part of the rent held in escrow in compensation

1 for:

2 (A) a repair made by the tenant in compliance with Section 406; or

3 (B) actual damages;

4 (3) the tenant's continued payment of rent into escrow as rent becomes due or
5 abatement of future rent until the landlord brings the premises into compliance with the lease or
6 Section 302; and

7 (4) payment to the landlord of any rent held in escrow not otherwise payable to the
8 tenant and any other amount the court determines the tenant owes the landlord.

9 (e) If rent has not been paid into escrow under this section and the court determines that
10 the landlord complied with the lease and Section 302, the court shall order the tenant to pay the
11 landlord all unpaid rent.

12 (f) If rent has not been paid into escrow under this section and the court determines that
13 the landlord's noncompliance with the lease or Section 302 materially interferes with the health
14 or safety of the tenant or an immediate family member or with the use and enjoyment of the
15 premises by the tenant or an immediate family member, the court shall order the tenant to pay the
16 landlord the unpaid rent less any amount expended by the tenant in compliance with Section 406
17 to repair the premises and actual damages.

18 (g) In addition to the other remedies provided in this section, the court may award
19 judgment for possession or other appropriate relief if the court determines the tenant:

20 (1) acted in bad faith in withholding rent; or

21 (2) failed to comply with the court's order to pay rent into escrow under
22 subsection (b) or to pay rent or other amounts owed to the landlord under this section.

23 (h) A court may not award a judgment for possession if the court determines that the

tenant withheld rent in good faith and the tenant complies with the court's order to pay unpaid rent into escrow or to the landlord under this section.

***Legislative Note:** State laws may differ on whether a landlord can bring a claim for both possession and rent in expedited summary eviction proceedings. If a state limits summary eviction proceedings to claims for possession, the state will need to revise subsections (e) through (h) of this section to conform to that state's practice.*

**SECTION 409. FIRE OR OTHER CASUALTY DAMAGE TO DWELLING UNIT
OR PREMISES.**

(a) Subject to subsection (b), if a dwelling unit or premises are substantially damaged or destroyed by fire or other casualty:

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

(2) subject to Section 404, if a part of the premises is rendered uninhabitable or unusable as a result of the fire or other casualty but continued occupancy of the unit is lawful, the tenant may continue the lease and may recover the remedies provided in Section 402(a)(2)(A), (B), (C), and (D) after complying with Section 401.

(b) If the dwelling unit or premises are substantially damaged or destroyed by fire or other casualty and repairs can be made only if the tenant vacates the dwelling unit, the landlord may terminate the lease by giving the tenant notice in a record that the lease will terminate on a date specified in the notice which is not earlier than [five] days after the notice is given.

(c) If a lease is terminated under subsection (a)(1) or (b), the landlord shall return the amount of any security deposit and unearned rent to which the tenant is entitled under Section 1204. In calculating the unearned rent, termination of the lease is deemed to occur on the date of the fire or other casualty.

1 (d) This section does not preclude:

2 (1) a landlord from seeking actual damages from the tenant under law of this state
3 other than this [act] for damages to the premises caused by the tenant, an immediate family
4 member, or a guest; or

5 (2) a tenant from seeking actual damages from the landlord under law of this state
6 other than this [act] if the fire or other casualty was caused by the landlord or the landlord's
7 agent.

8 **Comment**

9
10 When a dwelling unit has been partially damaged but the tenant's continued occupancy
11 of the undamaged part is lawful, the tenant may elect to remain in possession of the dwelling unit
12 under subsection (a)(2) but seek damages or other relief under Section 402(a)(2)(A), (B), (C), or
13 (D) for the portion of the unit that is uninhabitable. These rights may be limited, however, by the
14 safe harbor provided to landlords under Section 404. Thus, if the landlord is unable to make
15 repairs during the time period required by Section 401 because of circumstances beyond the
16 landlord's control (such as the continuing effects of a natural disaster that make it impossible to
17 get materials or personnel to make timely repairs), Section 404 limits the tenant's remedy to
18 termination of the lease or recovering actual damages limited to the diminution in the value of
19 the dwelling unit. See the comment to Section 404.

20 21 **SECTION 410. UNLAWFUL REMOVAL; EXCLUSION; OR DIMINUTION OF** 22 **ESSENTIAL SERVICE.**

23 (a) If a landlord unlawfully removes or excludes the tenant from the premises or willfully
24 interrupts or causes the interruption of an essential service that the landlord has the duty to
25 provide to the tenant, the tenant may:

- 26 (1) recover possession; or
27 (2) terminate the lease by giving the landlord a notice in a record of the tenant's
28 intent to terminate the lease immediately or on a later date specified in the notice; and
29 (3) in either case, may recover [three] times periodic rent or [triple] damages,
30 whichever is greater.

1 (b) If the lease terminates under subsection (a)(2), the landlord shall return the amount of
2 any security deposit and unearned rent to which the tenant is entitled under Section 1204.

3 **ARTICLE 5**

4 **TENANT'S DUTIES**

5 **SECTION 501. TENANT'S DUTIES.**

6 (a) In this section, "normal wear and tear" means deterioration that results from the
7 intended use of a dwelling unit, including breakage or malfunction due to age or deteriorated
8 condition. The term does not include deterioration that results from negligence, carelessness,
9 accident, or abuse of the unit, fixtures, equipment, or other tangible personal property by the
10 tenant, an immediate family member, or a guest.

11 (b) A tenant:

12 (1) shall comply with all obligations imposed on the tenant by the lease and this
13 [act];

14 (2) shall comply with all obligations imposed on a tenant by any applicable
15 building, housing, fire, or health code or other law;

16 (3) except with respect to duties imposed on the landlord by the lease, this [act],
17 or by law of this state other than this [act], shall keep the dwelling unit reasonably safe and
18 sanitary;

19 (4) shall remove all garbage, rubbish, and other debris from the unit in a clean and
20 safe manner;

21 (5) shall keep all plumbing fixtures in the unit reasonably clean;

22 (6) shall use in a reasonable manner all electrical, plumbing, heating, ventilating,
23 and air-conditioning systems and other facilities and appliances on the premises;

1 (7) without the landlord's consent, shall not intentionally or negligently:

2 (A) destroy, deface, damage, impair, or remove any part of the premises;

3 (B) destroy, deface, damage, impair, remove, or render inoperative any
4 safety equipment on the premises; or

5 (C) permit an immediate family member or a guest to do any of the acts
6 specified in this paragraph;

7 (8) shall not disturb the use and enjoyment of the premises by another tenant or
8 permit an immediate family member or a guest to do the same;

9 (9) shall not engage in or permit an immediate family member or a guest to
10 engage in any criminal activity on the premises;

11 (10) shall notify the landlord within a reasonable time of any condition of the
12 premises which requires repair by the landlord under the lease or Section 302;

13 (11) shall return the dwelling unit to the landlord at the termination of the lease in
14 the same condition as it was at the commencement of the term of the lease, with the premises
15 free of any damage caused by the tenant, an immediate family member, or a guest, except for:

16 (A) normal wear and tear;

17 (B) damage resulting from a cause beyond the control of the tenant, an
18 immediate family member, or a guest; and

19 (C) additions and improvements installed on the premises with the
20 landlord's consent; and

21 (12) unless the landlord and tenant otherwise agree, shall use the dwelling unit
22 only for residential purposes.

1 **Comment**

2
3 Under subsection (b)(3) the tenant is obligated to keep the dwelling unit in a safe or
4 sanitary condition unless the duty to do so is imposed on another, such as the landlord. For
5 example, because Section 302 imposes a duty on the landlord to conform plumbing fixtures to
6 applicable law, that duty is not shifted to the tenant by this section.
7

8 Subsection (b)(12) leaves to judicial determination whether the incidental use of a
9 dwelling unit for business, professional, or other purposes would constitute a use for other than
10 residential purposes. See 1 A.L.R. 6th 135 (2005)(collecting and analyzing cases). The provision
11 contemplates, however, that a landlord and tenant may agree that the tenant can use the dwelling
12 unit for both residential and commercial purposes. If the parties so agree, the tenant's actual
13 damages for a landlord's noncompliance with the lease or this act may include foreseeable
14 damages attributable to the commercial use.
15

16 Section 601(a)(2) allows the landlord to terminate a lease for tenant's material
17 noncompliance with Section 501. If tenant's noncompliance is not material, landlord cannot
18 terminate the lease under Section 601 but could resort to other remedies under the act. For
19 example, if tenant's minor child draws on the rented apartment's walls, the landlord could apply
20 the security deposit to the cost of repainting the wall.
21

22 **ARTICLE 6**

23 **LANDLORD REMEDIES**

24 **SECTION 601. TENANT'S FAILURE TO PAY RENT; OTHER**
25 **NONCOMPLIANCE WITH LEASE.**

26 (a) Except as otherwise provided by law of this state other than this [act]:

27 (1) a landlord may terminate a lease for nonpayment of rent by giving the tenant a
28 notice in a record stating that if the rent remains unpaid [14] days after the notice is given, the
29 lease will terminate upon the expiration of the [14]-day period or on a later date specified in the
30 notice;

31 (2) if there is a material noncompliance with a lease or this [act] by the tenant,
32 other than the nonpayment of rent, the landlord may give the tenant notice in a record specifying
33 the act or omission constituting the noncompliance and stating that the lease will terminate on a
34 date specified in the notice, which is not earlier than [30] days after the landlord gave the tenant

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

4 (b) Notwithstanding subsection (a), the landlord may terminate the lease without giving
5 the tenant an opportunity to remedy a noncompliance by giving the tenant the notice described in
6 subsection (c) if:

7 (1) the tenant failed to pay rent in a timely manner on at least [two] occasions
8 within the [four]-month period preceding the notice to terminate the lease;

9 (2) the tenant committed substantially the same act or omission that constituted a
10 prior noncompliance for which notice under subsection (a)(2) was given within six months
11 preceding the latest noncompliance;

12 (3) the tenant, an immediate family member, or guest engaged in a noncompliance
13 that poses an actual and imminent threat to the health and safety of any individual on the
14 premises, the landlord, or the landlord's agent; or

15 (4) subject to subsection (e), the landlord reasonably believes the tenant, an
16 immediate family member, or a guest has committed a criminal act on the premises.

17 (c) A notice in a record terminating a lease under subsection (b) shall specify the reason
18 for the termination and state that:

19 (1) for a termination under subsections (b)(1) or (b)(2), the lease will terminate
20 on a date specified in the notice which is not earlier than [14] days after the landlord gave the
21 notice, or

22 (2) for a termination under subsections (b)(3) or (b)(4), the lease will terminate
23 immediately or on a later date specified in the notice.

(d) Except as otherwise provided in this [act], if a tenant's noncompliance with Section 501 materially affects the health or safety of another tenant on the premises or is a material noncompliance with the lease, the landlord may:

(1) obtain injunctive relief or specific performance; or

(2) regardless of whether the lease terminates as a result of the tenant's noncompliance, recover actual damages [or liquidated damages as provided by the lease].

(e) A termination notice under subsection (b)(4) is not effective if a criminal act was the act of an immediate family member or guest and the tenant:

(1) neither knew nor should have known of the act; and

(2) took reasonable steps to ensure that there will be no repeated criminal acts on the premises by an immediate family member or guest.

Legislative Note: *If the state allows for liquidated damages in a lease the bracketed language should be included; if not, the language should be excluded.*

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.

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

(a) Subject to subsection (b), acceptance of rent for two or more successive rental periods by a landlord with knowledge of noncompliance by the tenant with the lease or this [act] or acceptance by the landlord of the tenant's performance that varies from the terms of the lease or this [act] is a waiver of the landlord's right to terminate the lease for that noncompliance, unless the landlord and tenant otherwise agree after the noncompliance occurs.

(b) This section does not prevent the landlord or tenant from exercising their rights under

Section 801 to terminate a periodic tenancy.

SECTION 603. DISTRAINT FOR RENT; LIENS.

(a) Distraint for rent is abolished.

(b) A landlord may not create, perfect, or enforce a lien or security interest on a tenant's tangible personal property to the extent the lien or security interest secures the tenant's performance under the lease or this [act]. This subsection does not apply to a lien or security interest created or perfected before the [effective date of this [act]].

Comment

This section prohibits the landlord from seizing the tenant's tangible personal property to satisfy the landlord's claims against the tenant or filing a lien against the tenant's tangible 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 tangible 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, if the landlord also owned an appliance store from which tenant purchased an appliance under a monthly payment plan, a landlord's lien on the appliance to secure tenant's payment of the debt incurred in purchasing the appliance is not prohibited by this act.

SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION.

(a) In this section, "reasonable efforts" means steps a landlord would take to rent a dwelling unit if the unit is vacated at the end of a term, including 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 before the end of the term by returning the keys or other means of access or otherwise notifies the landlord the unit has been vacated; or

(2) rent that was due was not paid for at least [five] days and the tenant has:

(A) vacated the unit by removing substantially all of the tenant's personal

1 property from the unit and the premises; and

2 (B) caused the termination of an essential service or otherwise indicated
3 by words or conduct that the tenant has no intention of returning to the unit.

4 (c) If a tenant abandons the dwelling unit before the end of the term, the landlord may
5 recover possession of the unit without a court order and may elect to:

6 (1) accept the tenant's abandonment of the unit by notice in a record given to the
7 tenant accepting the abandonment, in which case:

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

9 (B) the landlord and tenant are liable to each other under the lease or this
10 [act] only for a noncompliance with the lease that occurred before the lease terminates; and

11 (C) the landlord shall return the amount of any security deposit and
12 unearned rent to which the tenant is entitled under Section 1204; or

13 (2) treat the abandonment as wrongful.

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

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

19 (2) If the landlord leases the abandoning tenant's unit to another tenant for a term
20 beginning before the expiration of the abandoning tenant's lease, the abandoning tenant's lease
21 terminates as of the date of the new tenancy and the landlord may recover actual damages from
22 the abandoning tenant.

23 (3) If the landlord uses reasonable efforts to lease the abandoning tenant's unit but

1 is unable to lease it or is able to lease it only for an amount less than the rent payable by the
2 abandoning tenant, the landlord may recover actual damages from the abandoning tenant.

3 (4) If the landlord fails to use reasonable efforts to lease the abandoning tenant's
4 unit, the lease terminates as of the date of the abandonment and the landlord and tenant are liable
5 to each other under the lease or this [act] only for a noncompliance with the lease that occurred
6 before the date of the abandonment.

7 (5) After deducting the landlord's actual damages, the landlord shall return the
8 amount of any security deposit and unearned rent to which the tenant is entitled under Section
9 1204.

10 **Comment**

11
12 Under subsection (a) the reasonable steps include advertising the unit and showing the
13 unit to any prospective tenants. Advertising can be by a variety of means including sending
14 emails to prospective tenants, hiring a real estate agent to locate prospective tenants, posting for
15 rent signs on the premises, and advertising the unit for rent in newspapers or other media.

16
17 Under subsection (b)(2)(B), the tenant might cause termination of utility services by
18 cancelling the services or merely not paying the bill.

19
20 In light of subsection (c), a landlord who wishes to hold an abandoning tenant liable for
21 breaches of the lease after the tenant abandons the premises should not accept the abandonment
22 but should treat the abandonment as wrongful. Thus, if tenant abandons the premises on the date
23 rent would otherwise be due, rather than accepting the abandonment which would result in the
24 tenant owing no rent, the landlord should treat the abandonment as wrongful under subsection
25 (c)(2).

26
27 In light of subsection (d)(1), when at the time the landlord is fulfilling the duty to
28 mitigate the landlord has other vacant units to rent, the landlord can show and lease the other
29 units to prospective tenants before showing the abandoned unit to prospective tenants.

30
31 If a tenant abandons the dwelling unit, the landlord may choose to accept the
32 abandonment, thus agreeing to a termination of the lease. If, at the time of the abandonment, the
33 tenant is in arrears on rent, the landlord would still have a cause of action to recover the past due
34 rent. However, by accepting the abandonment, the landlord would not have a cause of action for
35 actual damages resulting from the abandonment.

36
37 Conversely, if the landlord does not accept the abandonment, the landlord can seek to

1 recover damages from the tenant for anticipatory breach or actual damages as provided in
2 subsection (d)(3).

3
4 **SECTION 605. RECOVERY OF POSSESSION LIMITED; INTERRUPTION OF**
5 **ESSENTIAL SERVICE.** Except as provided in Section 604, a landlord:

6 (1) may not recover or take possession of a dwelling unit by an act of self-help, including
7 willful interruption or causing the willful interruption of an essential service to the unit; and

8 (2) may recover possession of premises following the termination of a lease only through
9 an action permitted by law of this state other than this [act].

10 **Comment**

11 Typically, with most lease terminations, upon termination of the lease the tenant
12 voluntarily vacates the premises and the landlord retakes possession without the intervention of
13 courts. But if a lease terminates and the tenant does not vacate the premises, the landlord will
14 need to bring an action for possession. Subsection (a) bars the landlord from removing the tenant
15 from the premises by self-help and subsection (b) sets up the general principle that to recover
16 possession from a tenant who has not relinquished possession an action is required. This action
17 might be under the state's ejectment law or pursuant to a more expedited summary procedure.
18 Under Section 604, however, a landlord could obtain possession without a court order where the
19 tenant has abandoned the premises in which case the landlord would not need a court order.

20
21 **ARTICLE 7**

22 **ACCESS TO DWELLING UNIT**

23 **SECTION 701. LANDLORD ACCESS TO DWELLING UNIT.**

24 (a) A tenant may not unreasonably withhold consent to the landlord to enter the dwelling
25 unit to:

26 (1) inspect it;

27 (2) make a necessary or agreed-to repair, alteration, or improvement;

28 (3) supply a necessary or agreed-to service; or

29 (4) exhibit the unit to a prospective or actual purchaser, mortgagee, tenant,
30 worker, contractor, or a public official responsible for enforcement of a building, housing, fire,

1 or health code.

2 (b) Except as otherwise provided in subsection (c), a landlord may enter a dwelling unit
3 only at reasonable times with the tenant's consent and shall give the tenant at least [24] hours'
4 notice of the intent to enter the unit. The notice must include the intended purpose for the entry
5 and the date and a reasonable time period in which the landlord anticipates making the entry.

6 (c) In an emergency, for routine maintenance or pest control, or when maintenance or
7 repairs are being made at the tenant's request, the landlord may enter the dwelling unit without
8 the tenant's consent and shall give notice that is reasonable under the circumstances. If the
9 landlord has entered when the tenant is not personally present and prior notice has not been
10 given, the landlord shall place a notice of the entry in a conspicuous place in the unit stating the
11 fact of entry, the date and time of entry, and the reason for the entry.

12 (d) A landlord may not abuse the right to enter a tenant's dwelling unit or use that right to
13 harass the tenant.

14 (e) Except as otherwise provided in this section, a landlord has no other right to enter a
15 dwelling unit unless:

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

17 (2) entry is under a court or administrative order; or

18 (3) the tenant has abandoned the unit under Section 604.

19 **Comment**

20
21 If a landlord performs routine maintenance and pest control pursuant to a fixed schedule
22 of entry dates, the landlord will be in compliance with the advance notice requirement of
23 subsection (b) if the landlord delivers that schedule to the tenant at the commencement of the
24 term of the lease and includes a reasonable time period in which the maintenance or pest control
25 will be performed on the dates indicated in the schedule. [Review]
26

1 **SECTION 702. REMEDIES FOR ABUSE OF ACCESS.**

2 (a) If a tenant unreasonably refuses to allow the landlord access to a dwelling unit:

3 (1) a court may compel the tenant to grant the landlord access to the unit; or

4 (2) the landlord may terminate the lease by giving the tenant a notice in a record
5 stating that if the tenant fails to grant the landlord access to the unit no later than [14] days after
6 the landlord gave the notice, the lease will terminate upon the expiration of the [14]-day period
7 or on a later date specified in the notice.

8 In either case, the landlord may recover actual damages or [one] month's periodic rent,
9 whichever is greater.

10 (b) If a landlord makes an unlawful entry of a tenant's dwelling unit, a lawful entry in an
11 unreasonable manner, or repeated demands for entry which are otherwise lawful but have the
12 effect of harassing the tenant, the tenant may seek injunctive relief to prevent the recurrence of
13 the conduct or terminate the lease by giving the landlord a notice in a record that the lease will
14 terminate immediately or on a later date specified in the notice. In either case, the tenant may
15 recover actual damages or [one] month's periodic rent, whichever is greater.

16 **ARTICLE 8**

17 **PERIODIC AND HOLDOVER TENANCY; DEATH**

18 **OF TENANT**

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

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

22 (b) Except as otherwise provided in this [act], a landlord or tenant may terminate a
23 periodic tenancy:

1 (1) for week to week, by giving the other at least [five] days' notice in a record of
2 the party's intent to terminate the tenancy on the date specified in the notice; and

3 (2) for month to month, by giving the other at least [one] month's notice in a
4 record of the party's intent to terminate the tenancy at the end of the monthly period.

5 **Comment**

6
7 Under subsection (b)(2), a month to month tenancy can be terminated by giving one
8 month's notice. The termination date in the notice must coincide with the normal end of the
9 monthly period. Thus, if the tenancy begins on the first of the month, the termination date in the
10 notice must be on the last day of at least the next month or it could be on the last date of any
11 month at least one month after the notice is given. If the month-to-month tenancy begins on the
12 15th of the month, the one-month notice must have a termination date no earlier than the 14th of
13 the next month but could have a termination date on the 14th for subsequent months. Consistent
14 with common law, this [act] would not require the notice to include a reason for the termination.
15

16 **SECTION 802. HOLDOVER TENANCY.**

17 (a) Except as otherwise provided in subsection (b) and Section 405(a)(2), if a tenant
18 remains in possession without the landlord's consent after expiration of a tenancy for a fixed
19 term or termination of a periodic tenancy, the landlord may bring an action for possession. If the
20 tenant's holdover is willful and not in good faith, the landlord may recover [three] times periodic
21 rent or [triple] the actual damages, whichever is greater.

22 (b) Unless the landlord and the tenant otherwise agree in a record, if a tenant remains in
23 possession with the landlord's consent after expiration of a tenancy for a fixed term, a periodic
24 tenancy for month to month arises under the same terms as the lease.

25 **Comment**

26 Under the common law, largely reflected in this section, if a tenant holds over beyond the
27 end of the term, the landlord may elect to treat the holdover tenant as a trespasser (subsection (a))
28 or treat the tenant as a periodic tenant. Under the common law, the periodic tenancy arising from
29 a holdover was a year to year. Under this act it is limited to month to month. Additionally, the
30 terms of the periodic tenancy are the same as the lease that terminated. However, this is not true
31 if the landlord and tenant otherwise agreed. Such agreement may be in the terms of the original
32 lease or determined from subsequent agreements. For example, the parties may have agreed in a

1 record that if the tenant held over rent would increase by 10%. To be effective, however, that
2 agreement must be in a record. Thus, oral agreements would not change the terms of the
3 holdover tenancy.

4
5 The landlord's rights under this section are subject to Section 405(a)(2). That subsection
6 gives a succeeding tenant the right to bring the action for possession against the holdover tenant.

7 8 **SECTION 803. DEATH OF TENANT.**

9 (a) If the sole tenant under a lease dies before the end of a tenancy for a fixed term or a
10 periodic tenancy, the tenant's surviving spouse [or partner in a civil union] [or domestic partner]
11 who resides in the dwelling unit may assume the lease by giving the landlord notice in a record
12 not later than [20] days after the tenant's death stating the spouse's [or partner's] intent to
13 assume the lease. On assuming the lease, the spouse [or partner] becomes the tenant under the
14 lease.

15 (b) Except as otherwise provided in subsection (a), (c), or (d) or law of this state other
16 than this [act], the landlord or a tenant representative may terminate the lease of the deceased
17 tenant by giving to the other notice in a record that the lease will terminate on a date specified in
18 the notice which is not earlier than [30] days after the notice is given in the case of a tenancy for
19 a fixed term or a specified date consistent with Section 801(b) in the case of a periodic tenancy.

20 (c) If the deceased tenant is survived by a spouse [or partner in a civil union][or domestic
21 partner] who resides in the dwelling unit, a notice to terminate a lease under subsection (b) may
22 not be given before the time period described in subsection (a) has expired.

23 (d) If the landlord is unable to contact the deceased tenant's surviving spouse, [or partner
24 in a civil union] [or domestic partner] who resides in the dwelling unit or tenant representative
25 for purposes of termination under subsection (b), the landlord may terminate the lease without
26 notice if rent that was due was not paid for at least [25] days.

1 **Comment**

2 Any notice in a record given under this section must comply with Section 107(b).

3 Under subsection (a) the surviving spouse [, partner in a civil union, or domestic partner]
4 who resides in the dwelling unit may assume the lease. Upon such assumption, the spouse
5 becomes the tenant under the lease. An assumption does not require the landlord's consent.
6

7 If a tenant dies during the term of a lease, either the landlord or tenant representative (as
8 defined in Section 102(34)) can elect to terminate the lease under subsection (b) unless
9 subsection (a) or other law would prohibit the termination. A notice to terminate may not be
10 given, however, until the surviving spouse, [partner in a civil union] or [domestic partner] has the
11 opportunity to exercise the right granted under subsection (a).
12

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

23 **ARTICLE 9**

24 **RETALIATION**

25 **SECTION 901. RETALIATION PROHIBITED.**

26 (a) A landlord may not engage in conduct described in subsection (b) if the landlord's
27 purpose is to retaliate against a tenant who:

28 (1) complained to a governmental agency responsible for the enforcement of:

29 (A) a building, housing, fire, or health code violation applicable to the
30 premises materially affecting the health or safety of the tenant or an immediate family member;

31 or

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

33 (2) complained to the landlord of a noncompliance with the lease or Section 302;

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

2 (4) exercised or attempted to exercise a legal right or remedy under a lease, this
3 [act], or law of this state other than this [act]; or

4 (5) pursued an action or sought an administrative remedy against the landlord or
5 testified against the landlord in court or an administrative proceeding.

6 (b) Conduct that may be retaliatory under subsection (a) includes taking or threatening to
7 take any of the following acts:

8 (1) increasing the rent or fees;

9 (2) decreasing services, increasing the tenant's obligations, imposing different
10 rules on or selectively enforcing the landlord's rules against the tenant or an immediate family
11 member, or otherwise materially altering the terms of the lease;

12 (3) bringing an action for possession on a ground other than nonpayment of rent;

13 (4) refusing to renew a tenancy for a fixed term under a lease containing a
14 renewal option exercisable by the tenant without the need for further negotiation with the
15 landlord for any period after the lease would otherwise terminate;

16 (5) terminating a periodic tenancy; or

17 (6) committing a criminal act against the tenant, an immediate family member, or
18 a guest.

19 (c) A landlord is not liable for retaliation under subsection (a) if:

20 (1) the violation of which the tenant complained under subsection (a)(1) or (2)
21 was caused primarily by the tenant, an immediate family member, or a guest;

22 (2) the tenant's conduct described in subsection (a) was in an unreasonable
23 manner or at an unreasonable time, or was repeated in a manner harassing the landlord;

1 (3) the tenant was in default in the payment of rent at the time the notice of the
2 action for possession described in subsection (b)(3) was sent;

3 (4) the tenant, an immediate family member, or a guest engaged in conduct that
4 threatened the health or safety of another tenant on the premises;

5 (5) the tenant, an immediate family member, or a guest engaged in a criminal act
6 on the premises;

7 (6) the landlord is seeking to recover possession based on a notice to terminate the
8 lease and the notice was given to the tenant before the tenant engaged in conduct described in
9 subsection (a); or

10 (7) the landlord's compliance with a building, housing, fire, or health code
11 requires repairs, alteration, remodeling, or demolition that effectively would deprive the tenant of
12 the use and enjoyment of the premises.

13 **SECTION 902. TENANT REMEDIES FOR RETALIATORY CONDUCT.**

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

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

18 (2) the tenant may recover [three] times periodic rent or [triple] the actual
19 damages, whichever is greater.

20 (b) If a lease is terminated under subsection (a), the landlord shall return the amount of
21 any security deposit and unearned rent to which the tenant is entitled under Section 1204.

22 (c) A tenant's exercise of a right under this section does not release the landlord from
23 liability under Section 402.

1 **SECTION 903. PRESUMPTION OF RETALIATORY CONDUCT.**

2 (a) Except as otherwise provided in subsection (b), evidence that a tenant has engaged in
3 conduct described in Section 901(a) no earlier than [six] months before the landlord's alleged
4 retaliatory conduct creates a presumption that the purpose of the landlord's conduct was
5 retaliation.

6 (b) A presumption does not arise under subsection (a) if the tenant engaged in conduct
7 described in Section 901(a) after the landlord gave notice to the tenant of the landlord's intent to
8 engage in conduct described in Section 901(b).

9 (c) If a presumption arises under subsection (a), the landlord may rebut the presumption
10 by [a preponderance of][clear and convincing] evidence showing that the landlord had sufficient
11 justification for engaging in the conduct under Section 901(b) and would have engaged in the
12 conduct in the same manner and at the same time regardless of whether the tenant had engaged
13 in conduct described in Section 901(a).

14 **SECTION 904. LANDLORD REMEDIES FOR BAD FAITH ACTION OF**
15 **TENANT.** If a tenant engages in conduct described in Section 901(a)(1) or (5) knowing there is
16 no factual or legal basis for the conduct, the landlord may recover actual damages and a court
17 may award the landlord an amount up to [three] times periodic rent.

18 **ARTICLE 10**

19 **DISPOSITION OF TENANT PERSONAL PROPERTY**

20 **SECTION 1001. DISPOSITION OF TENANT PERSONAL PROPERTY ON**
21 **PREMISES.**

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

1 (1) the tenant vacates the unit at the termination of the tenancy; or

2 (2) the tenant abandons the unit under Section 604.

3 (b) If personal property remains on the premises after possession is relinquished to the
4 landlord and the landlord and tenant have not otherwise agreed at the time of relinquishment, the
5 landlord shall:

6 (1) subject to subsection (c), give the tenant notice in a record advising the tenant
7 of the tenant's right to retrieve the personal property; and

8 (2) leave the property in the dwelling unit or store the property on the premises or
9 in another place of safekeeping and exercise reasonable care in moving or storing the property.

10 (c) The notice required by subsection (b)(1) must be posted at the dwelling unit and:

11 (1) sent to any forwarding address the tenant provided to the landlord or an
12 address provided by the tenant to the landlord under Section 109 or, if no address is provided, to
13 the address of the unit;

14 (2) inform the tenant of the right to contact the landlord to claim the property
15 within the time period specified in subsection (d), subject to the payment of the landlord's
16 inventorying, moving, and storage costs; and

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

19 (d) If a tenant contacts the landlord not later than [eight] days after the landlord gives
20 notice to the tenant under subsection (b), the landlord shall permit the tenant to retrieve personal
21 property not later than [15] days after the date of contact or within a longer period to which the
22 parties agree.

23 (e) A landlord may require the tenant to pay the reasonable inventorying, moving, and

1 storage costs before retrieving personal property under subsection (d).

2 (f) This section does not prohibit a landlord from immediately disposing of perishable
3 food, hazardous material, garbage, and trash, or turning over an animal to an animal-control
4 officer, humane society, or other person willing to care for the animal.

5 (g) Unless a landlord and tenant otherwise agree, if the tenant fails to contact the landlord
6 or retrieve personal property as provided in subsection (d), the property is deemed abandoned
7 and:

8 (1) if a sale is economically feasible, the landlord shall sell the property and treat
9 the proceeds, after deducting the reasonable cost of inventorying, moving, storing, and disposing
10 of the property, as part of the tenant's security deposit; or

11 (2) if a sale is not economically feasible, the landlord may dispose of the property
12 in any manner the landlord considers appropriate.

13 (h) A landlord that complies with this section is not liable to the tenant or another person
14 that has a claim or interest in the personal property removed from the premises.

15 (i) A landlord who recovers possession of a dwelling unit under a court order need not
16 comply with this section. If the landlord who recovers possession of a dwelling unit under a
17 court order elects to comply with this section, the landlord is not liable to the tenant or another
18 person that has a claim or interest in the personal property removed from the premises.

19 **Comment**

20
21 This section applies, for example, if a lease terminates early as the result of an act of
22 domestic violence. However, if there are cotenants to the lease such that the lease does not
23 terminate then this section does not apply. In the latter case, control of the dwelling unit remains
24 with the other tenants; it does not belong to the landlord. Thus, if the tenant whose interest in the
25 lease is released leaves personal property at the dwelling unit, that tenant would need to contact
26 the remaining tenants to retrieve that property.

27
28 While a landlord is not required to inventory the tenant's property, if the landlord does,

1 the landlord is entitled to recover the inventory costs.

2
3 **SECTION 1002. REMOVAL OF DECEASED TENANT'S PERSONAL**

4 **PROPERTY BY TENANT REPRESENTATIVE.**

5 (a) If a landlord knows of the death of a tenant who, at the time of death, was the sole
6 occupant of the dwelling unit under a lease, the landlord:

7 (1) shall notify a tenant representative of the death;

8 (2) shall give the tenant representative access to the premises at a reasonable time
9 to remove any personal property from the unit and other personal property of the tenant
10 elsewhere on the premises;

11 (3) may require the tenant representative to prepare and sign an inventory of the
12 property being removed; and

13 (4) shall pay the tenant representative the deceased tenant's security deposit and
14 unearned rent to which the tenant would otherwise have been entitled under Section 1204.

15 (b) A contact person or an heir accepts appointment as a tenant representative by
16 exercising authority under this [act] or any other assertion or conduct indicating acceptance.

17 (c) The contact person or heir's authority to act under this [act] terminates when the
18 contact person, heir, or the landlord knows that a personal representative has been appointed for
19 the deceased tenant's estate.

20 (d) A landlord that complies with this section is not liable to the tenant's estate or another
21 person that has a claim or interest in the personal property removed from the premises, unearned
22 rent, or security deposit.

23 (e) A landlord that willfully violates subsection (a) is liable to the estate of the deceased
24 tenant for actual damages.

(f) In addition to the rights provided in this section, the tenant representative has the deceased tenant's rights and responsibilities under Section 1001.

Comment

The purpose of this section is to authorize a tenant representative to remove a deceased tenant's personal property and receive the return of the security deposit and unearned rent. The tenant representative typically will be the personal representative of the deceased tenant's estate, but if no personal representative has been appointed, the tenant representative will be the contact person under Section 109 or, in the absence of a contact person, an heir of the deceased tenant under the state's intestate succession laws. See Section 102(34). In the latter case, the landlord has no obligation to identify all of the deceased tenant's heirs and may give possession to *any* individual the landlord reasonably believes to be an heir of the deceased tenant.

Subsection (f) applies if the lease is terminated by the landlord or the tenant representative under Section 803(b). In that case, the tenant representative would have the rights and obligations of a tenant under Section 1001 if any personal property remained in the dwelling unit after possession of the dwelling unit had been relinquished to the landlord.

This section works in tandem with Section 1003, which provides procedures for a landlord to follow in disposing of personal property when the landlord has been unable to identify or contact a tenant representative who can act under this section.

Whether the tenant representative is entitled to keep any of the tenant's personal property or security deposit will depend on law other than this act.

SECTION 1003. DISPOSITION OF DECEASED TENANT'S PERSONAL PROPERTY ABSENT A TENANT REPRESENTATIVE.

(a) If the landlord knows of the death of a tenant who, at the time of death, was the sole occupant of the dwelling unit under a lease, and the landlord terminates the lease under Section 803(d) because the landlord is unable to notify a tenant representative, the landlord:

(1) shall mail a notice to the tenant at the tenant's last known address or other address of the tenant known to the landlord and to any emergency contact person listed on the tenant's application to rent the dwelling unit stating:

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

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

1 (C) that the premises contain personal property subject to disposal by the
2 landlord if not claimed within [60] days after the notice was sent; and

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

5 (2) with the exercise of reasonable care, may leave the property in the dwelling
6 unit or inventory the property and store it on the premises or in another place of safekeeping.

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

11 (c) If a deceased tenant's personal property is not retrieved within the time period in
12 subsection (b), the landlord may dispose of the property in compliance with Section 1001(g).

13 **Comment**

14
15 This section provides a process through which a landlord may dispose of a deceased
16 tenant's personal property if the landlord is unable to identify or contact a tenant representative.
17 Although the procedures generally parallel the provisions regarding disposition of a tenant's
18 personal property in Section 1001, some variation is required in the type of notice that must be
19 given and the time period for a tenant representative to retrieve the property.

20
21 Sections 1002 and 1003 do not govern the ultimate disposition of the personal property
22 removed from the property by a tenant representative. Those rights are determined under the
23 state's law governing decedents' estates. Thus, the tenant representative takes possession of the
24 personal property subject to those other laws.

25 **ARTICLE 11**

26 27 **EFFECT OF DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING, OR** 28 **SEXUAL ASSAULT**

29 **SECTION 1101. DEFINITIONS.** In this Article:

30 (1) "Attesting third party" means a law enforcement official, licensed health-care

1 professional, victim advocate, or victim-services provider.

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

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

6 (4) “Perpetrator” means an individual who commits an act of domestic violence on a
7 tenant or an immediate family member.

8 (5) “Sexual assault” means [sexual assault] as defined in [insert reference to definition in
9 other state law].

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

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

16 (8) “Victim-services provider” means a person that assists victims of domestic violence,
17 dating violence, stalking, or sexual assault. The term includes a rape crisis center, domestic
18 violence shelter, faith-based organization, or other organization with a history of work
19 concerning domestic violence, dating violence, stalking, or sexual assault.

20 **Legislative Note:** *If an enacting jurisdiction does not legislate with respect to dating violence, it*
21 *may either retain dating violence in this act and draft its own definition of dating violence or*
22 *delete dating violence as one of the types of domestic violence under this act. A jurisdiction that*
23 *does not use the phrase “domestic violence,” “dating violence,” “stalking,” or “sexual*
24 *assault,” should replace the phrases used in this act with the appropriate phrases used in the*
25 *jurisdiction.*
26

1 **SECTION 1102. EARLY RELEASE OR TERMINATION OF LEASE.**

2 (a) Subject to subsection (e), if a victim of an act of domestic violence, dating violence,
3 stalking, or sexual assault is a tenant or an immediate family member and has a reasonable fear
4 of suffering psychological harm or a further act of domestic violence, dating violence, stalking,
5 or sexual assault if the victim continues to reside in the dwelling unit, the tenant is released from
6 the lease, without the necessity of the landlord's consent, if the tenant gives the landlord a notice
7 that complies with subsection (b) and:

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

10 (2) evidence of the conviction or adjudication of a perpetrator for an act of
11 domestic violence, dating violence, stalking, or sexual assault against the tenant or an immediate
12 family member; or

13 (3) a verification which complies with Section 1104.

14 (b) In order to be released from a lease under subsection (a), the tenant must give the
15 landlord notice in a record that:

16 (1) states the tenant's intent to be released from the lease on a date no earlier than
17 [30] days from the date of the notice or, if the perpetrator is a cotenant of the dwelling unit, an
18 earlier date;

19 (2) states facts giving rise to the fear of psychological harm or suffering an act of
20 further domestic violence, dating violence, stalking, or sexual assault if the victim continues to
21 reside in the unit; and

22 (3) is given to the landlord:

23 (A) not later than [90] days after an act of domestic violence, dating

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

2 (B) when a court order exists preventing contact by the perpetrator with
3 the tenant because of an act of domestic violence, dating violence, stalking, or sexual assault; or

4 (C) if the perpetrator was incarcerated, not later than [90] days after the
5 tenant acquired knowledge that the perpetrator is no longer incarcerated.

6 (c) If there is only one individual tenant of the dwelling unit:

7 (1) a release under subsection (a) terminates the lease on the date specified in the
8 notice under subsection (b) if the tenant vacates the dwelling unit on or before that date; and

9 (2) the tenant is not liable for rent accruing after the lease terminates or other
10 actual damages resulting from termination of the lease, but the tenant remains liable to the
11 landlord for rent and other amounts owed to the landlord before the termination of the lease.

12 (d) If there are multiple individual tenants of the dwelling unit:

13 (1) the tenant who gave the notice under subsection (b) is released from the lease
14 as of the date in the notice if the tenant vacates the dwelling unit on or before that date, but the
15 release of one tenant under this section does not terminate the lease with respect to other tenants;

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

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

21 (4) the landlord is not required to return to the tenant released from the lease or a
22 remaining tenant any security deposit or unearned rent to which the tenant is otherwise entitled
23 under Section 1204 until the lease terminates with respect to all tenants.

(e) This section does not apply if a tenant seeking the release from the lease is a perpetrator.

Comment

Section 1102 is self-executing. Upon filing the appropriate documentation the tenant is released from the lease; no additional action is required or expected on the part of the landlord as would be the case when a tenant abandons the dwelling unit and an issue arises regarding the landlord's acceptance of the tenant's surrender. Of course, if the tenant vacates and subsequently the landlord sues for rent claiming the tenant had no reasonable fear of suffering psychological harm or a further act of domestic violence, dating violence, stalking, or sexual assault, the court would have to decide that question.

If a dwelling unit is rented by a revocable trust for the benefit of the settlor or a limited liability company for the benefit of its president, under Section 102(33)(C) the settlor or president is a tenant. If the settlor or president became the victim of domestic violence, dating violence, stalking, or sexual assault, and there were no other individual tenants of the dwelling unit, the lease would terminate under subsection (c).

Under subsection (d)(2), a tenant who is released from the lease is not liable to the landlord or another person for rent or actual damages. Thus, if T and T-1 are cotenants but T is released from the lease as a result of an act of domestic violence committed by P, T would not be liable for rent to the landlord for the period after the release. Furthermore, T would not be liable to T-1 when, following T's release from the lease, T-1 is liable to the landlord for all of the rent accruing after T's release. Under subsection (d)(3), however, T-1 could make a claim against P for the additional rent T-1 owes.

SECTION 1103. LANDLORD OBLIGATIONS ON EARLY RELEASE OR TERMINATION. If a tenant is released from a lease under Section 1102, the landlord:

(1) except as otherwise provided in Section 1102(d)(4), shall return the amount of any security deposit and unearned rent to which the tenant is entitled under Section 1204 after the tenant vacates the dwelling unit;

(2) may not assess a fee or other penalty against the tenant for exercising a right granted under Section 1102; and

(3) may not disclose information required to be reported to the landlord under Section 1102 unless:

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

3 (B) the information is required to be disclosed by a court order or law of
4 this state other than this [act].

5 **SECTION 1104. VERIFICATION.**

6 (a) A verification under oath given by a tenant under Section 1102(a)(3) must include the
7 following:

8 (1) from the tenant:

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

10 (B) the approximate dates during which an act of domestic violence,
11 dating violence, stalking, or sexual assault occurred;

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

14 (D) a statement that because of an act of domestic violence, dating
15 violence, stalking, or sexual assault, the tenant or an immediate family member has a reasonable
16 fear that the tenant or the family member will suffer psychological harm or a further act of
17 domestic violence, dating violence, stalking, or sexual assault if the tenant or the family member
18 continues to reside in the dwelling unit;

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

21 (F) a statement that the representations in the verification are true and
22 accurate to the best of the tenant's knowledge and the tenant understands that the verification
23 could be used as evidence in court; and

1 (2) from an attesting third party:

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

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

6 (C) a statement that the third party has read the tenant's verification and
7 has been advised by the tenant that the tenant or an immediate family member is the victim of an
8 act of domestic violence, dating violence, stalking, or sexual assault and has a reasonable fear
9 that the tenant or family member will suffer psychological harm or a further act of domestic
10 violence, dating violence, stalking, or sexual assault if the tenant or family member continues to
11 reside in the dwelling unit; and

12 (D) a statement that the third party, based on the tenant's verification,
13 believes the tenant and understands that the verification may be used as the ground for releasing
14 the tenant from a lease or terminating the tenant's interest under the lease.

15 (b) If a tenant gives the landlord a verification that contains a representation of a material
16 fact known by the tenant to be false, the landlord may recover an amount not to exceed [three]
17 times periodic rent or [triple] actual damages, whichever is greater.

18 *Legislative Note:* Jurisdictions should consider including the form in the comment in the statute.

19 **Comment**

20
21 The following is an example of a verification that would comply with this section.

22 **Verification**

23
24 I, _____ [insert name of tenant], state that:

25
26 (a) I am a tenant of a dwelling unit located at _____ [insert
27 address of dwelling unit];

1 (b) I or an immediate family member has been a victim of an act or acts of domestic
2 violence, dating violence, stalking, or sexual assault occurring to the best of my knowledge on or
3 over a period _____ [insert time period over which one or more
4 acts of domestic violence, dating violence, stalking, or sexual assault occurred] which act or acts
5 have created a reasonable fear that I or an immediate family member will suffer psychological
6 harm or a further act of domestic violence, dating violence, stalking, or sexual assault by continued
7 residence in the dwelling unit;
8

9 (c) The most recent act or acts of domestic violence, dating violence, stalking, or sexual
10 assault occurred on or about _____ [insert date]; and
11

12 (d) The date in the notice accompanying this verification that I have specified as the date
13 on which I am released from the lease is [check one]:
14

15 ☐ earlier than 90 days after the date of the most recent act of domestic violence,
16 dating violence, stalking, or sexual assault,
17

18 ☐ during a time when there is an outstanding court order preventing the
19 perpetrator's contact with the undersigned, or
20

21 ☐ not later than [90] days after the undersigned learned that the perpetrator has
22 been released from incarceration.
23

24 I declare under penalty of perjury that the above representations are true and accurate to
25 the best of my knowledge and belief and that I understand this verification could be used as
26 evidence in court.
27

28 _____
[Tenant's signature]
29

30 I, _____ [insert name of attesting third party] state that:
31

32 (a) I am a _____ [insert whichever is applicable: law
33 enforcement official, a licensed health care professional, a victim advocate, or a victim-services
34 provider];
35

36 (b) My business address and phone number is: _____;
37

38 (c) The individual who signed the preceding statement has informed me that the individual
39 or an immediate family member is a victim of an act or acts of domestic violence, dating violence,
40 stalking, or sexual assault based upon the act or acts listed in the preceding statement which act or
41 acts have created a reasonable fear that the tenant or an immediate family member will suffer
42 psychological harm or a further act of domestic violence, dating violence, stalking, or sexual
43 assault by continued residence in the dwelling unit described in the preceding statement; and
44

45 (d) I have read and believe the preceding statement recounting an act or acts of domestic
46 violence, dating violence, stalking, or sexual assault and understand that the tenant who made the

1 statement may use this document as a ground for terminating the tenant's lease for the dwelling
2 unit described in the preceding statement.

3
4

[Attesting third party's signature]
5

6 **SECTION 1105. PERPETRATOR'S LIABILITY FOR DAMAGES.**

7 (a) A landlord may recover from a perpetrator actual damages resulting from a tenant's
8 exercise of a right under Section 1102 and, if the perpetrator is a party to the lease who remains
9 in possession of the dwelling unit, hold the perpetrator liable on the lease for all obligations
10 under the lease or this [act].

11 (b) A perpetrator may not recover actual damages or other relief resulting from the
12 exercise of a right by a tenant under Section 1102 or a landlord under this section.

13 **SECTION 1106. CHANGE OF LOCK OR OTHER SECURITY DEVICE.**

14 (a) Subject to subsections (b) and (c), if a tenant or an immediate family member has
15 been the victim of an act of domestic violence, dating violence, stalking, or sexual assault and
16 the tenant has a reasonable fear that the perpetrator or other person acting on the perpetrator's
17 behalf may attempt to gain access to the dwelling unit, the tenant, without the landlord's consent,
18 may cause the locks or other security devices for the unit to be changed or rekeyed in a
19 professional manner and shall give a key or other means of access to the new locks or security
20 devices to the landlord and any other tenant, other than the perpetrator, that is a party to the
21 lease.

22 (b) If the locks or other security devices are changed or rekeyed under subsection (a), the
23 landlord may thereafter change or rekey them, at the tenant's expense, to ensure compatibility
24 with the landlord's master key or other means of access or otherwise accommodate the
25 landlord's reasonable commercial needs.

26 (c) If a perpetrator is a party to the lease, the locks or other security devices may not be

1 changed or rekeyed under subsection (a) unless there is a court order, other than an ex parte
2 order, expressly requiring the perpetrator to vacate the dwelling unit or to have no contact with
3 the tenant or an immediate family member and a copy of the order has been given to the
4 landlord.

5 (d) A perpetrator may not recover actual damages or other relief against a landlord or a
6 tenant caused by compliance with this section.

7 **Comment**

8
9 This section is designed to allow a tenant who is the victim of domestic violence to
10 change the locks or other security devices without first giving the landlord an opportunity to
11 change them, thus allowing the victim to make the change as quickly as possible. Nothing in this
12 section would prohibit the landlord on the landlord's own initiative to change the locks or other
13 security devices on behalf of the tenant at the tenant's expense or for the tenant to contact the
14 landlord for the change.

15
16 The tenant is not required to comply with Section 1102 to cause a change of the locks to
17 the dwelling unit.

18
19 When a perpetrator is a tenant under the lease, subsection (c) would permit a change of
20 locks only if a court has expressly ordered the perpetrator to vacate the dwelling unit or have no
21 contact with the tenant.

22 **SECTION 1107. EFFECT OF COURT ORDER TO VACATE.**

23
24 (a) On issuance of a court order requiring a perpetrator to vacate a dwelling unit because
25 of an act of domestic violence, dating violence, stalking, or sexual assault, other than an ex parte
26 order, neither the landlord nor tenant has a duty to:

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

29 (2) provide the perpetrator with any means of access to the unit.

30 (b) If a perpetrator is a party to the lease, on issuance of a court order requiring the
31 perpetrator to vacate the dwelling unit, other than an ex parte order, the perpetrator's interest

1 under the lease terminates and the landlord and any remaining tenants may recover any actual
2 damages from the perpetrator as a result of the termination.

3 (c) Termination of a perpetrator's interest under a lease under this section does not
4 terminate the interest of any other tenant under the lease or alter the obligations of any other
5 tenant under the lease.

6 (d) A landlord is not required to return to a perpetrator whose interest under the lease
7 terminates under this section or to any remaining tenant any security deposit or unearned rent
8 until the lease terminates with respect to all tenants.

9 **Comment**

10 Because of subsection (c), the landlord cannot increase the tenant-victim's rent or other
11 obligation because the perpetrator who might also have been a tenant on the lease has been
12 ordered to vacate the dwelling unit. For example, suppose V and P are cotenants on a lease
13 providing monthly rent in the amount of \$500. V is the victim of domestic violence committed
14 by P; P has been ordered to vacate the apartment. V continues to be liable for the monthly rent of
15 \$500, and the landlord cannot increase that rent to take account of the fact that P is no longer a
16 tenant. The landlord also may not increase the tenant's security deposit or require additional
17 prepaid rent even if the landlord believes that the remaining tenant might lack the financial
18 ability to comply with lease because the perpetrator is no longer a party to the lease.

19 **SECTION 1108. TERMINATION WITHOUT COURT ORDER OF TENANCY** 20 **OF PERPETRATOR.**

21 (a) If a landlord has a reasonable belief that a tenant or an immediate family member is
22 the victim of an act of domestic violence, dating violence, stalking, or sexual assault and another
23 tenant on the lease is the perpetrator, the landlord may terminate the perpetrator's interest under
24 the lease by giving the perpetrator notice in a record that the perpetrator's interest will terminate
25 immediately or on a later date specified in the notice. The notice shall state that the landlord has
26 a reasonable belief that the perpetrator has committed an act of domestic violence, dating
27 violence, stalking, or sexual assault and the approximate date of the act.

1 (b) Prior to giving the notice to the perpetrator under subsection (a), the landlord shall
2 notify the tenant who was a victim of an act of domestic violence, dating violence, stalking, or
3 sexual assault or whose immediate family member was the victim of an act of domestic violence,
4 dating violence, stalking, or sexual assault of the landlord's intent to terminate the perpetrator's
5 interest. This notice may be given by any means reasonably calculated to reach the tenant,
6 including oral communication, notice in a record, or sent to the tenant at any other address at
7 which the landlord reasonably believes the tenant is located.

8 (c) Failure of the tenant to receive the notice of the landlord's intent to terminate the
9 perpetrator's interest under subsection (b) does not affect the landlord's right to terminate under
10 this section or expose the landlord to any liability.

11 (d) If a perpetrator's interest under a lease is terminated by the landlord under this
12 section, any other tenant under the lease may recover actual damages from the perpetrator
13 resulting from the termination.

14 (e) Termination of a perpetrator's interest under a lease under this section does not
15 terminate the interest of any other tenant under the lease or alter the obligations of any other
16 tenant under the lease.

17 (f) A landlord is not required to return to a perpetrator whose interest under a lease is
18 terminated under this section or to any other tenant under the lease any security deposit or
19 unearned rent until the lease terminates with respect to all tenants.

20 (g) In an action between a landlord and a tenant involving the right of the landlord to
21 terminate the tenant's interest under this section, the landlord must prove by a preponderance of
22 the evidence that the landlord had a reasonable belief that the tenant is a perpetrator.
23

1 **Comment**

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

11
12 Under this section the landlord could terminate the perpetrator's interest as a tenant even
13 though there is no judicial determination that the perpetrator committed an act of domestic
14 violence so long as the landlord reasonably believes the tenant is a perpetrator. This is entirely
15 consistent with the right of a landlord to terminate the interest of any tenant who engages in other
16 types of criminal activity on the premises in violation of Section 501, even though the tenant has
17 not been found guilty of a crime. See Section 601. In either case, of course, if the tenant refuses
18 to surrender possession of the premises to the landlord upon termination of the lease and the
19 landlord sues for possession, the defendant (tenant) could defend on the ground that the tenant
20 did not commit the acts alleged by the landlord. In this case, the landlord would have the burden
21 to prove by a preponderance of the evidence that the landlord had the right to terminate the
22 tenancy. This means the landlord has the burden to prove that the landlord had a reasonable
23 belief that the defendant was a perpetrator entitling the landlord to terminate the lease.

24
25 **SECTION 1109. LANDLORD CONDUCT WITH RESPECT TO VICTIM.**

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

28 (b) Except as otherwise provided in subsections (c) and (d), a landlord may not take or
29 threaten to take any of the acts in Section 901(b) or refuse or threaten to refuse to let a dwelling
30 unit when the landlord's purpose for engaging in the conduct is that:

31 (1) the tenant or an immediate family member is or has been the victim of an act
32 of domestic violence, dating violence, stalking, or sexual assault;

33 (2) an act of domestic violence, dating violence, stalking, or sexual assault
34 committed against a tenant or an immediate family member resulted in a violation of the lease or
35 this [act] by the tenant; or

1 (3) a complaint of an act domestic violence, dating violence, stalking, or sexual
2 assault committed against the tenant or an immediate family member resulted in a law
3 enforcement or emergency response.

4 (c) Evidence that any of the events described in subsection (b)(1), (2), or (3) occurred
5 within [six] months before the landlord's conduct creates a presumption that the purpose of the
6 landlord's conduct was retaliation. The landlord may rebut the presumption by [a preponderance
7 of][clear and convincing] evidence showing that the landlord had sufficient justification for
8 engaging in the conduct described in subsection (b) and would have engaged in the conduct in
9 the same manner and at the same time regardless of whether the events described in subsection
10 (b) had occurred.

11 (d) A landlord may terminate the lease of a tenant by giving the tenant notice in a record
12 that the lease will terminate on a date specified in the notice which is not earlier than [30] days
13 after the giving of the notice if:

14 (1) without the landlord's permission, the tenant invited a perpetrator on to the
15 premises or allowed the perpetrator to occupy the dwelling unit:

16 (A) after the landlord gave the tenant notice in a record to refrain from
17 inviting the perpetrator on to the premises; or

18 (B) during a time the tenant knows the perpetrator is subject to a no-
19 contact court order or a court order barring the perpetrator from the premises; and

20 (2) the landlord demonstrates that:

21 (A) there is an actual and imminent threat to the health and safety of any
22 individual on the premises, the landlord, or the landlord's agents if the lease is not terminated, or

23 (B) the perpetrator has damaged the premises.

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

2 (1) the tenant may:

3 (A) terminate the lease;

4 (B) defend an action for possession on the ground that the landlord has
5 violated subsection (b); or

6 (C) obtain appropriate injunctive relief; and

7 (2) the tenant may recover [three] times periodic rent or [triple] actual damages,
8 whichever is greater.

9 **ARTICLE 12**

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

11 **SECTION 1201. PAYMENT REQUIRED AT THE COMMENCEMENT OF** 12 **TERM OF LEASE.**

13 (a) In this Article, “bank account” means a federally insured checking, demand, time,
14 savings, passbook, or similar account maintained at a bank.

15 (b) Except as otherwise provided in subsections (c) and (d), a landlord may not require
16 the tenant to pay a security deposit, prepaid rent, or any combination thereof, in an amount that
17 exceeds [two] times periodic rent.

18 (c) The limit established in subsection (b) does not include the first month’s rent or fees.

19 (d) Except as otherwise provided by law other than this [act], if a tenant keeps a pet on
20 the premises or is permitted by the lease to make alterations to the premises, the landlord may
21 require the tenant to pay an additional security deposit in an amount commensurate with the
22 additional risk of damage to the premises.

1 **Comment**

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

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

11 This section does not preclude a landlord from charging fees. Common fees include
12 application fees, surety bonds fees, cleaning fees, and pet fees. (See Section 102(11)).
13

14 The landlord's ability to require a higher security deposit or a fee for pets may be limited
15 by other state or federal law governing a disabled tenant's right to keep a service animal.
16

17 **SECTION 1202. LANDLORD, TENANT, AND THIRD PARTY INTERESTS IN**
18 **SECURITY DEPOSIT.**

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

20 (1) The landlord's interest is limited to a security interest.

21 (2) Notwithstanding law other than this [act], the landlord's security interest is
22 effective against and has priority over each creditor of and transferee from the tenant.

23 (3) Subject to subsection (c), a creditor of and transferee from the landlord can
24 acquire no greater interest in a security deposit than the interest of the landlord.

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

26 (1) Notwithstanding law other than this [act], the tenant's interest in a security
27 deposit held in a bank account has priority over any right of setoff the bank in which the account
28 is maintained may have for obligations owed to the bank other than charges normally associated
29 with the bank's maintenance of the account.

30 (2) The tenant's interest is not adversely affected if the security deposit is
31 commingled with the security deposits of other tenants in a bank account under Section

1 1203(a)(2).

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

4 (c) Subsection (a)(3) does not abrogate generally applicable rules of law enabling a
5 transferee of funds to take the funds free of competing claims.

6 **Comment**

7
8 Subsection (a) protects the tenant, e.g., if the landlord enters bankruptcy. It limits the
9 landlord's interest in the funds constituting a security deposit to a security interest and provides
10 that a creditor of or transferee from the landlord (including the landlord's trustee in bankruptcy)
11 generally cannot obtain any greater interest in those funds. Likewise, it protects the landlord if
12 the tenant enters bankruptcy. Under subsection (a)(2), the landlord's security interest in a
13 security deposit is superior to any competing claim of a creditor of or transferee from the tenant,
14 including the tenant's trustee in bankruptcy. If the tenant is in financial stress, subsection (a) is a
15 useful clarification that can benefit the tenant's creditors whether or not the tenant files a
16 bankruptcy petition because it makes clear that the security deposit is an asset of the tenant.

17
18 Subsection (b)(1) prohibits a bank from setting off any claim it has against the landlord
19 other than for charges normally associated with the maintenance of the account. The section is
20 mandatory and neither the landlord nor the tenant nor the bank can contract otherwise. If the
21 bank imposes a maintenance fee, the landlord would then have a duty to replenish the account
22 for those charges.

23
24 Under subsection (b)(3), the effect of commingling not permitted by this [act], as, for
25 example, when the landlord commingles the landlord's personal funds with the security deposit,
26 is governed by law other than this act.

27
28 Under subsection (c), whether a transferee of funds from a bank account maintained for
29 the purpose of holding security deposits takes the funds free from the tenant's interest is
30 governed by other law. *See, e.g.,* Restatement (Third) of Restitution and Unjust Enrichment § 67,
31 *cmt. d.*

32 **SECTION 1203. SAFEKEEPING OF SECURITY DEPOSIT.**

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

35 (1) shall maintain the ability to identify the funds:

36 (A) by holding the funds in a bank account used exclusively for security
37 deposits that is maintained by a federally insured bank doing business in this state that is titled as

1 an account holding security deposits; and

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

4 (2) may commingle the funds received from other tenants as security deposits in
5 the same bank account but may not commingle other funds, including the landlord's personal or
6 business funds, in the account.

7 (b) If a landlord fails to comply with subsection (a), a tenant may recover actual damages
8 or [one month's] periodic rent, whichever is greater.

9 (c) A bank in which funds constituting a security deposit have been deposited has no duty
10 to ensure that the landlord properly applies the funds.

11 (d) Unless a lease provides otherwise, the landlord is not required to deposit a security
12 deposit into an interest-bearing account or to pay the tenant interest on the deposit.

13 **Legislative Note:** A jurisdiction that wishes to require the payment of interest on a security
14 deposit should delete subsection (d) and replace it with a provision governing the parties' rights
15 regarding the interest payments.

16 17 **Comment** 18

19 Section 1203 introduces a new requirement that a landlord segregate security deposits
20 from the landlord's other funds. Imposing the safekeeping requirements ensures that an amount
21 equivalent to the deposited funds is available for return as required under various provisions in
22 the act.

23
24 It is not necessary for a landlord to deposit the specific funds received from a tenant into
25 the account. A landlord who places the landlord's own funds into a security deposit account to
26 cover the amounts received from tenants pursuant to this article is not engaged in an act of
27 commingling as these funds are no longer the landlord's personal funds.

28
29 The segregation requirement does not apply to prepaid rent. By definition, rent payments
30 made by or on behalf of the tenant for future dates, even if required by the terms of the lease or
31 as a condition of entering into the lease, are not security deposits. Rather, they are payment for
32 those future dates, discharging, to the extent of the payment, the obligation to pay rent for those
33 dates. Accordingly, unlike security deposits, the tenant no longer owns the funds paid as rent.
34 Several provisions of this act require a landlord to return to the tenant the amount of unearned

1 rent. If a landlord fails to comply with such a requirement, the aggrieved tenant would have a
2 right to a money judgment but would have no in rem claim to the unearned rent.

3
4 Subsection (b) does not preclude the landlord or tenant from recovering other damages to
5 which the landlord or tenant may be entitled under this [act].

6
7 **SECTION 1204. DISPOSITION OF SECURITY DEPOSIT AND UNEARNED**
8 **RENT ON TERMINATION OF LEASE.**

9 (a) At the termination of a lease, the tenant is entitled to the amount by which the security
10 deposit and any unearned rent exceeds the amount the landlord is owed for unpaid rent due under
11 the lease and any other amount the landlord is owed under the lease or this [act].

12 (b) Not later than [30] days after a lease terminates and the tenant vacates the premises,
13 the landlord shall determine the amount that the landlord believes the tenant is entitled to under
14 subsection (a) and pay that amount to the tenant or, if the tenant has died, the tenant
15 representative.

16 (c) A landlord shall satisfy the landlord's obligation to pay the amount determined under
17 subsection (b) by:

18 (1) tendering the amount to the tenant or tenant representative;

19 (2) sending the amount by first-class mail, postage prepaid, to an address provided
20 by the tenant or tenant representative or, in the absence of that address, to the relevant address
21 specified in Section 109; or

22 (3) causing a funds transfer in that amount to be made, with the cost of transfer
23 paid, to a bank account designated by the tenant or tenant representative.

24 (d) If the amount paid by a landlord under subsection (b) is less than the sum of the
25 tenant's security deposit and any unearned rent, the landlord shall provide the tenant or tenant
26 representative, within the [30] days specified under subsection (b), with a record specifying each

1 item of property damage or other unfulfilled obligation of the tenant to which the security
2 deposit or unearned rent was applied and the amount applied to each item.

3 (e) If the amount owed under subsection (a) is disputed, a tenant or tenant representative
4 may recover the difference between the amount to which the tenant is entitled under subsection
5 (a) and the amount paid to the tenant or tenant representative under subsection (b).

6 (f) If a landlord fails to comply with subsection (b), (c), or (d), the court may award the
7 tenant or the tenant representative, in addition to any amount recoverable under subsection (e),
8 \$[250] or [twice] the amount recoverable under subsection (e), whichever is greater, unless the
9 landlord's only noncompliance was the inadvertent failure to pay the cost of postage or
10 transmission or to use the proper address.

11 (g) If the amount of a security deposit and unearned rent held by a landlord is insufficient
12 to satisfy the tenant's obligations under the lease and this [act], the landlord may recover actual
13 damages.

14 **Comment**

15
16 The amount paid to a tenant need not be in cash but could be by check, money order,
17 electronic transfer, or the like.

18
19 Subsection (f) provides a penalty when the landlord fails to comply with any of the
20 requirements of subsections (b), (c), or (d), including the failure to act within the applicable time
21 period, the failure to provide a record to explain why the security deposit was not returned in
22 full, and the failure to return an amount equal to the landlord's good faith calculation of the sum
23 to which the tenant is entitled.

24
25 Subsection (f) would not apply if the landlord has acted in good faith, but merely erred in
26 determining the amount owed. In that case, the landlord has complied with subsection (b) by
27 making a good faith computation. Thus, subsection (e) permits the tenant to recover the amount
28 to which the tenant is entitled, but the landlord would not be subject to the penalty in subsection
29 (f).

1 **SECTION 1205. DISPOSITION OF SECURITY DEPOSIT AND UNEARNED**
2 **RENT ON TERMINATION OF LANDLORD INTEREST IN PREMISES.**

3 (a) Not later than [30] days after the termination of a landlord's interest in the premises,
4 the landlord:

5 (1) if the lease continues, shall transfer to the person succeeding the landlord's
6 interest in the premises any security deposit being held by the landlord and notify the tenant in a
7 record of the successor's name and address, the amount transferred, and any claim previously
8 made against the security deposit; or

9 (2) if the lease terminates as a result of the termination of the landlord's interest,
10 shall return the security deposit and an amount equal to the unearned rent to which the tenant is
11 entitled under Section 1204.

12 (b) If the landlord dies before the termination of the lease, the personal representative of
13 the landlord's estate becomes the landlord until the premises are distributed to the successor. If
14 the premises are distributed to the successor before the termination of the lease, the security
15 deposit held by the personal representative shall be transferred to the successor and the personal
16 representative shall notify the tenant in a record of the successor's name and address, the amount
17 transferred to the successor, and any claim previously made against the security deposit.

18 (c) If a landlord or personal representative of the landlord's estate complies with
19 subsection (a) or (b), the landlord or the estate has no further liability with respect to the security
20 deposit.

21 (d) Subject to subsection (e), the successor to the landlord's interest in the premises has
22 all rights and obligations of the landlord under this [act] with respect to any security deposit held
23 by the predecessor landlord which has not been returned to the tenant, whether or not the security

1 deposit was transferred or distributed to the successor.

2 (e) If a landlord's interest is terminated by foreclosure, the successor's liability under
3 subsection (d) is limited to the amount of a security deposit received by the successor.

4 **Comment**

5
6 Section 1205 is a new section that provides for disposition of security deposits and
7 unearned rent after a transfer of the landlord's interest in the premises.
8

9 **ARTICLE 13**

10 **MISCELLANEOUS PROVISIONS**

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

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

20 **SECTION 1303. APPLICATION.** This [act] applies only to a lease made on or after
21 the effective date of this [act].

22 **SECTION 1304. REPEALS.** The following are repealed:

23 (a)

24 (b)

25 (c)

26 **SECTION 1305. EFFECTIVE DATE.** This [act] takes effect on [insert date].