

DRAFT

FOR DISCUSSION ONLY

REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For November 2013 Drafting Committee Meeting

Redline Draft

~~Post 2013 Annual Meeting Draft with Initial Edits~~ November 2013 Meeting Draft (Prepared 10/23/13)

WITH PRELIMINARY COMMENTS

Copyright ©2013

By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

~~May 30, 2013~~ October 25, 2013

DRAFTING COMMITTEE ON REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

JOAN ZELDON, District of Columbia Superior Court, 515 Fifth St. NW, Room 219,
Washington, DC 20001, *Chair*

WILLIAM W. BARRETT, 600 N. Emerson Ave., P.O. Box 405, Greenwood, IN 46142

MICHAEL A. FERRY, 200 N. Broadway, Suite 950, St. Louis, MO 63102

LYNN FOSTER, University of Arkansas at Little Rock, William H. Bowen School of Law,
1201 McMath Ave., Little Rock, AR 72202

CARL H. LISMAN, 84 Pine St., P.O. Box 728, Burlington, VT 05402

REED L. MARTINEAU, P.O. Box 45000, 10 Exchange Pl., 11th Floor, Salt Lake City, UT
84145-5000

ROBERT L. MCCURLEY, JR., P.O. Box 861287, Tuscaloosa, AL 35486

JANICE L. PAULS, 1634 N. Baker St., Hutchinson, KS 67501

KEVIN P.H. SUMIDA, 735 Bishop St., Suite 411, Honolulu, HI 96813

V. DAVID ZVENYACH, 1350 Pennsylvania Ave. NW, Suite 4, Washington, DC 20004

SHELDON F. KURTZ, University of Iowa College of Law, Boyd Law Bldg. – 446, Iowa City,
IA 52242, *Co-Reporter*

ALICE NOBLE-ALLGIRE, Southern Illinois University School of Law, Mail Code 6804,
1150 Douglas Dr., Lesar Law Bldg., Carbondale, IL 62901, *Co-Reporter*

EX OFFICIO

HARRIET LANSING, 1 Heather Pl., St. Paul, MN 55102-2615, *President*

NORA WINKELMAN, Office of Chief Counsel, House Democratic Caucus, Pennsylvania House
of Representatives, Room 620 Main Capitol, Harrisburg, PA 17120, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

PETER A. BUCHSBAUM, Superior Court of New Jersey, 65 Park Ave., 3rd Floor, Flemington,
NJ 08822-1128, *ABA Advisor*

STEVEN J. EAGLE, George Mason University School of Law, 3301 Fairfax Dr., Arlington, VA
22201-4426, *ABA Section Advisor*

AMERICAN LAW INSTITUTE ADVISOR

STEVEN L. HARRIS, Chicago-Kent College of Law, 565 W. Adams St., Chicago, IL 60661-
3691, *ALI Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (201)

TABLE OF CONTENTS

**ARTICLE 1
GENERAL PROVISIONS**

SECTION 101. SHORT TITLE.	1
SECTION 102. DEFINITIONS.	1
SECTION 103. SCOPE.	9
SECTION 104. ADMINISTRATION OF REMEDIES; ENFORCEMENT; DUTY TO MITIGATE.	11
SECTION 105. OBLIGATION OF GOOD FAITH.	11
SECTION 106. UNCONSCIONABILITY.	11
SECTION 107. KNOWLEDGE AND NOTICE.	12
[SECTION 108. COMMON LAW AND PRINCIPLES OF EQUITY	14

**ARTICLE 2
GENERAL PROVISIONS APPLICABLE TO LEASE**

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

**ARTICLE 3
LANDLORD’S DUTIES**

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

**ARTICLE 4
TENANT’S DUTIES**

SECTION 401. TENANT’S DUTIES	25
------------------------------------	----

**ARTICLE 5
TENANT REMEDIES**

SECTION 501. NONCOMPLIANCE BY LANDLORD; IN GENERAL.	27
SECTION 502. LANDLORD’S FAILURE TO DELIVER POSSESSION TO TENANT	30
SECTION 503. SELF-HELP FOR MINOR DEFECTS	31

SECTION 504. LANDLORD’S WRONGFUL FAILURE TO PROVIDE ESSENTIAL SERVICE.....	32
SECTION 505. LANDLORD’S NONCOMPLIANCE AS DEFENSE TO ACTION FOR NONPAYMENT OF RENT.	33
SECTION 506. FIRE OR CASUALTY DAMAGE.....	35
SECTION 507. TENANT REMEDIES FOR UNLAWFUL REMOVAL, EXCLUSION, OR DIMINUTION OF ESSENTIAL SERVICE.....	36
SECTION 508. EARLY RELEASE OR TERMINATION OF LEASE BECAUSE OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.	36
SECTION 509. LANDLORD’S OBLIGATIONS IN EVENT OF EARLY RELEASE OR TERMINATION.....	38
SECTION 510. VERIFICATION.	39
SECTION 511. EFFECT ON PERPETRATOR.	41
SECTION 512. CHANGE OF LOCKS AS RESULT OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.	42
SECTION 513. EFFECT OF COURT ORDER TO VACATE.	43
SECTION 514. LIMITATIONS ON LANDLORD’S CONDUCT WITH RESPECT TO VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.....	44

ARTICLE 6 LANDLORD REMEDIES

SECTION 601. NONCOMPLIANCE WITH LEASE BY TENANT; FAILURE TO PAY RENT.	46
SECTION 602. WAIVER OF LANDLORD’S RIGHT TO TERMINATE	48
SECTION 603. DISTRESS FOR RENT; LANDLORD LIENS.	48
SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION	49
SECTION 605. RECOVERY OF POSSESSION LIMITED; INTERRUPTION OF ESSENTIAL SERVICE.....	51

ARTICLE 7 ACCESS

SECTION 701. LANDLORD’S ACCESS TO DWELLING UNIT.	51
SECTION 702. LANDLORD AND TENANT REMEDIES FOR ABUSE OF ACCESS.	52

ARTICLE 8 TERMINATION OF PERIODIC TENANCY; DEATH OF TENANT; HOLDOVER TENANCY

SECTION 801. TERMINATION OF PERIODIC TENANCY	53
SECTION 802. TERMINATION UPON DEATH OF TENANT.....	54
SECTION 803. HOLDOVER TENANCY	55

**ARTICLE 9
RETALIATION**

SECTION 901. RETALIATION PROHIBITED.	56
SECTION 902. ACTS NOT CONSIDERED RETALIATORY.	57
SECTION 903. TENANT REMEDIES FOR RETALIATORY CONDUCT.	58
SECTION 904. PRESUMPTION OF RETALIATORY CONDUCT.	59

**ARTICLE 10
DISPOSITION OF PERSONAL PROPERTY**

SECTION 1001. TENANT’S RIGHT TO RETRIEVE PERSONAL PROPERTY.	59
SECTION 1002. DISPOSITION OF PERSONAL PROPERTY ON TENANT’S DEATH.	62
SECTION 1003. CONTACT PERSON.	64

**ARTICLE 11
ASSIGNMENTS AND SUBLEASES**

SECTION 1101. COMMERCIALLY REASONABLE OBJECTION.	65
SECTION 1102. TENANT’S RIGHT TO SUBLEASE OR ASSIGN.	66
SECTION 1103. RIGHTS FOLLOWING ASSIGNMENT OR SUBLEASE.	68

**ARTICLE 12
SECURITY DEPOSITS, FEES, AND UNEARNED RENT**

SECTION 1201. PAYMENTS REQUIRED AT THE COMMENCEMENT OF THE LEASE.	79
SECTION 1202. LANDLORD, TENANT, AND THIRD PARTY INTERESTS IN SECURITY DEPOSIT.	80
SECTION 1203. SAFEKEEPING OF SECURITY DEPOSITS.	82
SECTION 1204. RETURN OF SECURITY DEPOSITS OR UNEARNED RENT.	83
SECTION 1205. DISPOSITION OF SECURITY DEPOSITS AND UNEARNED RENT UPON TERMINATION OF LANDLORD’S INTEREST IN PREMISES.	85

**ARTICLE 13
MISCELLANEOUS PROVISIONS**

SECTION 1301. UNIFORMITY OF APPLICATION AND CONSTRUCTION.	87
SECTION 1302. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.	87
SECTION 1303. REPEALS.	87
SECTION 1304. EFFECTIVE DATE.	87

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

2 **ARTICLE 1**

3 **GENERAL PROVISIONS**

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

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

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

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

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

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

15 ~~—— (5) “Assignee” means the person to which whom an assignor has assigned the lease.~~

16 ~~—— (6) “Assignor” means a person that assigns a lease to an assignee.~~

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

20 (86) “Bank” means an organization that is engaged in the business of banking. The term
21 includes a savings banks, savings and loan associations, credit unions, and trust compan~~y~~ies.

22 (97) “Bank account” means a checking, demand, time, savings, passbook, or similar
23 account maintained at a bank.

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

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

(1210) “Diminution in value of the dwelling unit” means a reduction from the rent provided in a lease in an amount that reflects the extent to which a noncompliant condition of the premises impairs the tenant’s use and enjoyment of the dwelling unit.

(1311) “Domestic violence” means domestic violence as defined by [insert reference to definition in other state law]. ~~“Dormitory” means a building with private or semi-private rooms with bathroom facilities in the rooms or in the common areas but without kitchen or dining facilities in the rooms.~~

(15142) “Dwelling unit” means: ~~a building or the part of a building that is used as a home, residence, or sleeping place by an individual or by two or more individuals, regardless of their relationship to each other, who maintain a common household.~~

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

(B) In the case of a structure having only one unit to be leased, ~~other structures,~~ the entire structure, together with the fixtures, facilities, and appurtenances therein, to be used as

1 the home, residence, or sleeping place by an individual or by two or more individuals who
2 maintain a common household, regardless of their relationship to each other. Unless the lease
3 otherwise provides, the term excludes areas associated with the structure but exterior to it such as
4 parking areas, detached garages, other buildings and grounds.

5 (16153) “Electronic” means relating to technology having electrical, digital, magnetic,
6 wireless, optical, electromagnetic, or similar capabilities.

7 (17164) “Essential services” means heat, hot and cold running water, plumbing, and
8 electricity. The term includes gas, air conditioning, or other services if required to be supplied ~~to~~
9 to a tenant by the lease or by law which, if not supplied to the tenant, would create a
10 [serious][substantial] threat to the health, safety, or property of the tenant or an immediate family
11 member.

12 (1758) “Fees” means amounts payable by a tenant ~~to~~ to a landlord for which the
13 landlord has no obligation to account or return to the tenant. The term does not include a security
14 deposit or prepaid unearned rent.

15 (19186) “Funds” means money, checks, bank-account credits, or the like.

16 (20197) “Good faith” means honesty in fact and the observance of reasonable
17 commercial standards of fair dealing.

18 (212018) “Immediate family member” means any of the following who habitually resides
19 ~~in~~ in a dwelling unit with ~~the~~ a tenant:

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

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

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

(~~22~~24~~19~~) “Landlord” means ~~the~~ an owner ~~or lessor~~ of a dwelling unit or the building of which it is a part, a successor in interest to the landlord, and any person ~~a person~~ that enters into a lease on behalf of an ~~undisclosed~~ owner. Except for the duties imposed on a landlord under Section 303, the term includes an assignor to whom section ~~1102~~1103(a) does not apply and a sublessor.

(~~23~~22~~20~~) “Lease” means a contract between a landlord and tenant under which the landlord rents to the tenant a dwelling unit for a tenancy for a fixed term or ~~for~~ a periodic tenancy.

(~~24~~23~~21~~) “Normal wear and tear” means deterioration that results from the intended use ~~of~~ of a dwelling unit, including breakage or malfunction due to age or deteriorated condition. The term does not include deterioration that results from negligence, carelessness, accident, or abuse of the unit, fixtures, equipment, or chattels by the tenant, an immediate family member, or other individual on the premises with the tenant's consent, other than the landlord or the landlord's agent.

(~~25~~24~~22~~) “Owner” means a person vested with:

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

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

(~~26~~25~~23~~) “Periodic rent” means the amount of rent 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

1 rent divided by 12.

2 (27264) "Periodic tenancy" means a tenancy created under a lease or arising by operation
3 of law for either month to month or week to week.

4 (28275) "Perpetrator" means an individual who:

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

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

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

9 (29286) "Person" means an individual, estate, business or nonprofit entity, public
10 corporation, government or governmental subdivision, agency, or instrumentality, or other legal
11 entity.

12 (30297) "Premises" means a dwelling unit and the structure of which it is a part if the
13 structure has two or more units to be leased. The term also includes all areas associated with the
14 structure whether exterior or interior to it ~~that are~~ that are excluded from the definition of
15 dwelling unit-including, including the fixtures, facilities, and appurtenances thereto, which areas
16 are held out for the use of tenants generally or the use of which is promised to the tenant. and the
17 building of which the unit is a part, including the facilities and appurtenances thereto, and the
18 grounds, areas, and facilities held out for the use of tenants generally or the use of which is
19 promised to the tenant.

20 (313028) "Prepaid rent" means rent paid to a landlord for a future rental period but prior
21 to the first day of the rental period to which it is to be applied. rent paid by the tenant before it is
22 due under the lease. more than thirty days before the beginning of the next month following the
23 date of the payment other than the amount of rent payable or prorated that month.

(323129) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(33320) “Rent” means the payments to be made to or for the benefit of the landlord for the use and occupation of a dwelling unit. The term does not include a security deposit or fees.

(34331) “Security deposit” means funds, and the identifiable proceeds thereof, provided to a landlord to secure payment or performance of a tenant’s obligations under a lease or this [act], regardless of how the funds are denominated. ~~The term includes damage deposits, key deposits, and pet deposits.~~ The term does not include ~~prepaid-unearned~~ rent and fees.

(35342) “Security interest” means an interest in personal property that secures payment or performance of a tenant’s obligations under a lease or this [act].

(36353) “Sexual assault” means [sexual assault] as defined in [insert reference to definition in other state law].

(37364) “Sign” means, with present intent to authenticate or adopt a record:

(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; ~~or~~

~~—— (C) to send an electronic mail communication bearing the sender’s name, or electronic mail address, or other identifying header.~~

(38375) “Stalking” means [stalking] as defined in [insert reference to definition in other state law].

(39386) “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.

~~(4039)~~

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

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

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

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

~~_a lease to a sublessee by a sublessor, or the creation of a cotenancy between the sublessor and sublessee for any period during which both parties are entitled to possession of a dwelling unit or a portion of the unit.~~

~~(4140) “Sublessee” means a person to which a sublessor has subleased a dwelling unit.~~

~~(4241) “Sublessor” means a person that subleases a dwelling unit to a sublessee.~~

~~(434238)~~ “Tenancy for a fixed term” means a tenancy under a lease for a fixed or computable period, regardless of the length of the period.

~~(444339)~~ “Tenant” means a person entitled to possession of a dwelling unit under a lease. The term includes an assignee, sublessee, and, if the tenant is not an individual, an individual the tenant has authorized to occupy the unit. If the tenant is an individual, ~~the term~~the term excludes a ~~person that~~person that neither is a party to the lease nor pays rent but occupies the

dwelling unit with the tenant's permission.

(45440) "Tenant representative" means:

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

(B) before the appointment of a personal representative, the contact person, or in the absence of a contact person, any person reasonably known to the landlord ~~who would to~~ be an heir of the tenant ~~tenant's heir~~ under the intestate succession laws of ~~this~~ the state.

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

(46452) "Victim advocate" means an individual, whether paid or serving as a volunteer, who provides services to victims of domestic violence, sexual assault, or stalking under the auspices or supervision of a victim-services provider or of a court or a law enforcement or prosecution agency.

(47463) "Victim-services provider" means a person that assists victims of domestic violence, sexual assault, or stalking. The term includes a rape crisis center, domestic violence shelter, faith-based organization, or other organization with a documented history of work concerning domestic violence, sexual assault, or stalking.

(48474) "Willfully" means a deliberate intent to ~~perform~~ perform an act prohibited under this [act] or by a lease, a deliberate intent to refrain from ~~performing~~ performing ~~a~~ an ~~act~~ act required under this [act] or by a lease, or an indifference to whether the act or failure to act violates this [act] ~~or~~ or a lease.

Comment

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

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

4 |
5 | The definition of landlord includes both the owner of the dwelling unit and any agent of
6 | that owner, such as a management company. Where a dwelling unit is leased by a management
7 | company on behalf of the owner, both would be landlords under this act.
8 |

9 | The definition of “owner” ~~would~~ includes a mortgagee in possession. It would not
10 | include a mortgagee in a title theory state unless the mortgagee became entitled to possession.
11 |

12 | The definition of “sublease” includes both the traditional definition of that term as well as
13 | a transfer of the entire balance of the lease term where the sublessor is also entitled to possession
14 | of the dwelling unit. For example, if landlord leases an apartment to a college student who in
15 | turn relets to another college student for the duration of the original term and both students are
16 | entitled to live in the dwelling unit, the re-letting is characterized as a sublease, not an
17 | assignment, even though it is for the duration of the original term.
18 |

19 | The definition of “tenant” recognizes that some leases are entered into by business
20 | entities for their employees or by a trust on behalf of a beneficiary. For example, an LLC might
21 | rent an apartment for a member or a manager. Both the LLC and the member or manager are
22 | tenants, the latter because the member or manager has been authorized to occupy the dwelling
23 | unit by the LLC, the former because it is legally entitled to possession under the lease.
24 |

25 | The definition of “unearned rent” contemplates two circumstances where a refund will be
26 | due a tenant because the lease was properly terminated. The first circumstance is that “rent”
27 | (defined in Section 102(30)) was paid to the landlord for any period of time beyond the
28 | termination of the date. For example, assume a one-year lease with rent payable on the first. The
29 | tenant pays rent to the landlord on April 1 for the month of April. However on April 10 the
30 | tenant properly terminates the lease. In this case “unearned rent” includes the amount of rent
31 | attributable to the period April 10 to April 30. Because rent is apportioned on a daily basis (See
32 | Section 201(b)(2)(B), this means that 2/3 of the April 1st payment would be “unearned rent.”
33 | The second circumstance is that “prepaid rent” (defined in Section 102(28)) was paid to the
34 | landlord for any period of time beyond the termination of the date. For example, suppose before
35 | the commencement date of the lease a tenant pays the landlord an amount for the last month’s
36 | rent. Three months into the lease tenant properly terminated the lease. In this case, unearned
37 | rent” includes the prepaid rent for the last month. In both examples, under Section 1204 amounts
38 | treated as unearned rent must be returned to the landlord after taking account on any proper
39 | charges against the same as set forth in Section 1204.
40 |

41 | **SECTION 103. SCOPE.**

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

or dining facilities in the rooms.

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

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

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

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

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

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

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

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

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

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

Comment

Subsection (**bc**)(2) has been modified from the 1972 act, which excluded all University-owned housing. Under this act, only traditional university dormitory housing is excluded from

1 the scope of this act. Rentals of university-owned apartments are now subject to the act.

2
3 This act applies to the lease of a mobile home but does not apply to a mere ground lease
4 of land upon which a mobile home is placed. Thus, if O owns a mobile home park and leases
5 space to T, that ground lease is not subject to this act. However, if T brings a mobile home onto
6 O's land and later leases the home to X, the T-X lease is subject to this act.

7
8 **SECTION 104. ADMINISTRATION OF REMEDIES; ENFORCEMENT; DUTY**
9 **TO MITIGATE.**

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

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

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

15
16 **Comment**

17
18 Under the common law a landlord had no duty to mitigate damages. The no-mitigation
19 rule was abrogated by the 1972 version of this act, and this act is consistent with that policy
20 choice and the conceptualization of the lease as a contract. Unlike the 1972 act, however, this act
21 provides a safe harbor in Section 604 for a landlord who makes reasonable efforts to relet the
22 dwelling unit following a tenant's abandonment.

23
24 **SECTION 105. OBLIGATION OF GOOD FAITH.** Every duty under this [act] and
25 every act that must be performed as a condition precedent to the exercise of a right or remedy
26 under this [act] imposes an obligation of good faith in its performance or enforcement.

27 **SECTION 106. UNCONSCIONABILITY.**

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

32 (b) If a court, ~~as a matter of law,~~ finds that a settlement agreement in which a party

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

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

8 **SECTION 107. KNOWLEDGE AND NOTICE.**

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

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

11 (1) knows of the fact;

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

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

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

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

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

21 ~~(ed) Except as provided in subsection (c), a person gives notice of a fact to another~~
22 ~~person when notice is required to be given in a record signed by either a landlord or a tenant, a~~
23 ~~person notifies, gives, or sends notice of a fact to another person~~ by taking steps reasonably

1 calculated to inform the other person whether or not the other person learns of the fact.

2 (~~de~~) A person receives notification of a fact ~~when~~:

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

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

5 when the record is:

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

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

8 ~~(2) in the case of a landlord, the notification is:~~

9 ~~(A) hand personally delivered by the tenant to the landlord [or another~~
10 ~~person designated by the landlord];~~

11 ~~(B) sent in a record addressed to the post-office mail or electronic mail~~
12 ~~address the landlord designates; or,~~

13 ~~(C) in the absence of a designation, is delivered to the landlord by any~~
14 ~~other method reasonably calculated to provide notice to the landlord; or~~

15 ~~(3) in the case of a tenant, the notification is:~~

16 ~~(A) hand personally delivered by the landlord to the tenant;~~

17 ~~(B) sent in a record addressed to the post-office mail or electronic mail~~
18 ~~address the tenant designates; or,~~

19 ~~(C) in the absence of a designation, is delivered to the tenant by any other~~
20 ~~method reasonably calculated to provide notice to the tenant.~~

21 ~~[(e) Whenever, under this [act], notice in a record is to be sent by a landlord to a tenant~~
22 ~~or a tenant to a landlord in accordance with this subsection, the notice shall be either~~
23 ~~personally delivered to the landlord or tenant, or sent) sent to the landlord at the~~

~~an address specified in subsection (d)(2))B) or and to the tenant at the an address designated in subsection (d)(3)(B).]~~

Comment

A number of sections in this act require either a landlord or a tenant to send the other notice in a record signed by the party giving the notice. (See, Sections 508 and Section ~~540-511~~ relating to domestic violence, sexual assault, or stalking, Section 601 relating to terminations for nonpayment of rent, Section 801 relating to termination of a periodic tenancy, Section 1001 relating to retrieval of personal property, and Section 1101 relating to assignments or subleases). ~~In light of subsections (c) and (e), when~~ When notice in a signed record is required, ~~to be it must be given in accordance with subsection (c). In other cases it could be given by other means reasonably calculated to come to the recipient's attention.~~ ~~sent, the notice must either be personally delivered cannot be hand delivered to the recipient; it must be or sent to the recipient's post office address mail or electronic mail address. In light of subsection (d)(1), other notices, if not required to be in a record, could be telephonically communicated.~~

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

~~In the fall the drafting committee will consider whether personal service of a notice in a record should be permitted as a policy matter. Thus, subsection (e) is in brackets.~~

~~[SECTION 108. JURISDICTION AND VENUE. The [designate appropriate court] may exercise jurisdiction over a landlord or tenant with respect to conduct in this state governed by this [act] or a claim arising from a transaction subject to this [act]. An action must be brought in the [designate appropriate court] in the [county] where the dwelling unit subject to the action is located.]~~

~~**Legislative Note:** This section is unnecessary in states that have addressed jurisdiction and venue in their civil procedure code or other statutes.~~

[SECTION ~~109~~108. COMMON LAW AND PRINCIPLES OF EQUITY. Unless displaced by this [act], the principles of law and equity supplement this [act]].

Comment

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

1 **ARTICLE 2**

2 **GENERAL PROVISIONS APPLICABLE TO LEASE**

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

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

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

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

11 (2) rent is:

12 (A) payable without demand or notice:

13 (i) at the address or place the landlord designates under Section
14 301(b)(3) or, if no designation is made, at the landlord's place of business at the time the lease
15 was made; ~~;~~ and

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

18 (B) uniformly apportioned from day to day.

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

22 **Comment**

23
24 Under subsection (c), tenancies at will are effectively abolished; the only recognized
25 | tenancies other than a tenancy for a fixed term, is a periodic tenancy ~~for month-to-month~~for

1 | month to month or the less common ~~week to week~~ week to week.

2
3 **SECTION 202. EFFECT OF UNSIGNED, UNDELIVERED LEASE; IMPLIED**
4 **LEASE.**

5 (a) Subject to subsection (b):

6 (1) if a written lease signed by the tenant is delivered to the landlord and the
7 landlord fails to sign the lease and return it to the tenant, acceptance of rent by the landlord
8 without reservation of rights gives the lease the same effect as if the lease had been signed and
9 returned to the tenant by the landlord; and

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

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

16 (c) In the absence of a written lease signed by the landlord or tenant, if the tenant accepts
17 possession and pays rent to the landlord without reservation of rights and the landlord accepts
18 rent from the tenant without reservation of rights, the tenancy created is a periodic tenancy for
19 week to week in the case of a tenant that pays rent weekly and in all other cases a periodic
20 tenancy for month to month.

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

22 (a) A lease may not provide that the tenant:

23 (1) waives or foregoes a right or remedy under this [act];

24 (2) authorizes a person to confess judgment on a claim arising out of the lease;

(3) will perform a duty imposed on the landlord by Section 303;

(4) agrees to pay ~~the attorney's~~the attorney's fees and costs of the landlord; or

(5) agrees to exculpate or limit a liability of the landlord arising under this [act] or law of this state other than this [act] or to indemnify the landlord ~~for the~~for the liability ~~and liability and~~ the costs connected with the liability.

(b) A provision in a lease prohibited by subsection (a) or by law of this state other than this [act] is unenforceable. If a landlord willfully includes a provision in a lease that violates subsection (a), the court, in addition to awarding the tenant actual damages, may award the tenant an amount up to [three] months' periodic rent, costs, and reasonable attorney's fees.

Comment

While subsection (a)(3) prohibits a lease from imposing the landlord's Section 303 duties on the tenant, Section 303(b) permits the landlord and tenant to agree that the tenant to perform one or more of the landlord's duties under Section 303 if that agreement is in *a contract separate from the lease*, the consideration for the contract is not tied to the tenant's rent, and the tenant's failure to perform under the contract does not discharge the landlord's duties under Section 303.

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

SECTION 204. SEPARATION OF RENT FROM DUTY TO MAINTAIN

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

Comment

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

1 ARTICLE 3

2 LANDLORD'S DUTIES

3 SECTION 301. REQUIRED DISCLOSURES BY LANDLORD AND TENANT.

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

8 (1) all rules ~~, regulations,~~ and conditions ~~of the landlord~~ which govern the
9 tenancy;

10 (2) any condition of the premises which would ~~cause a landlord to be in~~ breach of
11 a duty owed to a tenant under Section 303 and of which the prospective landlord knows or had
12 ~~the prospective landlord done a reasonable inspection of the premises should have known; ;~~
13 ~~based on a reasonable inspection, should have known; and~~

14 (3) whether the premises are in foreclosure or the landlord is knowingly in default
15 on any obligation to pay money or perform another obligation ~~mortgage or other debt~~ that could
16 result in foreclosure; and

17 ~~(4) in the case of prepaid rent, the month or other period of the lease to; which the~~
18 ~~prepaid rent is to be applied.~~

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

20 (1) the landlord ~~or any person authorized to enter into a lease on the landlord's~~
21 ~~behalf~~ shall disclose to the tenant in a record:

22 (1A) the name of:

23 (A) the landlord;

(Bii) any other person authorized to manage the premises; and
(Ciii) ~~an~~ the owner of the premises or a person authorized to act
for the owner for the purpose of service of process and receiving notices and demands;

(2B) the mail address and any address used for the receipt of electronic
communications post-office address mail and electronic mail address of by the landlord or any
other person designated by the landlord to which notices and ~~demands must~~ demands must be
sent; and

(3C) the address or place to which the tenant must deliver rent; and
(2) the tenant shall disclose to the landlord the tenant's mail address and any
address used by the tenant for the receipt of electronic communications. any mail or electronic
mail address of the tenant to which notices and demands must be sent.

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

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

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

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

Comment

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

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

TENANT. ~~At the commencement of the term of a lease:~~

Comment

SECTION 303. LANDLORD'S DUTY TO MAINTAIN.

(4) have access to a water supply approved under applicable law that is capable of

1 producing 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 ~~are free of~~
7 rodents, bedbugs, other vermin, mold, or the exposure to radon, lead paint, asbestos, ~~or and~~
8 other hazardous substances;

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

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

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

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

20 (12) have in good working order ~~and repair~~ locks or other security devices on all
21 exterior doors and windows that open and shut of the dwelling unit and other parts of the
22 premises; ~~s of both the dwelling unit and the premises and locks or security devices on~~ exterior
23 windows that open and shut of the dwelling unit and the premises in good repair; ~~and~~

(13) have safety equipment required by applicable law.

Comment

Consistent with the practice of nearly every state, Section 303 recognizes that modern conditions require the proper maintenance and operation of rental housing. This section imposes certain minimum duties of repair and maintenance upon landlords consistent with prevailing public standards. Section 401 imposes corresponding duties of cleanliness and proper use within the dwelling unit upon the tenant. This section sets forth only minimum standards. Because many jurisdictions do not have building, housing, or health codes applicable to rental housing, it is appropriate that this statute incorporate minimum standards of maintenance. A lease could impose other maintenance obligations on the landlord. It could also impose other maintenance obligations on the tenant and so long as those obligations do not absolve the landlord of the landlord's obligations under this section. See Section 203(a)(3).

SECTION 304. DUTIES OF LANDLORD PERFORMED EMPLOYMENT

AGREEMENT BETWEEN LANDLORD AND BY TENANT

(ba) A landlord and tenant may agree, in a record signed by the landlord and tenant that is separate from the lease, that the tenant will perform one or more of the duties imposed on the landlord by ~~subsection (a),~~ Section 303, subject to the following rules:

(1) Consideration for the agreement ~~agreement [must be based on the value of the services provided by the tenant and not based on a reduction in the amount or percentage of the rent payable under the lease]~~ cannot be based on a reduction in the amount or percentage of the rent payable under the lease; and:

(2) The tenant's failure to adequately perform the duties does not:

(A) discharge the landlord from the performance of the duties;

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

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

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

1
2
3
4
5
6
7
8
9
10
11

Comment

Consistent with the practice of nearly every state, this section recognizes that modern urban conditions require the proper maintenance and operation of rental housing. This section imposes certain minimum duties of repair and maintenance upon landlords consistent with prevailing public standards. Section 401 imposes corresponding duties of cleanliness and proper use within the dwelling unit upon the tenant. These obligations may not be waived (see Section 203(a)), but subsection (b) Section 304 permits the landlord and tenant to agree, by separate contract, that the tenant may perform repairs or maintenance provided that the consideration for the contract is not tied to the tenant's rent and the tenant's failure to perform under the contract does not discharge the landlord's duties under Section 303.

12
13
14
15
16
17

SECTION ~~304~~305. LIMITATIONS ON LANDLORD'S LIABILITY.

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

(b) Unless the landlord and tenant otherwise agree in a record signed by the landlord and the tenant or as otherwise provided in Section 1205, the landlord remains liable to the tenant for the amount of any security deposit and unearned prepaid rent, to which the tenant is entitled under Section 1204.

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

26
27
28
29
30
31

Comment

The effect of Section ~~304~~305(a), which first appeared in the 1972 act, is to sever both privity of contract and privity of estate between the assigning landlord and the tenant.

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

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

7 [Insert comment showing relationship to section 1205]
8

9 SECTION ~~305~~306. RULES ~~AND REGULATIONS~~ OF LANDLORD.

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

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

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

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

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

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

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

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

1 ARTICLE 4

2 TENANT'S DUTIES

3 SECTION 401. TENANT'S ~~DUTY DUTIES~~ TO MAINTAIN, USE, AND OCCUPY.

4 A tenant shall:

5 (1) comply with all obligations imposed on the tenant by the lease, including the
6 obligation to pay rent;

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

9 (23) except with respect to duties imposed upon the landlord by this [act], as otherwise
10 provided in this [act], by law of this state other than this [act], or by the lease, keep the dwelling
11 unit as safe and sanitary as the conditions of the unit permit;

12 (34) remove all ~~ashes,~~ garbage, rubbish, and other ~~waste debris~~ from the dwelling unit in
13 a clean and safe manner;

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

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

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

22 (78) ~~act and require other persons on the premises with the tenant's consent, other than~~
23 ~~the landlord or the landlord's agent, to act in a manner that will~~ not disturb or allow other

1 persons on the premises with the tenant's consent, other than the landlord or the landlord's agent,
2 to disturb other tenants' the use and enjoyment of the premises; ~~of another tenant of the dwelling~~
3 ~~unit or other dwelling units in the premises;~~

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

5 (8910) notify the landlord within a reasonable time of any condition of the premises that
6 requires repair or remediation by the landlord under Section 303 or the lease; ~~and~~

7 (9101) return the dwelling unit to the landlord at the termination of the lease in the same
8 condition as it was at the commencement of the tenancy, except for normal wear and tear, ~~and~~
9 damage caused by casualties beyond the control of the tenant, and additions and improvements
10 installed on the premises with the landlord's consent; ~~excepted,~~ and

11 (40142) unless the landlord and tenant otherwise agree, occupy the dwelling unit only as
12 a dwelling unit.

13 **Comment**

14
15 ~~Paragraphs (23) and (45) recognize that in some cases, noncompliant conditions are~~
16 ~~beyond the tenant's control. Under paragraph (3) the tenant is obligated to keep the dwelling unit~~
17 ~~in a safe or sanitary condition unless the duty to do so is imposed on another, such as the~~
18 ~~landlord. For example, because Section 303 imposes a duty on the landlord to conform plumbing~~
19 ~~fixtures to applicable law, that duty is not shifted to the tenant by this section.~~

20
21 Paragraph (89) would prohibit the tenant from engaging in any illegal activities on the
22 premises that would disturb the use and enjoyment of the premises by other tenants, including
23 the tenant's cotenants as well as tenants in other dwelling units on the premises.

24
25 Paragraph (4112) leaves to judicial determination whether the incidental use of a
26 dwelling unit for business, professional, or other purposes would constitute a use for other than a
27 dwelling unit. See 1 A.L.R. 6th 135 (2005)(collecting and analyzing cases).
28

1 ARTICLE 5

2 TENANT REMEDIES

3 SECTION 501. NONCOMPLIANCE BY LANDLORD; IN GENERAL.

4 (a) ~~Except as otherwise provided in subsection (b), if~~ If there is a noncompliance by the
5 landlord with the lease or Section 303, the tenant must give the landlord notice ~~in a record~~
6 signed by the tenant of the noncompliance and an opportunity to remedy the noncompliance
7 within the following time periods:

8 (1) Subject to subparagraph (2),

9 (A) If the noncompliance by the landlord involves the failure to provide an
10 essential service, the landlord ~~must~~shall remedy the noncompliance not later than [5] days after
11 the date of the receipt of the notice, ~~and-~~

12 (2B) If the noncompliance ~~with the lease or Section 303~~ does not involve
13 the failure to provide an essential service, the landlord must remedy the noncompliance not later
14 than [14] days after the date of the receipt of the notice.

15 (2b) If the noncompliance ~~by the landlord~~ poses an [imminent][serious] threat to
16 the health or safety of the tenant or other occupant of the dwelling unit, the ~~tenant landlord may~~
17 must remedy the noncompliance as promptly as the conditions ~~require~~require. e ~~[and notify the~~
18 ~~landlord not later than [24] hours after taking any corrective action].~~

19 (eb) If the landlord's noncompliance with the lease or Section 303(a) substantially
20 interferes with the tenant's use and enjoyment of the premises and is not remedied during the
21 applicable ~~time~~ period in subsection (a), the tenant may:

22 (1) terminate the lease and [except in cases of a natural disaster] recover actual
23 damages for the period before termination, including damages based on the diminution in value

of the dwelling unit as determined by the court based upon evidence which need not include
without the use of expert testimony ~~for the period before termination~~; or

(2) continue the lease and:

(A) withhold the rent for the period of ~~the~~ noncompliance subject to ~~the~~
~~terms of~~ Section 505;

(B) recover actual damages, including damages based on the diminution
in value of the dwelling unit as determined by the court based upon evidence which need not
include ~~without the use of~~ expert ~~testimony~~ testimony;

(C) seek injunctive relief or specific performance;

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

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

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

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

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

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

(fe) If a lease is terminated, the landlord shall return to the tenant the amount of any security deposit and unearned rent to ~~to~~ which the tenant is entitled ~~under Section 1204 and prepaid rent to which the tenant is entitled under Section 120?~~.

(gf) In addition to the remedies provided in subsections (eb) and (dc), if the landlord's noncompliance is ~~willfull~~ willful, the court shall award the tenant costs and reasonable attorney's fees.

Comment

This section has been modified from the 1972 act to clarify the remedies available to a tenant for a landlord's noncompliance with the warranty provisions in Section 303 or under the lease. If there is a substantial noncompliance by the landlord with the lease or Section 303(a), Section 501 allows the tenant to elect from among six remedies. However, the tenant's ability to secure essential services or substitute housing under Section 504 is only available for the landlord's substantial noncompliance in providing essential services. Not all services or obligations of the landlord described in Section 303(a) are "essential services." See Section 102(1~~64~~7).

This section also clarifies the measurement of damages when a tenant has occupied a dwelling unit in a noncompliant condition. The 1972 Act permitted recovery of the "diminution in the fair rental value" of the dwelling unit. That terminology is modified in this act to permit recovery of damages based upon the "diminution in value of the dwelling unit," which is defined in Section 102(~~12~~10) as "a reduction from the rent provided in a lease in an amount that reflects the extent to which a noncompliant condition of the premises impairs the tenant's use and enjoyment of the dwelling unit." ~~In determining the amount of the reduction, the court need not hear evidence from experts as typically would be required when the amount of reduction is tied to the property's fair market value rather than, as under this act, diminution in value. The act further emphasizes that this calculation is to be determined by the court without requiring expert testimony.~~ In so doing, the court may consider such factors as the nature and duration of the defect, the proportion of the dwelling unit that is affected, the value of services to which the tenant was deprived, the degree of discomfort imposed by the defect, and the effectiveness of the landlord's remediation efforts. For example, if, as a result of noncompliance, the tenant is deprived only of the use of office space, the diminution in value should be less than if the noncompliance results in the loss of bath and kitchen facilities in the entire dwelling unit.

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

A duty to mitigate damages exists under Section 104.

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

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

6 (1) terminate the lease by ~~sending~~ a notice in a record signed by the tenant ~~and to~~
7 ~~the landlord in accordance with Section 107(e)~~ at any time before the landlord delivers
8 possession of the dwelling unit to the tenant; or

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

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

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

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

21 **Comment**
22

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

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

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

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

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

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

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

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

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

25 (e) A tenant's use of the remedy under this section is limited to [\$500][one month's

1 | ~~rent], \$500]~~ during any 12-month period.

2 | **Comment**

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

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

21 |
22 | **SECTION 504. LANDLORD'S WRONGFUL FAILURE TO PROVIDE**
23 | **ESSENTIAL SERVICE.**

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

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

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

32 | (3) in addition to the remedy provided in subparagraph (2) of this subsection, the
33 | court shall award the tenant ~~in which case the tenant is excused from paying rent for the period~~

~~of the landlord's noncompliance and the court shall award to the tenant~~ actual damages, costs,
and reasonable attorney's fees.

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

Comment

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

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

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

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

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

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

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

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

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

7 (A) a release to the landlord of all or part of the rent held in escrow ~~be~~
8 ~~released to the landlord~~ for the purpose of bringing the premises into compliance with the lease
9 or Section 303; _____

10 _____ (B) a refund to the tenant of all or part of the rent held in escrow ~~be~~
11 ~~refunded to the tenant~~ for:

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

13 (ii) damages based on the diminution in value of the dwelling unit

14 as determined by the court based upon evidence which need not include ~~without the use of~~ expert
15 testimony; or

16 (iii) other actual damages;

17 (C) that the tenant continue to pay rent into escrow as rent becomes due or
18 abate future rent until the landlord brings the premises into compliance with the lease or Section
19 303; or

20 (D) payment to the landlord of any rent held in escrow not otherwise
21 payable to the tenant and any other amount the court determines the tenant owes the landlord. ~~be~~
22 ~~paid to the landlord;~~ ~~or~~

23 ~~_____ (2) the landlord fully complied with the lease and Section 303, the court shall~~

~~order the immediate release of any rent held in escrow to the landlord and direct the tenant to pay the landlord any remaining rent owed.~~

Comment

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

SECTION 506. FIRE OR CASUALTY DAMAGE.

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

(1) the tenant may vacate the unit immediately and not later than [14] days after vacating the unit give the landlord a notice in a record signed by the tenant of the intention of the tenant to terminate the lease, to terminate the tenancy contained in a record signed by the tenant and to the landlord in accordance with Section 107(e) not later than [14] days after vacating the unit of the tenant's intention to terminate the lease, in which case the lease terminates as of the date the tenant vacates the unit;

(2) the landlord may ~~send~~ give the tenant a [30] days' notice in a record signed by the landlord of the landlord's intent to terminate the tenancy lease contained in a record signed by the landlord and to the tenant in accordance with Section 107(e) of the landlord's intention to terminate the lease, in which case the lease terminates as of the expiration of the [30] days' notice period; or

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

evidence which need not include ~~without the use of~~ expert testimony.

(b) If a lease is terminated, the landlord shall return to the tenant the amount of any security deposit and unearned prepaid ~~rent to which the tenant is entitled under Section 1204.~~ Accounting for rent in the event of termination or apportionment of the rent shall be made as of the date of the fire or other casualty.

SECTION 507. TENANT REMEDIES FOR UNLAWFUL REMOVAL, EXCLUSION, OR DIMINUTION OF ESSENTIAL SERVICES. If a landlord unlawfully removes or excludes the tenant from the premises or attempts to constructively evict the tenant by willfully interrupting or causing the interruption of an essential service to the tenant, the tenant may recover possession or terminate the lease and, in either case, the court shall award the tenant an amount equal to [three] months' periodic rent or [triple] the actual damages, whichever is greater, costs, and reasonable attorney's fees. If the lease terminates, the landlord shall return to the tenant the amount of any security deposit and unearned prepaid ~~rent to which the tenant is entitled under Section 1204.~~

SECTION 508. EARLY RELEASE EARLY RELEASE OR TERMINATION OF LEASE OF TENANT FROM LEASE BECAUSE OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.

(a) ~~If Subject to subsection (d), if as the result a tenant or an immediate family member becomes the victim~~ of an act of domestic violence, sexual assault, or stalking a tenant or an immediate family member has ~~which creates~~ a reasonable fear ~~in the tenant or the immediate family member that the tenant or the immediate family member will suffer serious bodily harm or death by~~ of further acts of domestic violence, sexual assault, or stalking by continued residence in the dwelling unit, the tenant may be released from the lease by giving a notice that

1 complies with subsection (b).

2 (b) A tenant shall be released from a lease if the tenant gives the landlord: ~~is released~~
3 ~~from the lease on the date specified in the notice [described in paragraph (1)] if the tenant sends~~
4 ~~delivers to the landlord:~~

5 (1) notice in a record to be released from the lease contained in a record signed by
6 the tenant of the tenant's intent to be released ~~offrom the lease and to the landlord in accordance~~
7 with Section 107(e) not later than [90] days after the act of domestic violence, sexual assault, or
8 stalking and at least [14] days before the release date specified in the notice specifying facts
9 giving rise to the fear ~~and of the tenant's intent to be released from the lease~~; and

10 (2) one of the following documents:

11 (A) a copy of a valid outstanding temporary or permanent court order ~~of a~~
12 ~~court of any state~~ which restrains a perpetrator from contact with the tenant or an immediate
13 family member;

14 (B) a copy of the conviction of a perpetrator for an act of domestic
15 violence, sexual assault, or stalking against the tenant or an immediate family member; or

16 (C) a verification in a record signed by the tenant and an attesting third
17 party which complies with Section 509510.

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

21 ~~(ed)~~ Except as otherwise provided in Section 540511(a)(2), if there are multiple tenants
22 that are parties to the lease, the release of one tenant under this section does not terminate the
23 lease with respect to other tenants. The tenant who is released from the lease is not liable for rent

1 accruing after the tenant is released from the lease. The landlord is not required to return to the
2 released tenant or ~~the a~~ remaining tenant any security deposit or unearned prepaid rent ~~under~~
3 ~~Section 1204~~ until the lease terminates with respect to all tenants.

4 (de) This section shall not apply if the tenant is the perpetrator.

5 **Comment:**

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

8
9 **SECTION 509. PROHIBITIONS ON LANDLORD'S OBLIGATIONS IN EVENT**
10 **OF EARLY RELEASE OR TERMINATION.**

11 (da) If a tenant complies with ~~this section~~ Section 508, the landlord:

12 (1) except as otherwise provided in ~~subsection~~ Section 508 (ed), shall return to the
13 tenant— the amount of any security deposit and unearned ~~prepaid~~ rent to which the tenant is
14 entitled ~~under Section 1204~~ after the tenant vacates the dwelling unit;

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

17 (3) may not disclose information required to be reported to the landlord under ~~this~~
18 ~~section~~ Section 508 unless:

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

21 (B) the information is required to be disclosed by a court order or other
22 law.

23 (eb) If a landlord willfully refuses to release a tenant who under ~~this section~~ Section 508
24 is entitled to be released from the lease, the court shall award the tenant an amount equal to
25 [three] months' periodic rent or [triple] actual damages, whichever is greater, costs, and

reasonable attorney's fees.

SECTION ~~509~~510. VERIFICATION.

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

(1) ~~to the best knowledge and belief of~~from the tenant:

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

(B) the approximate dates during which the domestic violence, sexual assault, or stalking described in Section 508 occurred;

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

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

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

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

(2) from ~~to the best knowledge and belief of~~ an attesting third party:

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

(B) the capacity in which the attesting third party received the information

1 regarding the domestic violence, sexual assault, or stalking;

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

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

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

13 (b) If a tenant willfully submits a false verification to the landlord under subsection
14 508(a)(2)(C), the court may award the landlord an amount up to [three] months' periodic rent or
15 [triple] actual damages, whichever is greater, ~~and~~ costs, and reasonable attorney's fees.

16 Comment

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

19 Verification

20 I, _____ [insert name of tenant], ~~do hereby~~ state that:

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

22 _____ [insert address of dwelling unit];

23 (b) I or an immediate family member has been a victim of acts of [domestic violence,]
24 [sexual assault,] or [stalking] occurring to the best of my knowledge over a period
25 _____ [insert time period over which acts of
26 domestic violence, sexual assault, or stalking occurred] which acts have created a reasonable fear
27 that I or an immediate family member will suffer further acts of domestic violence, sexual
28 assault, or stalking of serious bodily harm by continued residence in the dwelling unit;

29 (c) The most recent act of that violence occurred on _____ [insert

1 date]; and

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

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

10 _____
11 [Tenant's signature]

12 I, _____, [insert name of attesting third party] ~~do hereby~~ state
13 that:

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

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

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

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

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

31 _____
32 [Attesting third party's signature]
33

34 **SECTION ~~510~~511. EFFECT ON PERPETRATOR.**

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

37 (1) except as otherwise provided in Section ~~512~~513(b), allow the perpetrator to
38 remain in possession of the dwelling unit and hold the perpetrator liable on the lease for future
39 rent payable under the lease; or

40 (2) terminate the perpetrator's interest under the lease by sending the perpetrator

1 notice in a record signed by the landlord of the landlord's intention to terminate the lease
2 contained in a record signed by the landlord and to the perpetrator in accordance with Section
3 107(e) at least [5] days before the termination date specified in the notice and bring an action for
4 possession against the perpetrator if the perpetrator fails to vacate the dwelling unit on the
5 specified termination date.

6 (b) ~~The A~~ perpetrator is not entitled to damages ~~or other relief resulting from a good~~
7 ~~faith exercise of a right granted to a landlord or a tenant by against a landlord or tenant that~~
8 ~~complies in good faith with~~ Section 508 or this section.

9 Comment

10 If a tenant does not exercise a right to be released from a lease on which the perpetrator is
11 also a party, the landlord could still terminate the perpetrator's interest in the lease under Section
12 401 because of the perpetrator's breach of the duty not to engage in criminal acts.
13

14 **SECTION 512. CHANGE OF LOCKS AS RESULT OF DOMESTIC VIOLENCE,** 15 **SEXUAL ASSAULT, OR STALKING.**

16 (a) Subject to subsections (b) and (c), if a tenant or ~~an~~ immediate family member, other
17 than a perpetrator, has been the victim of domestic violence, sexual assault, or stalking, and the
18 tenant has a reasonable fear that the perpetrator or other person acting on the perpetrator's behalf
19 may attempt to gain access to the dwelling unit, the tenant may ask the landlord to change the
20 locks or other security devices for ~~to~~ the dwelling unit.

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

24 (1) the tenant may change the locks or other security devices without the
25 landlord's consent and the tenant shall give a key or other means of access to the new locks or

1 | security devices to the landlord and ~~to~~ any other tenant, other than the perpetrator, that is a party
2 | to the lease; and

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

7 | (c) If a perpetrator ~~is also a tenant who~~ is a party to the lease, the locks or other security
8 | devices may not be changed under subsection (b) unless there is a court order expressly requiring
9 | the perpetrator to vacate the dwelling unit [for a no-contact order] and a copy of the order has
10 | been ~~furnished~~ [given] to the landlord.

11 | (d) A perpetrator is not entitled to ~~any~~ damages or other relief against ~~a~~the landlord or
12 | ~~a~~the tenant complying in good faith~~who in good faith complies~~ with this section.~~.- in good faith.~~

13 | **Comment**

14 |
15 | The tenant is not required to comply with Section 508(a)(2) to cause a change of the
16 | locks to the dwelling unit.

17 |
18 | When a perpetrator is a tenant under the lease, subsection (c) would permit a change of
19 | locks only if a court has expressly ordered the perpetrator to vacate the residence. In the absence
20 | of this explicit language, a standard [stay away] [order of protection] would be insufficient.

21 | 22 | **SECTION ~~512~~513. EFFECT OF COURT ORDER TO VACATE.**

23 | (a) Upon issuance of a court order requiring a perpetrator to vacate ~~the a~~ dwelling unit,
24 | neither a landlord nor ~~a~~ tenant has a duty to:

25 | (1) allow the perpetrator access to the unit unless accompanied by a law
26 | enforcement officer; or

27 | (2) provide the perpetrator with a keys~~s~~ to the unit.

28 | ~~—~~(b) If a perpetrator is a party to the lease, then upon issuance of a court order requiring

1 the perpetrator to vacate the dwelling unit, the perpetrator's interest in the tenancy terminates and
2 the landlord and any remaining tenants are entitled to any actual damages from the perpetrator as
3 a result of the termination.

4 ~~_____~~(c) The termination of ~~the a~~ perpetrator's interest under a lease does not affect the
5 obligations of any remaining tenant under the lease.

6
7 ~~_____~~(d) Subject to subsection (b), a Alandlord shall return to all tenants, including a
8 perpetrator, ~~the, the~~ amount of any security deposit and unearned prepaidrent to which they are
9 entitled ~~under Section 1204~~ following the termination of the lease.

10 **Comment**

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

17 ~~_____~~
18 ~~_____~~If a perpetrator's interest under a lease is terminated, the landlord may not increase the
19 obligations of the remaining tenant under the lease even if the landlord believes that the
20 remaining tenant might lack the financial ability to comply with lease. Thus, if the perpetrator
21 and the spouse of the perpetrator sign a lease with monthly rent of \$1,000 for which they are
22 jointly and severally liable, the termination of the perpetrator's interest does not affect the
23 spouse's obligation to continue to pay rent of \$1,000. And, the landlord cannot increase that rent
24 or security deposit to take account of the fact the perpetrator is no longer a party to the lease.
25 ~~_____~~

26 **SECTION ~~513~~514. LIMITATIONS ON LANDLORD'S CONDUCT WITH** 27 **RESPECT TO VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR** 28 **STALKING.**

29 (a) In this section, For the purposes of this section, the word "tenant" includes an
30 applicant ~~who seeks~~seeking to enter into a lease with a landlord.

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

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

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

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

(c) A landlord may terminate the lease of a tenant if the landlord ~~had given~~givesgave the tenant a prior notice in a record signed by the landlord ~~and to the tenant in accordance with~~ Section 107(e) regarding a perpetrator's behavior relating to domestic violence, sexual assault, or stalking ~~involving against~~ the tenant or an immediately family member, and subsequently~~;~~:

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

(2) the perpetrator damages the premises, harms ~~other persons~~another person on the premises, or otherwise disturbs the use and enjoyment of the premises by another tenant of

the dwelling unit or other dwelling units in the premises.

(d) If a landlord ~~f~~willfully violates this section:

(1) the tenant may:

(A) terminate the lease; or

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

(C) obtain appropriate injunctive relief; and

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

ARTICLE 6

LANDLORD REMEDIES

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

(a) Except as otherwise provided in this [act] or by law of this state other than this [act], if there is a substantial noncompliance ~~with Section 401 by a tenant which substantially affects health or safety or a substantial noncompliance~~ with the lease or this [act], the landlord may ~~send~~ deliver to give the tenant a notice in a record signed by the landlord specifying the act and omission constituting the noncompliance and that the lease will terminate upon a specified date not less than [30] days after receipt of the notice if the noncompliance is not remedied not later than [14] days after receipt of the notice. The record shall be signed by the landlord and to the tenant in accordance with Section 107(e). ~~o the tenant specifying the act and omission constituting the noncompliance and that the lease will terminate upon a specified date not less than [30] days after receipt of the notice if the noncompliance is not remedied not later than [14]~~

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

3 ~~—— (b) Subject to subsection (c), if substantially the same act or omission that constituted a~~
4 ~~prior noncompliance of which notice under subsection (a) was sent recurs not later than [6]~~
5 ~~months after the notice, the landlord may send to the tenant notice in a record specifying the~~
6 ~~substantially same act or omission constituting the noncompliance and that the lease will~~
7 ~~terminate on a specified date not less than [14] days after receipt of the notice without the~~
8 ~~opportunity for the tenant to remedy the noncompliance. The record shall be signed by the~~
9 ~~landlord and to the tenant in accordance with Section 107(e), specifying the substantially same~~
10 ~~act or omission constituting the noncompliance and that the lease will terminate on a specified~~
11 ~~date not less than [14] days after receipt of the notice without the opportunity for the tenant to~~
12 ~~remedy the noncompliance.~~

13 ~~—— (c) If the act or omission constituting noncompliance with Section 401 was nonpayment~~
14 ~~of rent, the landlord may not elect to terminate the lease under subsection (b) unless if within any~~
15 ~~[four]-month period the tenant has failed to pay rent in a timely manner on at least [two]~~
16 ~~occasions within any [four]-month period. (b) A landlord may terminate a lease, without~~
17 ~~giving the tenant an opportunity to remedy a noncompliance, by giving the tenant notice in a~~
18 ~~record signed by the landlord that the lease will terminate on a specified date not less than [14]~~
19 ~~days after receipt of the notice in the following circumstances:~~

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

22 ~~(2) the noncompliance is substantially the same act or omission that constituted a~~
23 ~~prior noncompliance, other than for nonpayment of rent, for which notice under subsection (a)~~

1 had been sent within the six months preceding the latest noncompliance.

2 (dc) Except as otherwise provided in this [act], a landlord may recover actual damages
3 and obtain injunctive relief or specific performance for a tenant's noncompliance with Section
4 401 that substantially affects health or safety or a substantial noncompliance with the lease.~~;-In~~
5 ~~addition, if the tenant's substantial noncompliance is willful, the court shall award the landlord~~
6 ~~costs and reasonable attorney's fees.~~

7 **Comment**

8
9 If subsection (b) applies, the tenant has no right to cure the noncompliance to avoid
10 termination of the lease.

11
12 While not required by this act, good practice would suggest that a landlord taking
13 advantage of subsection (b) would include in the notice a statement of the noncompliance that
14 had previously occurred with the time periods set forth in that subsection.

15
16 **SECTION 602. WAIVER OF LANDLORD'S RIGHT TO TERMINATE.**

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

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

23 (a) Distraint for rent is abolished.

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

27 **Comment**

28
29 This section prohibits the landlord from seizing the tenant's personal property to satisfy

1 the landlord's claims against the tenant or filing a lien against the tenant's personal property to
2 secure the tenant's obligations under the lease.

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

5 (a) In this section, "reasonable efforts" means steps a landlord ~~takes~~ would have taken in
6 good faith to rent a dwelling unit if the unit ~~ishad been~~ vacated at the end of the term, such as
7 showing the unit to prospective tenants or advertising the availability of the unit.

8 (b) A tenant ~~is presumed to have abandoned~~ sed a dwelling unit if:

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

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

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

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

16 (c) If a tenant abandons the dwelling unit before the end of the term, the landlord, in
17 fulfilling the duty to mitigate, shall make reasonable efforts to rent the unit.

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

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

24 (f) If a landlord uses reasonable efforts to rent a dwelling unit abandoned by the tenant
25 but is unable to rent the dwelling unit for an amount equal to the rent payable by the ~~tenant~~

1 | ~~tenant~~, the landlord may recover actual damages from the tenant.

2 | (g) If a landlord fails to use reasonable efforts to rent a dwelling unit abandoned by a
3 | tenant, the lease ~~is deemed to be terminated~~ terminates as of the date of the abandonment and the
4 | landlord and tenant are liable to each other under the lease only for breaches occurring before the
5 | date of the abandonment. The landlord shall return to the tenant the amount of any security
6 | deposit and unearned prepaid rent to rent to which the tenant is entitled ~~under Section 1204~~.

7 | _____ (h) A landlord may accept a tenant's abandonment of a dwelling unit only by sending the
8 | ~~tenant~~ a notice in a record signed by the landlord accepting the abandonment, contained in a
9 | ~~record signed by the landlord and to the tenant in accordance with Section 107(e), stating the~~
10 | ~~landlord's intent to accept the abandonment~~. If the landlord accepts the abandonment, the lease
11 | terminates as of the date of the abandonment, and the landlord and tenant are liable to each other
12 | under the lease only for breaches occurring before ~~the~~ acceptance of the abandonment. The
13 | landlord shall return to the tenant ~~the amount of any security deposit and unearned prepaid rent~~
14 | to which the tenant is entitled ~~is entitled under Section 1204~~.

15 | (i) If a tenant wrongfully terminates the lease, the landlord has a claim for possession.
16 | The landlord also has a claim for past due rent and, unless the landlord accepts abandonment or
17 | fails to mitigate, a separate claim for actual damages for breach of the lease, costs, and
18 | reasonable attorney's fees.

19 | **Comment**

20 |
21 | Under subsection (a) the reasonable steps include showing or advertising the unit.
22 | Showing assumes of course that there are prospective tenants interested in seeing the unit.
23 | Advertising can be by a variety of means including sending emails to prospective tenants, hiring
24 | a real estate agent to locate prospective tenants, posting for rent signs on the premises, and
25 | advertising the unit for rent in newspapers or other media.
26 |

27 | In light of subsection (d), when at the time the landlord is fulfilling the duty to mitigate
28 | the landlord has other vacant units to rent, the landlord can show the other units to prospective

tenants before showing the abandoned unit to prospective tenants.

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

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

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

ARTICLE 7

ACCESS

SECTION 701. LANDLORD'S ACCESS TO DWELLING UNIT.

(a) A tenant may not unreasonably withhold consent to the landlord to enter into the dwelling unit to inspect it, make a necessary or agreed-to repair, alteration, or improvement, supply a necessary or agreed-to service, or exhibit the dwelling unit to a prospective or actual purchaser, mortgagee, tenant, worker, contractor, or public official responsible for enforcement of a building, housing, or health code.

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

enter as follows:

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

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

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

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

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

(2) pursuant to a court order; or

(3) the tenant has abandoned the dwelling unit.

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

(a) If a tenant unreasonably refuses to allow the landlord lawful access to the dwelling unit, the court may compel the tenant to grant the landlord access or may terminate the lease. In

1 either case, the court shall award the landlord actual damages, costs, and reasonable attorney's
2 fees.

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

9 ARTICLE 8

10 TERMINATION OF PERIODIC TENANCY; DEATH 11 OF TENANT; HOLDOVER TENANCY.

12 SECTION 801. TERMINATION OF PERIODIC TENANCY; ~~DEATH OF A~~ 13 ~~TENANT.~~

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

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

18 (1) ~~Either the~~ The landlord or tenant may terminate a periodic tenancy for week to
19 week by giving ~~sending the other at least~~ not less than a [five] days' notice in a record of the
20 intent to terminate the lease ~~terminating the tenancy on the date specified in the notice contained~~
21 ~~in a record~~ signed by the party ~~sending~~ giving the notice. ~~that is to the other party in accordance~~
22 with Section 107(e), of the intent to terminate on the date specified in the notice.

23 (2) ~~Either the~~ The landlord or the tenant may terminate a periodic tenancy for

month to month by ~~giving~~ ~~sending the other at least an~~ ~~ot less than~~ [one] month's notice ~~in a~~
~~record of the intent to terminate the lease terminating the tenancy at the end of the monthly~~
~~period contained in a record~~ signed by the party ~~giving~~ the notice. ~~that is to the other party in~~
~~accordance with Section 107(e). of the intent to terminate at the end of a monthly period.~~

Comment

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

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

(a) ~~[unless the tenant's will otherwise provides]~~ ~~[notwithstanding a contrary provision in the tenant's will]~~, the tenant's surviving spouse [, ~~partner in a civil union~~, or domestic partner] who resides in the dwelling unit may ~~assume the lease in accordance with its terms by by giving the landlord a notice to assume the lease contained in a record expressing the spouse's [or partner's] intent to assume the lease.~~ The record shall be:

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

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

1 ~~(b)(2) except~~ Except as otherwise provided in ~~paragraph (A)~~ subsection (a) or law of this
2 ~~state other than this [act]~~, either the landlord or a tenant representative may terminate the lease
3 by notifying the other in a signed record of the intent of the person signing the record to
4 terminate the tenancy, and

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

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

10
11 **SECTION ~~802~~803. HOLDOVER TENANCY.**

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

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

22 (c) If ~~the a~~ lease includes a provision providing specific consequences if ~~the a~~ tenant
23 remains in possession after the expiration of a tenancy for a fixed term or termination of the
24 lease, the terms of the lease control and, to the extent the tenant's continued possession is

consistent with the lease, subsections (a) and (b) do not apply.

ARTICLE 9

RETALIATION~~ORY CONDUCT~~

SECTION 901. RETALIATION~~ORY CONDUCT~~ PROHIBITED.

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

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

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

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

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

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

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

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

or

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

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

(1) increasing ~~or threatening to increase~~ the rent;

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

(3) bringing ~~or threatening to bring~~ an action for possession except for nonpayment of rent;

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

(5) ~~engaging in or threatening to engage in~~ conduct prohibited under [the criminal code].

Comment

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

SECTION 902. ACTS NOT CONSIDERED RETALIATORY.

~~—(e)~~ A landlord is not liable for retaliation if:

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

(~~2b~~) the tenant's conduct ~~under subsection described in Section 901~~(a) was made in an unreasonable manner ~~or~~, at an unreasonable time, or was repeated in a manner having the effect of harassing the landlord;

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

(~~4d~~) the tenant, an immediate family member, or other person on the premises with the tenant's consent, other than the landlord or the landlord's agent, engaged in conduct that presents a threat to the health or safety of another tenant ~~of the dwelling unit or another dwelling unit~~ on the premises;

(5e) the tenant, an immediate family member, or other person on the premises with the tenant's consent, other than the landlord or the landlord's agent, used the premises ~~or the unit~~ for an illegal purpose;

(6f) the landlord is seeking to recover possession on the basis of a notice to terminate the lease and the notice was given to the tenant before the tenant engaged in conduct described in subsection (a); or

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

~~Comment~~

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

~~SECTION 902~~903. TENANT REMEDIES FOR RETALIATORY CONDUCT.

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

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

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

(3) if the lease terminates, the landlord shall return to the tenant the amount of any security deposit and ~~unearned prepaid~~ rent to which the tenant is entitled. ~~under Section 1204.~~

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

1 | been relinquished to the landlord, the landlord shall ~~send~~ deliver to give the tenant notice in a
2 | record of the tenant's right to retrieve the personal property to retrieve the personal property
3 | contained in a record signed by the landlord, ~~and to the tenant in accordance with Section~~
4 | ~~107(e), of the tenant's rights to retrieve the personal property.~~ The notice required under this
5 | section must:

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

8 | (2) inform the tenant of the right to contact the landlord to claim the property
9 | within the ~~time~~ period in subsection (c); and

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

12 | ~~(e) The tenant may contact the landlord to retrieve the personal property not later than~~
13 | ~~[eight] days after the landlord sent the notice to the tenant.~~

14 | ~~(d)(c)~~ -If the tenant contacts the landlord not later than [8] days after the landlord gave the
15 | notice to the tenant under subsection (b), within the time period specified in subsection (c), in
16 | ~~subsection (c);~~ the landlord shall permit the tenant to retrieve the personal property not later than
17 | [15] days after the date of contact or within a longer time period if to which the parties agree.

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

22 | ~~(he)~~ Nothing in this section prohibits the landlord from immediately disposing of
23 | perishable food, hazardous materials, ~~or~~ and ~~other~~ garbage, or turning over animals to an animal

control officer, humane society, or other individual or organization willing to care for such the animal.

~~(f) If a landlord violates this section, the court shall award the tenant actual damages, costs, and reasonable attorney's fees.~~

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

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

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

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

(g) If a landlord violates this section, the court shall award the tenant actual damages, costs, and reasonable attorney's fees.

Comment

t

This section applies if a lease terminates early as the result of domestic violence, sexual assault, or stalking. However, if there are co-tenants to the lease such that the lease does not terminate then this section does not apply. In the latter case, control of the dwelling unit remains with the other tenants; it does not belong to the landlord. Thus, if the tenant²s whose interest in the lease is released leaves personal property at the dwelling unit, that tenant would need to contact the remaining tenants to retrieve that property.

1 When a tenant who is the sole occupant of the dwelling unit dies, the tenant's
2 representative may elect to terminate the lease pursuant to Section ~~801~~802. If that election is
3 made and the dwelling unit is vacated, possession of the dwelling unit is relinquished to the
4 landlord pursuant to Section 1001(a).

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

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

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

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

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

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

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

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

23 (42) cause a the notice to be published, at least once a week for two consecutive
24 weeks in a manner consistent with [the rules of civil procedure relating to service by
25 publication]. a newspaper of general circulation [or other media authorized to publish legal
26 notices] for the city or county in which the dwelling unit is located, stating:

~~_____ (A) the name of the tenant and address of the dwelling unit;~~
~~_____ (B) the date of the tenant's death;~~
~~_____ (C) that the dwelling unit premises contained personal property that is~~
~~subject to disposal by the landlord if unclaimed by a personal representative, contact person, or~~
~~heir of the tenant not later than [60] days after the last date of publication of the notice; and~~
~~_____ (D) the landlord's name, and a telephone number, and post office mailing~~
~~mail address, or electronic mail address at which the landlord may be contacted to claim the~~
~~personal property; and~~
~~(2) mail a copy of the notice with the inventory to the tenant at the tenant's~~
~~last known address.~~

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

(d) If a tenant representative is identified not later than [30] days after the last date of publication of the notice, the tenant representative may retrieve the tenant's personal property from the landlord not later than [60] days after the last date of publication of the notice. Before retrieving the property, the tenant representative must pay the landlord's reasonable costs of inventorying, moving, and storing the property and the reasonable costs of publishing the notice pursuant to subsection ~~(b)(1)~~(b)(2).

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

1 **Comment**

2
3 Subsection (a) permits a tenant's representative to exercise a deceased tenant's rights and
4 responsibilities regarding removal of the tenant's personal property from the premises. Sections
5 1001 and 1002 do not govern the ultimate disposition of the personal property removed from the
6 property by a tenant representative; those rights are determined under the state's law governing
7 decedents' estates. Thus, the tenant representative takes possession of the personal property
8 subject to those other laws.
9

10 The tenant representative typically will be the personal representative of the decedent's
11 estate, but if no personal representative has been appointed, ~~the~~ tenant representative will be the
12 contact person under Section 1003 or, in the absence of a contact person, an heir of the tenant
13 under the state's intestate succession laws. See Section ~~102(46)~~102(40). In the latter case, the
14 landlord has no obligation to identify all of the tenant's heirs and may give possession to *any*
15 individual the landlord knows to be an heir of the tenant.

16 Subsections (b) through (e) provide a process through which the landlord may dispose of
17 the personal property if no tenant representative is identified.
18

19 **SECTION 1003. CONTACT PERSON.**

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

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

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

28 (1) ~~on learning of the tenant's death,~~ shall notify the contact person of the tenant's
29 death;

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

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

(4) shall ~~return to~~ return to the contact person the deceased tenant's security deposit ~~and prepaid rent and unearned rent to to~~ which the tenant would otherwise have been entitled personal representative would have been entitled under Section 1204.

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

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

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

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

Comment

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

ARTICLE 11

ASSIGNMENTS AND SUBLEASES

SECTION 1101. COMMERCIALY REASONABLE OBJECTION.

For the purpose of this article, a commercially reasonable objection includes the

following:

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

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

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

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

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

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

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

Comment

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

SECTION ~~1101~~1102. TENANT'S RIGHT TO SUBLEASE OR ASSIGN.

(a) In this section, "transferee" means a person a tenant has authorized to possess a dwelling unit for any period of time up to and including the balance of the term when the tenant:

~~(1) does not intend to retain the right to possession during the transferee's occupancy of the dwelling unit, and~~

~~2) failed to obtain without first obtaining the landlord's consent otherwise required by subsection (b).~~

(ba) ~~Except as otherwise provided in a lease~~ Unless a lease authorizes a tenant to assign or sublet the lease without the landlord's consent, a tenant may not assign or sublease a lease without the landlord's consent in a record signed by the landlord. If the tenant violates this subsection, the landlord may terminate the lease ~~by~~ by sending the tenant a notice in a record signed by the landlord of the landlord's intent to terminate the lease to terminate the tenancy on a date specified in the notice contained in a record signed by the landlord and to the tenant in accordance with Section 107(c) to the tenant at least [10] days before the termination date specified in the notice.

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

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

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

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

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

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

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

SECTION ~~1102~~1103. RIGHTS FOLLOWING ASSIGNMENT OR SUBLEASE.

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

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

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

Comment

~~Under the common law an assignor or sublessor remains liable on the lease on the theory in the case of an assignment that the landlord and assignor are in privity of contract.~~

~~This section deviates from the common law for assignments but not subleases and reflects a fundamental shift in the rights of landlords and tenants. The underlying premise of this section is that if the landlord consents to an assignment, the landlord implicitly concludes that the transferee is tenant worthy. Therefore, it is not necessary to hold the assignor liable on the lease. If the landlord is at all concerned about the tenant worthiness of the transferee, the landlord can refuse to consent to the assignment or enter into an agreement with the tenant for the tenant to remain liable on the lease.~~

~~SECTION 1103. COMMERCIALLY REASONABLE OBJECTION.~~ For the purpose of this article, a commercially reasonable objection includes the following:

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

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

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

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

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

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

~~Comment~~

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

~~ARTICLE 12~~

~~SECURITY DEPOSITS, FEES, AND PREPAID RENT~~

~~Reporters' Note~~

~~—— This draft of Article 12 is subject to ongoing discussions among the Drafting Committee, other Commissioners knowledgeable about Article 9 of the UCC, and advisors from the UCC~~

Article 9 community and the ALI. While the drafting committee has concluded that the landlord's interest in a security deposit and prepaid rent should be treated as a security interest only, it wants to do this in a way that is self-contained within this act. To do this, there still remain a number of concepts and complexities that must be finalized. The current draft reflects many of the helpful suggestions from the advisors to the drafting committee who have agreed to work closely with the committee next year to finalize this Article.

~~SECTION 1201. NATURE AND AMOUNT OF SECURITY DEPOSIT, FEES,~~
~~AND PREPAID RENT~~PAYMENTS REQUIRED AT THE COMMENCEMENT OF THE
LEASE.

~~(a) Except as otherwise provided in subsections (b) and (c), a landlord may not require a tenant to pay, at the commencement of the lease, an amount totaling more than [three] months of periodic rent. For purposes of this subsection, this amount includes the first month's rent, last month's rent, and a security deposit or other payments whether characterized as rent, security deposit, insurance bond, or otherwise. collect a security deposit in an amount which, together with any fees payable at the commencement of the lease, exceeds [1] month[s] of periodic rent. For purposes of this subsection, fees exclude amounts paid to a prospective landlord to qualify for a lease, such as application fees.~~

~~(b) The limitation in subsection (a) does not apply to application fees, non-refundable cleaning fees, or non-refundable pet fees.~~

~~(bc) If a lease is for a furnished dwelling unit or the tenant keeps or maintains pets or makes alterations to the unit as permitted by the lease, the landlord may [require] [collect] an additional security deposit in an amount commensurate with the additional risk of damage.~~

~~(c) A landlord's interest in a tenant's security deposit and prepaid rent is limited to a security interest. The security interest continues in the identifiable proceeds of the security deposit or prepaid rent.~~

~~(d) Notwithstanding other law, a landlord's security interest in a security deposit or~~

1 ~~prepaid rent is effective against and takes priority over all creditors of the tenant.~~

2 ~~—— (e) Except as otherwise provided by law other than this [act], creditors of the landlord~~
3 ~~can acquire no greater interest in a security deposit or prepaid rent than the interest of the~~
4 ~~landlord.~~

5 **Drafting Note**

6
7 ~~—— During its April 2013 drafting committee meeting, the drafting committee agreed to~~
8 ~~reconsider subsection (a) with the view of placing caps on all amounts the landlord could receive~~
9 ~~at the inception of the lease. While the Committee has not reviewed or approved the following~~
10 ~~language, it reflects the tenor of much of the comments made at the meeting.~~

11
12 ~~—— (a) Except as provided in subsection (b), a landlord may not collect from the tenant at the~~
13 ~~commencement of the lease an amount totaling more than [three] months of periodic rent. For~~
14 ~~purposes of this subsection, this amount excludes payments to qualify for a lease, such as~~
15 ~~application fees, but includes: (1) the first month's rent; and (2) all other payments, whether~~
16 ~~characterized as rent, security deposit, fees, or otherwise.~~

17 **Comment**

18
19
20 ~~Consistent with the 1972 act, subsection (a) limits what a landlord may demand of a~~
21 ~~tenant at the commencement of the lease as a security deposit but places no limit on prepaid rent.~~
22 ~~Unlike the 1972 act, however, this act includes fees within subsection (a) to discourage landlords~~
23 ~~from circumventing the limit on security deposits by charging fees instead.~~

24
25 ~~This act differs from the 1972 act in its treatment of prepaid rent. The act treats both~~
26 ~~security deposits and prepaid rent as the property of the tenant in which the landlord has a~~
27 ~~security interest and provides protection of the funds from both the landlord and tenant's~~
28 ~~creditors. This treatment is consistent with the modern trend of recognizing that the purpose of a~~
29 ~~security deposit is to ensure the tenant's compliance with the tenant's obligations under the lease;~~
30 ~~thus, the landlord is not entitled to the deposit unless the tenant fails to comply with one or more~~
31 ~~of those obligations.~~

32
33 ~~Prepaid rent is treated as property of the tenant for a similar reason. The act defines~~
34 ~~prepaid rent as rent paid in advance of the date on which it is due under the terms of the lease.~~
35 ~~See Section 102(32). Thus, prepaid rent reflects funds that the landlord has accepted on the~~
36 ~~tenant's behalf before the tenant is actually obligated to make the payment under the terms of the~~
37 ~~lease. Like the 1972 act, this act provides a number of situations in which the landlord is required~~
38 ~~to return prepaid rent (as well as a security deposit) on termination of the lease. Imposing the~~
39 ~~same safekeeping requirements on both types of payments ensures that the funds are available~~
40 ~~for return in those situations.~~

41
42 ~~Whether a payment constitutes prepaid rent depends on the terms of the lease. For~~

1 example, if a one-year lease provides for payment of \$500 in rent every month on the first of the
2 month, a \$3,000 payment at the beginning of the lease would be prepaid rent for six months of
3 the lease. Conversely, if the lease provides that the full amount of the rent is due and payable at
4 the commencement of the lease, payment of that amount would not be prepaid rent. The funds in
5 this latter situation would belong entirely to the landlord on payment and would not be subject to
6 the safekeeping requirements of Section 1203.

7
8 Subsection (d) intends to clarify the priority of the landlord's interest in security deposits
9 and prepaid rent as a security interest if the tenant files for bankruptcy. *See In re Verus Inv.*
10 *Mgmt., LLC*, 344 B.R. 536, 546 (Bankr. N.D. Ohio 2006) (landlord's assignee was a secured,
11 rather than unsecured, creditor with respect to a perfected security interest in a certificate of
12 deposit that served as a security deposit under a commercial lease); *cf. In re Coomer*, 375 B.R.
13 800, 804-06 (Bankr. N.D. Ohio 2007) (applying § 541 of the Bankruptcy Code to conclude that
14 bankruptcy trustee was not entitled to a security deposit that landlord was holding to secure the
15 debtor-tenant's obligations under a residential lease). Designating security deposits and prepaid
16 rent as a security interest should similarly protect the tenant's interests in the event of the
17 landlord's bankruptcy. *See In re Frempong*, 460 B.R. 189, 195 (Bankr. N.D. Ill. 2011) (stating
18 that under Chicago municipal ordinance, tenant security deposits "are held 'in trust' by the
19 landlord and thus are not part of the Bankruptcy Estate of any landlord in a Bankruptcy filing");
20 *cf. 6 West's Fed. Admin. Prac.* § 7032 (3d ed.) (the bankruptcy estate acquires any security
21 interest held by the debtor and the right to enforce that security interest, but not the property
22 subject to that security interest).

23
24 In light of subsection (e), whether a transferee of funds from a bank account maintained
25 for the purpose of holding security deposits and prepaid rents takes the funds free from the
26 tenant's interest is governed by other law.

27
28 ~~SECTION 1202. TENANT PROHIBITED FROM USING SECURITY DEPOSIT~~
29 ~~AS RENTLANDLORD, TENANT, AND THIRD PARTY INTERESTS IN SECURITY~~
30 ~~DEPOSIT.~~

31 ~~(ca) A landlord's interest in a tenant's security deposit and prepaid rent is limited to a~~
32 ~~security interest, which~~

33 ~~(i). The security interest continues in the identifiable proceeds of the security~~
34 ~~deposit; and or prepaid rent~~

35 ~~(ii) notwithstanding other law, is effective against and takes priority over all~~
36 ~~creditors and transferees of the tenant,~~

37 ~~(d) Notwithstanding other law, a landlord's security interest in a security deposit or~~

prepaid rent is effective against and takes priority over all creditors and transferees of the tenant.

~~(b) Except to the extent that a secured party has greater rights under law other than this [act], creditors and transferees of the landlord can acquire no greater interest in a security deposit than the interest of the landlord.~~

~~(cc) A tenant's interest in the tenant's security deposit~~

~~(i) is not destroyed by commingling of the security deposits from multiple tenants, as permitted under Section 1203(a)(3); and~~

~~(ii) has priority over any right of set-off the bank with which the account is maintained may have for obligations owed to the bank by the landlord other than charges normally associated with the bank's maintenance of the account.~~

Except as otherwise provided by law other than this [act], creditors and transferees of the landlord can acquire no greater interest in a security deposit or prepaid rent than the interest of the landlord. ~~(c) A tenant's right to the return of all or part of a security deposit held in a bank account has priority over any right of set-off the bank with which the account is maintained may have for obligations owed to the bank by the landlord other than charges normally associated with the bank's maintenance of the account.~~

~~[(d) Unless the landlord and tenant otherwise agree [in a signed record], the tenant is not entitled to the use of a security deposit or any portion of it as a substitute for the payment for rent. may not withhold any portion of any month's rent on the grounds that the security deposit is security for unpaid rent. If a tenant willfully violates this section, the court shall award the landlord the unpaid rent to which the landlord is entitled and may award the landlord an additional amount up to [twice] the periodic rent, and costs and reasonable attorney's fees.~~

Comment

~~Section 1202 is a new provision to address the common misconception of tenants that the security deposit may be used in lieu of paying rent, particularly the last month's rent. The primary purpose of a security deposit is to provide the landlord with funds to reimburse the landlord for the costs incurred in remedying any damages to the dwelling unit by the tenant. If the tenant could withhold rent only to have it charged against the security deposit, the landlord would have no funds to pay for any damages. A tenant that wrongfully withholds last month's rent is subject to the penalty imposed by this section.~~

~~**SECTION 1203. SAFEKEEPING AND USE OF SECURITY DEPOSITS AND PREPAID RENT.**~~

~~(a) With respect to funds received by a landlord as security deposits and prepaid rent, the landlord:~~

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

~~(A) holding the funds in a bank account in this state which is used exclusively for security deposits and prepaid rent, and~~

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

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

~~(3) may commingle the funds received from other tenants in the same bank account but may not commingle other funds, including the landlord's personal or business funds, in the same bank account.;~~

~~(4) except as otherwise provided in paragraph (5) may apply funds from the bank account only on the termination of the lease to the payment of any actual damages the landlord has suffered by reason of the tenant's noncompliance with the lease or with this [act]; and~~

~~_____ (5) to the extent the funds in the account include prepaid rent, may apply funds from the account to the payment of rent as it becomes due.~~

~~_____ (b) Commingling permitted by this [act] shall not destroy a tenant's property rights in a security deposit or prepaid rent.~~

~~_____ (c) A tenant's right to the return of all or part of a security deposit held in a bank account has priority over any right of set-off the bank with which the account is maintained may have for obligations owed to the bank by the landlord other than charges normally associated with the bank's maintenance of the account. _____~~

~~_____ (db) If the landlord willfully fails to comply with subsection (a), the court shall award the tenant actual damages or one month's periodic rent, whichever is greater, costs, and reasonable attorney's fees. This subsection does not preclude the landlord or tenant from recovering other damages to which the landlord or tenant may be entitled under this [act].~~

~~_____ [(ce) Unless the lease provides otherwise, a landlord is not required to deposit security deposits and prepaid rent into an interest-bearing account or have interest thereon paid to the tenant.]~~

Comment

~~_____ Section 1203 introduces a new requirement that landlords segregate both security deposits and prepaid rent from the landlord's other funds. Imposing the safekeeping requirements on both types of payments ensures that the funds are available for return as required under various provisions in the act.~~

~~_____ Typically, security deposits are applied by a landlord to unpaid rent, unpaid utility charges, late fees, repair work, or cleaning contracted for by the tenant but not paid, costs of repossession, costs for storage or disposal of unclaimed property, and costs of restoring the dwelling unit to its condition at the commencement of the lease, normal wear and tear excepted. The provision allowing a landlord to apply a security deposit to actual damages would allow the landlord to apply the deposit against unpaid rent. The fact that this could be done is not intended to implicitly approve the withholding of rent by a tenant in anticipation of the landlord's application of the security deposit to unpaid rent. In fact, Section 1202 expressly penalizes a tenant for that behavior, when willful. Rather, Section 1203(a)(4) simply recognizes that,~~

1 notwithstanding the Section 1202 penalty, some tenants may willfully withhold rent and, thus,
2 landlords should be allowed to apply the security deposit towards the unpaid rent.

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

7
8 ~~—— The effect of commingling not permitted by this [act] is governed by other law.~~

9 ~~—— **SECTION 1204. RETURN OF SECURITY DEPOSITS OR PREPAID RENT.**~~

10 ~~—— (a) Not later than [30] days after the termination of a lease, the landlord shall Upon~~
11 ~~termination of a lease, a tenant is entitled, to the extent and in the manner provided in this~~
12 ~~section, to the return to the tenant of an amount by which any prepaid rent or security deposits~~
13 ~~which, based upon the landlord's good faith calculations, exceed the amounts that the landlord is~~
14 ~~owed for rent remaining due under the lease or for tenant's noncompliance with the terms of the~~
15 ~~lease or this [act].:~~

16 ~~—— (1) prepaid rent exceeds the amount of rent remaining due under the lease; and~~

17 ~~—— (2) the security deposit exceeds any amount the tenant owes the landlord for~~
18 ~~noncompliance with terms of the lease or this [act].~~

19 ~~—— (b) Not later than [30] days after the termination of the lease and subject to subsection~~
20 ~~(c), the landlord shall:~~

21 ~~—— (1) return to the tenant the amount of the security deposit and prepaid rent the~~
22 ~~landlord in good faith reasonably believes is due the tenant; and~~

23 ~~—— (2) if~~

24 ~~—— (b) If less than the entire amount of the tenant's security deposit or prepaid rent is~~
25 ~~returned to the tenant, the landlord shall provide the tenant with a signed record specifying the~~
26 ~~items to which the security deposit or prepaid rent is being applied and the amount of the~~
27 ~~security deposit or prepaid rent being applied for each item.~~

~~————(c) The landlord shall send the amount to be returned to the tenant under subsection (ba)(1) and any record required by subsection (b)(2), postage paid, to an address provided by the tenant to the landlord on termination of the lease or, in the absence of that address, to the address specified in Section 107(d)(3).~~

~~————(de) The penalties for noncompliance with this section are as follows:~~

~~————(1) If a landlord fails to comply with subsections (ba) and (cb), the court shall award the tenant the amount of the security deposit and prepaid rent to which the tenant is entitled and an additional amount equal to [two] times the amount of security deposit and prepaid rent to which the tenant is entitled or \$[250], whichever is greater, costs, and reasonable attorney's fees.~~

~~————(2) If a landlord retains an amount in excess of the landlord's good faith calculation of the amount to which the landlord is entitled, the court shall award the tenant the amount of the security deposit and prepaid rent to which the tenant is entitled and an additional amount equal to [two] times the amount of the security deposit and prepaid rent to which the tenant is entitled or \$[250], whichever is greater, costs, and reasonable attorney's fees.~~

~~————(ed) If the amount returned to the tenant and any record is misdelivered or is undeliverable, the landlord remains liable for the amount of any security deposit and prepaid rent to which the tenant is entitled but is not liable for the penalties under subsection (de).~~

~~————(fe) Notwithstanding other law of this state, any security deposit or prepaid rent unclaimed by the tenant and the amount of any check that remains outstanding more than [180] days after the security deposit or prepaid rent and any record are sent to the tenant pursuant to subsection (cb) are [forfeited by the tenant][treated as unclaimed property under other law of this state]. Nothing in this subsection precludes a tenant from recovering from the landlord a penalty~~

1 ~~for noncompliance as provided in subsection (de).~~

2 **Comment**

3
4 ~~Section 1204 provides new procedural requirements for withholding or returning security~~
5 ~~deposits and prepaid rent. These rules are triggered automatically by the termination of the lease,~~
6 ~~rather than requiring the tenant to make a demand for the payment as was required under the~~
7 ~~1972 act.~~

8
9 ~~The time frame set forth in subsection (f) may supersede the time limits for other forms~~
10 ~~of unclaimed property provided in other law of the state.~~

11
12 ~~**SECTION 1205. RIGHTS AND OBLIGATIONS OF LANDLORD'S SUCCESSOR**~~
13 ~~**REGARDING SECURITY DEPOSITS AND PREPAID RENT.**~~

14 ~~(a) Not later than [30] days after the termination of the landlord's interest in the premises,~~
15 ~~whether by sale, assignment, death, appointment of receiver, or otherwise, the landlord or the~~
16 ~~personal representative of the landlord's estate shall do one of the following acts, either of which~~
17 ~~relieves the landlord or the landlord's estate from further liability with respect to the security~~
18 ~~deposits and prepaid rent held by the landlord:~~

19 ~~(1) transfer the security deposit and prepaid rent being held by the landlord to the~~
20 ~~person succeeding to the landlord's interest in the premises and notify each tenant of the amount~~
21 ~~transferred to the successor, of any claims made against the security deposits or prepaid rent~~
22 ~~before the transfer, and of the successor's name and address; or~~

23 ~~(2) return the security deposits and prepaid rent to the tenant pursuant to the~~
24 ~~terms of Section 1204.~~

25 ~~(b) On receipt of any portion of the security deposits and prepaid rent under subsection~~
26 ~~(a), the landlord's successor has all of the rights and obligations of a landlord under this [article]~~
27 ~~for those funds.~~

Comment

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

ARTICLE 12

SECURITY DEPOSITS, FEES, AND UNEARNED RENT

Reporters' Note to the Drafting Committee

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

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

SECTION 1201. PAYMENTS REQUIRED AT THE COMMENCEMENT OF THE LEASE.

(a) Except as otherwise provided in subsections (b) and (c), a landlord may not require a tenant to pay, at or prior to the commencement of the lease, an amount equal to more than ~~three~~^{two} months of periodic rent. ~~This For purposes of this subsection, this amount may includes, in any combination, prepaid rent, a the first month's rent, last month's rent, security deposit [, or other~~^{any} payments not otherwise described in subsection (b)].

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

1 fees.

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

6 **SECTION 1202. LANDLORD, TENANT, AND THIRD PARTY INTERESTS IN**
7 **SECURITY DEPOSIT.**

8 (a) A landlord's interest in a tenant's security deposit is limited to a security interest.;
9 which

10 ~~(i) continues in the identifiable proceeds of the security deposit; and~~

11 (b) N—~~(ii)~~ notwithstanding law other than this [act], a landlord's security interest in a
12 tenant's security deposit is effective against and has priority over all creditors and transferees of
13 the tenant.

14 ~~((c) b)~~ Subject to subsection ~~(d)(1) and~~ ~~fe provides otherwise~~(f), creditors and transferees
15 of ~~the~~ a landlord can acquire no greater interest in a security deposit than the interest of the
16 landlord.

17 (ed) The following rules apply to a tenant's ~~A tenant's~~ interest in the tenant's security
18 deposit:

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

23 (2) The tenant's interest ~~(i)~~ is not destroyed if the security deposit is commingled

1 ~~by its commingling with the security deposits of other tenants in a bank account pursuant to , as~~
2 ~~permitted under Section 1203(a)(3); and~~

3 ~~(#3) The effect of commingling not permitted by this [act] is determined by law~~
4 ~~other than this [act]. has priority over any right of set-off a bank in which the account is~~
5 ~~maintained may have for obligations owed to the bank by the landlord other than charges~~
6 ~~normally associated with the bank's maintenance of the account.~~

7 ~~(e) Unless thea landlord and tenant otherwise agree [in a signed record], if a tenant fails~~
8 ~~to pay rent when due and the landlord uses the whole or any portion of a security deposit to pay~~
9 ~~the rent that is due, a court the tenant is not entitled to the use of a security deposit or any portion~~
10 ~~of it as a substitute for the payment for rent. If a tenant willfully violates this section, the court~~
11 ~~shall award the landlord an amount equal to the amount of the security deposit applied towards~~
12 ~~the payment of rent and the unpaid rent to which the landlord is entitled and may award the~~
13 ~~landlord an additional amount up to [twice] the periodic rent, and costs and reasonable attorney's~~
14 ~~fees.~~

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

17 Comment

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

1 (the bankruptcy estate acquires any security interest held by the debtor and the right to enforce
2 that security interest, but not the property subject to that security interest).

3
4 Under subsection (b), whether a transferee of funds from a bank account maintained for
5 the purpose of holding security deposits takes the funds free from the tenant's interest is
6 governed by other law.

7
8 Under subsection (3), the effect of commingling not permitted by this [act], as, for
9 example, when the landlord commingles the landlord's personal funds with the security deposit,
10 is governed by law other than this act.

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

19 20 **SECTION 1203. SAFEKEEPING OF SECURITY DEPOSITS.**

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

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

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

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

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

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

33 (b) If the landlord willfully fails to comply with subsection (a), the court shall award the

1 tenant actual damages or one month's periodic rent, whichever is greater, costs, and reasonable
2 attorney's fees. ~~This subsection does not preclude the landlord or tenant from recovering other~~
3 ~~damages to which the landlord or tenant may be entitled under this [act].~~

4 (c) Unless ~~the~~ lease provides otherwise, a landlord is not required to deposit a security
5 deposits into an interest-bearing account or to pay ~~the~~ tenant any ~~have~~ interest thereon. ~~paid to~~
6 ~~the tenant.~~

7 Comment

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

12
13 Subsection (b) ~~This subsection does not preclude the landlord or tenant from recovering~~
14 ~~other damages to which the landlord or tenant may be entitled under this [act].~~

15
16 The segregation requirement does not apply to prepaid rent. Rent payments made by or
17 on behalf of the tenant for future dates, even if required by the terms of the lease or as a
18 condition of entering into the lease, are not security deposits. Rather, they are payment for those
19 future dates, discharging, to the extent of the payment, the obligation to pay rent for those
20 dates. Accordingly, unlike security deposits, the tenant no longer owns the funds paid. But see
21 Section 1204 relating to the landlord's duty to refund unearned rent in situations in which the
22 tenancy terminates before a date for which rent has been paid. While the tenant no longer owns
23 the funds, to the extent the landlord fails to return them when under this [act] the tenant has a
24 right to them, the tenant would have a cause of action to recover them.

25 26 SECTION 1204. RETURN OF SECURITY DEPOSITS OR UNEARNED RENT.

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

32 (b) If a landlord sends the tenant less ~~less~~ than the entire amount of the ~~tenant's~~ security

1 deposit that the landlord received from the tenant, is returned to the tenant, the landlord shall
2 provide the tenant with a signed record specifying the items to which the security deposit is
3 being applied and the amount of the security deposit being applied ~~for~~to each item.

4 (ec) The landlord shall send the amount required by ~~to be returned to the tenant under~~
5 subsection (a) and any record required by subsection (b), postage or cost of transmission
6 provided for, to an address provided by the tenant ~~t to the landlord on termination of the lease or,~~
7 in the absence of that address, to the address specified in Section 301(b)(2).

8 (d) If a landlord fails to comply with subsections (a) and (b), the court
9 _____ (1) shall award the tenant the amount of the security deposit and unearned rent to
10 which the tenant is entitled, ~~and~~

11 _____ (2) may award the tenant in addition the greater of ~~an additional amount equal to~~
12 [two] times the amount in paragraph (1) and of security deposit and prepaid rent to which the
13 tenant is entitled or \$[250], whichever is greater, costs, and reasonable attorney's fees.

14 (e) If the amount returned to the tenant and any record is misdelivered or is undeliverable
15 ~~;~~ or if the landlord complied with subsections (a) and (b) but returned an amount less than the
16 sum to which a court determines the tenant was entitled, ~~;~~ The landlord's liability is limited to the
17 amount provided ~~is liable only for the amount of any security deposit and prepaid rent to which~~
18 the tenant is entitled but is not liable for the additional penalties under subsection (d)(1), in the
19 following circumstances:

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

23 _____ (2) if the landlord complied with subsections (a) and (b) but returned an amount

1 less than the sum to which a court determines the tenant was entitled.

2 (f) Notwithstanding ~~other law of this state other than this [act], any security deposit or~~
3 ~~unearned rent unclaimed by the tenant and the amount of any check that remains outstanding for~~
4 ~~more than [180] days after the tenancy has ended, including the amount of any check that~~
5 ~~remains outstanding at the end of the [180]-day period, are [the landlord has complied with the~~
6 ~~requirements of this section,][the security deposit or prepaid rent and any record are sent to the~~
7 ~~tenant pursuant to subsection (b)] are [forfeited by the tenant][treated as unclaimed property~~
8 ~~under [cite to state unclaimed property act] other law of this state]. Nothing in this subsection~~
9 ~~precludes a tenant from recovering from the landlord a penalty for noncompliance as provided in~~
10 ~~subsection (d).~~

11 **Comment**

12
13 Section 1204 provides new procedural requirements for withholding or returning security
14 deposits and unearned rent. These rules are triggered automatically by the termination of the
15 lease, rather than requiring the tenant to make a demand for the payment as was required under
16 the 1972 act.

17
18 Subsection (d)(2) provides a penalty when the landlord fails to comply with any of the
19 requirements of subsections (a) and (b), including the failure to act within the applicable time
20 period, the failure to provide a record to explain why the security deposit was not returned in
21 full, and the failure to return an amount equal to the landlord's good faith calculation of the sum
22 to which the tenant is entitled. If the landlord has acted in good faith, but merely erred in
23 calculating the amount owed, subsection (e) permits the tenant to recover the amount to which
24 the tenant is entitled but does not impose an additional penalty upon the landlord.

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

28
29 ~~Nothing in this subsection~~in subsection (f) ~~precludes~~ precludes a tenant from recovering
30 from the landlord a penalty for noncompliance as provided in subsection (d).

31 **SECTION 1205. DISPOSITION OF SECURITY DEPOSITS AND UNEARNED** 32 **RENT UPON TERMINATION OF LANDLORD'S INTEREST IN PREMISES.**

33
34 (a) Not later than [30] days after the termination of the landlord's interest in the premises.

1 whether by sale, assignment, death, appointment of receiver, or otherwise, the landlord or the
2 personal representative of the landlord's estate shall: ~~do one of the following acts, either of~~
3 ~~which relieves the landlord or the landlord's estate from further liability with respect to the~~
4 ~~security deposits and prepaid rent held by the landlord:~~

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

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

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

16 (bec) On receipt of any portion of the security deposits and unearned rent under
17 subsection (a), the person succeeding to the landlord's interest in the premises ~~the landlord's~~
18 ~~successor~~ has all of the rights and obligations of a landlord under this [article] with respect to
19 those funds.

Comment

20 Section 1205 is a new section that provides for disposition of security deposits and
21 unearned rent after a transfer of the landlord's interest in the premises.
22
23

1 **ARTICLE 13**

2 **MISCELLANEOUS PROVISIONS**

3 **SECTION 1301. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

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

6 **SECTION 1302. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**

7 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal

8 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,

9 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or

10 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15

11 U.S.C. Section 7003(b).

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

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