

DRAFT  
FOR DISCUSSION ONLY

# REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (2015)

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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April 17 – 18, 2015 Drafting Committee Meeting

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April 6, 2015

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

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

5 (86) “Criminal act” or “criminal activity” means:

6 (A) the ~~illegal-criminal~~ manufacture, sale, distribution, use, or possession of a  
7 controlled substance ~~with intent to manufacture, sell, distribute, or use the substance~~ as defined  
8 by law other than this [act]; or

9 (B) activity that is ~~illegal-criminal~~ under ~~the-criminal~~ law ~~of this state other than~~  
10 ~~this [act]~~ and threatens the health or safety of ~~another tenant~~ individual on the premises, the  
11 landlord, or the landlord’s agents.

12 ~~(98) “Dating violence” means dating violence as defined by [insert reference to definition~~  
13 ~~in other state law].~~

14 (107) “Diminution in the value of ~~the a~~ dwelling unit” means a reduction from ~~the~~ rent  
15 ~~provided in a lease~~ that reflects the extent to which a noncompliant condition of the premises  
16 impairs the tenant’s use and enjoyment of the unit as determined by a court based upon evidence  
17 that need not include expert testimony.

18 ~~(110) “Domestic violence” means:~~

19 ~~(A) domestic violence as defined by [insert reference to definition in other state~~  
20 ~~law]; and~~

21 ~~(B) dating violence, stalking, and sexual assault.~~

22 (128) “Dwelling unit” means property leased to a tenant for use as a home, residence, or sleeping  
23 place by an individual or two or more individuals who maintain a common household, regardless

1 of their relationship to each other. ~~The term includes:~~ ~~For purposes of this paragraph, property~~  
2 ~~dwelling unit includes:~~

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

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

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

11 (1410) “Essential service” means heat, hot and cold running water, and electricity. The  
12 term includes gas or, air conditioning, ~~or [other service]~~ if required to be supplied to a tenant by  
13 the lease or by law other than this [act] which, if not supplied to the tenant, would create a  
14 serious threat to the health, safety, or property of the tenant or an immediate family member. ~~]~~

15 (1511) “Fees” means amounts payable by a tenant to a landlord for which the landlord  
16 has no obligation to account or return to the tenant. The term does not include rent or a security  
17 deposit.

18 (1612) “Funds” means money, checks, bank-account credits, certificates of deposit, or the  
19 like.

20 (1713) “Guest” means a person, other than the landlord or the landlord’s agent, invited on  
21 the premises by a tenant or an immediate family member.

22 (1814) “Good faith” means honesty in fact and the observance of reasonable commercial  
23 standards of fair dealing.

1 (1915) “Immediate family member” means any of the following who habitually resides in  
2 a dwelling unit with a tenant:

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

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

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

8 (2016) “Landlord” means:

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

10 (B) ~~and~~ a successor in interest to the landlord; ~~The term includes:~~

11 (AC) a sublessor only if the landlord did not consent to the sublease; and

12 (BD) a person that manages a dwelling unit or enters a lease on behalf of the  
13 owner of a dwelling unit and fails to comply with Section 108(b) and (c), but such person shall  
14 not be a landlord as to events occurring after:

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

17 (2) ~~if the person’s authority to act on behalf of the owner is terminated,~~ the  
18 date of termination of the person’s authority to act on behalf of the owner if owner if that  
19 authority is terminated. that authority.

20 (2117) “Lease” means a contract, oral or in a record, between a landlord and tenant in  
21 which the landlord rents a dwelling unit to the tenant ~~a dwelling unit and the tenant takes~~  
22 possession of a dwelling unit from the landlord for a tenancy for a fixed term or a periodic  
23 tenancy subject to the terms and conditions set forth in the lease. The term includes all

1 amendments and modifications to the lease and all rules adopted by the landlord which were  
2 disclosed to the tenant ~~pursuant to~~under Section 108(a)~~(c)~~(4) and, subject to Section ~~305304~~(b),  
3 rules adopted by the landlord after the commencement of the lease.

4 Legislative Note: This act uses the term “lease” rather than “rental agreement”, which was used  
5 in the 1972 Act, because in many states the lawyers and courts prefer the word lease. However,  
6 the mere use of the term “lease” is not meant as a substantive change. If a state prefers “rental  
7 agreement,” the term can be substituted in place of the word “lease.”  
8

9 ~~(22) “Normal wear and tear” means deterioration that results from the intended use of a~~  
10 ~~dwelling unit, including breakage or malfunction due to age or deteriorated condition. The term~~  
11 ~~does not include deterioration that results from negligence, carelessness, accident, or abuse of the~~  
12 ~~unit, fixtures, equipment, or other tangible personal property by the tenant, an immediate family~~  
13 ~~member, or a guest.~~

14 (18) “Notice in a record” means notice that complies with the requirements of Section  
15 107(eb).

16 ~~(2319)~~ “Owner” means a person vested with all or part of:

17 (A) the legal title to the premises; or

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

20 ~~(2420)~~ “Periodic rent” means the amount payable each month under a tenancy for a fixed  
21 term or a periodic tenancy for month to month or payable each week under a periodic tenancy for  
22 week to week. If rent is payable annually, periodic rent is the amount of the annual rent divided  
23 by 12.

24 ~~(2521)~~ “Periodic tenancy” means a tenancy created under a lease or arising by operation  
25 of law for either month to month or week to week.

26 ~~(26) “Perpetrator” means an individual who commits an act of domestic violence on a~~

1 ~~tenant or an immediate family member.~~

2 (2722) “Person” means an individual, estate, trust, business or nonprofit entity, public  
3 corporation, government or governmental subdivision, agency, or instrumentality, or other legal  
4 entity.

5 (2823) “Premises” means a dwelling unit and, to the extent owned by the landlord, any  
6 structure of which the unit is a part. The term includes all areas and other structures owned by  
7 the landlord that are associated with the structure in which the dwelling unit is located and are  
8 held out by the landlord for the use of tenants generally.

9 (2924) “Prepaid rent” means rent paid to a landlord before the first day of the rental  
10 period to which it is to be applied.

11 (3025) “Record” means information that is inscribed on a tangible medium or that is  
12 stored in an electronic or other medium and is retrievable in perceivable form.

13 (3126) “Rent” when used as a noun means a payment-payment ~~made or to be made to the~~  
14 ~~landlord, or another person for the benefit of the landlord,~~ for the possession, use, use, and  
15 enjoyment of a dwelling unit. The term does not include a security deposit or fees.

16 (3227) “Repairs” includes remediations.

17 (3328) “Security deposit” means funds provided to a landlord to secure payment or  
18 performance of a tenant’s obligations under a lease or this [act] and the identifiable proceeds of  
19 the funds, regardless how the funds are denominated. The term does not include rent or fees.

20 (3429) “Security interest” means an interest in personal property that secures payment or  
21 performance of a tenant’s obligations under a lease or this [act].

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

1 (3630) “Sign” means, with present intent to authenticate or adopt a record:

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

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

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

7 (3831) “State” means a state of the United States, the District of Columbia, Puerto Rico,  
8 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction  
9 of the United States.

10 (3932) “Tenancy for a fixed term” means a tenancy under a lease for a fixed or  
11 computable period, regardless of the length of the period.

12 (4033) “Tenant” means:

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

15 (B) an assignee or sublessee of the person described in paragraph (A). ~~The term~~  
16 ~~includes a sublessee~~ who enters into possession of the unit with the landlord’s consent to the  
17 exclusion of that person;

18 (C) ~~, an assignee, and~~ an individual authorized to occupy the unit by a person  
19 described in paragraph (A) tenant who who is not an individual; and

20 (D) a roommate [,] or spouse[, or partner in a civil union] [or domestic partner] of  
21 a person described in paragraphs (A), (B) or (C) who occupies the unit with that person with the  
22 landlord’s consent and contributes towards the payment of rent but who is not a party to the  
23 lease.

1 (4134) “Tenant representative” means:

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

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

6 ~~(42) “Undisclosed owner” means the owner of a dwelling unit whose identity has not  
7 been disclosed to the tenant by the property manager or other person entering into the lease on  
8 the owner’s behalf.~~

9 (4335) “Unearned rent” means rent, including prepaid rent, that a tenant paid to a  
10 landlord for the right to occupy the dwelling unit for any period after the date the lease  
11 terminates in accordance with its terms or this [act]. The term does not include any amount,  
12 including rent, owed to the landlord for a period before or after the date the lease terminates  
13 during which the tenant is in actual-physical possession of the premises.

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

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

20 (4636) “Willful” means the intentional performance of an act the actor knows to be  
21 prohibited under this [act] or by a lease, an intentional failure to perform an act the actor knows  
22 to be required under this [act] or by a lease, or a deliberate indifference to whether the  
23 performance or failure to perform violates this [act] or a lease. Willfully has a corresponding

1 meaning.

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

## 8 9 Comment

10  
11 The definition of “lease” (paragraph (2120)) includes all rules of the landlord disclosed  
12 under Section 108(a)(4) prior to the landlord’s acceptance of funds from the tenant or before  
13 entering into the lease as well as later adopted rules of the landlord adopted under Section  
14 305304. Rules of other persons that apply to the dwelling unit, such as rules of a condominium  
15 association or a homeowner’s association, are not part of the lease even though they affect the  
16 tenant’s use and enjoyment of the premises. See Section 305 for the rights of a tenant whose use  
17 and enjoyment of the dwelling unit is affected by the rules of persons other than the landlord,  
18 including homeowners, cooperative, or condominium associations.

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

28  
29 The definition of criminal act (paragraph (86)) includes certain defined activities relating  
30 to controlled substances “as defined by law other than this [act].” Such law could include federal  
31 law even if that law conflicts with state law. This is appropriate because of the risk of forfeiture  
32 of the landlord’s property if the landlord permits such activities on the premises.

33  
34 The definition of “fees” (paragraph (1511)) includes nonrefundable payments made by  
35 the tenant to the landlord. Common examples include application fees, cleaning fees, short-term  
36 lease fees, late-payment fees, dishonored check fees, credit card or other payment processing  
37 fees, abandonment fees, special amenities fees, pet fees, or fees assessed for violating pet  
38 policies or other rules governing the tenancy.

39  
40 ~~The definitions of “rent” (paragraph (3129)) and “security deposit” (paragraph (313))~~  
41 ~~have been included or updated from the 1972 act to reflect important distinctions in how these~~  
42 ~~payments are handled under Article 12.~~

43  
44 The definition of “landlord” (paragraph (2016)) includes not only the owner of the  
45 dwelling unit, but also any person -- such as a management company -- that enters into a lease on

1 behalf of a landlord without making all of the disclosures required by Section 108. In that  
2 situation, the management company qualifies as a “landlord” and has all of the rights and  
3 responsibilities of a landlord under the act. Conversely, if a management company has disclosed  
4 the owner and the other information required by Section 108 to the tenant, only the owner is the  
5 “landlord” and the management company is merely the landlord’s agent for purposes of this act.  
6 Subparagraphs ~~(16)(B)(D)(1) and (2)~~ provides the procedures for a person in that situation to be  
7 relieved of liability under the act. For example, if after entering into the lease on behalf of the  
8 undisclosed owner the identity of the owner is disclosed, the manager would no longer be the  
9 landlord as to events occurring after the tenant received a notice in a record disclosing the  
10 landlord’s identity and the other information required by Sections 108(b) and (c), such as the  
11 landlord’s addresses. **[Note to Committee: This comment may need reworking after the  
12 February meeting.]**  
13

14 The definition of “lease” (paragraph (17)) includes all rules of the landlord disclosed  
15 under Section 108(a)(4) prior to the landlord’s acceptance of funds from the tenant or before  
16 entering into the lease as well as later adopted rules of the landlord adopted under Section 304.  
17 Rules of other persons that apply to the dwelling unit, such as rules of a condominium  
18 association or a homeowner’s association, are not part of the lease even though they affect the  
19 tenant’s use and enjoyment of the premises. See Section 305 for the rights of a tenant whose use  
20 and enjoyment of the dwelling unit is affected by the rules of persons other than the landlord,  
21 including homeowners, cooperative, or condominium associations.  
22

23 The definition of “owner” (paragraph ~~(23)~~19) includes a mortgagee in possession. It  
24 would not include a mortgagee in a title theory state unless the mortgagee became entitled to  
25 possession.  
26

27 The definition of “premises” (paragraph ~~(28)~~23) includes a tenant’s dwelling unit and the  
28 structure of which it is a part, as well as any areas associated with the structure held out for the  
29 use of tenants generally. The definition was broadly written to cover both the exterior and  
30 interior of a structure and any fixtures, facilities, and appurtenances to it, such as parking areas.  
31

32 Portions of a structure not owned by the landlord are not part of the “premises.” For  
33 example, if the dwelling unit is a condominium located in a 40-story building, the premises do  
34 not include the common areas of the building. ~~owned by the condo association.~~ If the landlord  
35 owned an assigned parking space in the structure that is leased to the tenant, then the space  
36 would be included within the term “premises.”  
37

38 Prepaid rent (paragraph (24)) is rent paid before the first day of the rental period to which  
39 it is to be applied. For example, assume on November 1 a landlord and tenant agree to the lease  
40 of a dwelling unit with the term to begin the following January 1 at a monthly rent of \$500.  
41 Tenant gives the landlord a check for \$1,000 to cover the January rent and the security deposit of  
42 \$500. From November 1 until January 1, the \$500 for January’s rent is “prepaid rent.” After,  
43 January 1 it is not prepaid rent.  
44

45 The definitions of “rent” (paragraph (26)) and “security deposit” (paragraph (28)) have  
46 been included or updated from the 1972 act to reflect important distinctions in how these

1 payments are handled under Article 12.

2  
3 The definition of “tenant” (paragraph (4033)) recognizes that some leases are entered into  
4 by business entities for their employees or by a trust on behalf of a beneficiary. For example, an  
5 LLC might rent an apartment for a member or a manager. Both the LLC and the member or  
6 manager are tenants, the latter because the member or manager has been authorized to occupy  
7 the dwelling unit by the LLC; the former because it is legally entitled to possession under the  
8 lease. In addition the definition treats as the tenant any assignee of the tenant and/or sublessee ~~to~~  
9 who enters possession with the landlord’s consent. ~~whom a sublet was made with the landlord’s~~  
10 consent. By doing so, the definition makes clear that landlord’s obligations under the lease run  
11 to the assignee and vice versa as they did at common law. By adding assignee to the definition  
12 of tenant it is also clear that all of the statutory duties run between them as well. By treating a  
13 sublessee as a tenant in cases where the landlord consented to the sublease, the sublessee is also  
14 obligated to discharge a tenant’s statutory and lease obligations to the landlord and vice  
15 versa. duties are owed from the landlord to the assignee and sublessee and vice versa.

16  
17 The term tenant also includes a roommate or spouse, or partner in a civil union, or  
18 domestic partner ~~who occupies with the landlord’s consent and pays rent but is not a party to the~~  
19 lease. Thus, if a landlord rents to a tenant, who in turn allows someone to share possession of the  
20 unit with the tenant, that individual is a tenant if the criteria in the definition of “roommate” are  
21 met. See paragraph (31). ~~If the roommate occupies the unit without the landlord’s consent or~~  
22 does not pay rent, the roommate is not a tenant under this act. On the other hand, the individual  
23 could be a “guest” and the tenant would be responsible for violations of the lease or this act  
24 caused by the guest. See, e.g., Section 501(7)-(9), (11). ~~excludes an individual who resides in the~~  
25 dwelling unit with the tenant’s permission but neither is a party to a lease nor pays rents. ~~For~~  
26 example, if a tenant allows his friend to live in the dwelling unit with him but the friend does not  
27 pay rent and is not a party to the lease, the friend is not a tenant. ~~Under other sections of the act,~~  
28 however, if, for example, the friend damages the dwelling unit, the tenant would be liable to the  
29 landlord because the damage was done by an individual invited on the premises by the tenant.  
30 See, e.g., Sections 501(11) and 601.

31  
32 “Premises” (paragraph (2826)) ~~do not include portions of a structure not owned by the~~  
33 landlord. For example, if the dwelling unit is a condominium located in a 40-story building, the  
34 premises do not include the common areas of the building. If the landlord owned an assigned  
35 parking space in the structure that is leased to the tenant, then the space would be included within  
36 the term “premises.”

37  
38 Prepaid rent (paragraph 2927) ~~is rent paid before the first day of the rental period to~~  
39 which it is to be applied. For example, assume on November 1 a landlord and tenant agree to the  
40 lease of a dwelling unit with the term to begin the following January 1 at a monthly rent of \$500.  
41 Tenant gives the landlord a check for \$1,000 to cover the January rent and the security deposit of  
42 \$500. From November 1 until January 1, the \$500 for January’s rent is “prepaid rent.” After,  
43 January 1 it is not prepaid rent.

44  
45 The definition of “unearned rent” (paragraph (4335)) contemplates two circumstances  
46 where a refund will be due a tenant because the lease terminated. The first circumstance is

1 where “rent” (defined in Section 102(~~3126~~)) was paid to the landlord on its due date but for any  
2 period of time beyond the date the lease terminates. For example, assume a one-year lease with  
3 rent payable on the first of each month. The tenant pays rent to the landlord on April 1 for the  
4 month of April. However on April 10 the tenant properly terminates the lease. In this case  
5 “unearned rent” includes the amount of rent attributable to the period April 11 to April 30.  
6 Because rent is apportioned on a daily basis (see Section 201(b)(2)(B)), this means that two-  
7 thirds of the April 1<sup>st</sup> payment would be “unearned rent.” The second circumstance is where  
8 “prepaid rent” (defined in Section 102(~~2924~~)) was paid to the landlord for a rental period beyond  
9 the date the lease terminates. For example, suppose before the commencement of the lease a  
10 tenant pays the landlord an amount for the last month’s rent. Three months into the lease tenant  
11 properly terminates the lease. In this case, “unearned rent” includes the prepaid rent for the last  
12 month. In both examples, Section 1204 requires amounts treated as unearned rent to be returned  
13 by the landlord to the tenant after taking account of any proper charges against the unearned rent  
14 as set forth in Section 1204.

15  
16 The phrase “unearned rent” does not include rent for any period beyond the lease  
17 termination during which the tenant is in ~~actual-physical~~ possession of the premises. For  
18 example, suppose tenant signs a fixed term lease to end on December 31. The tenant pays the  
19 landlord the last month’s rent (December rent) at the beginning of the lease term. Because of the  
20 tenant’s failure to pay rent, the landlord properly terminates the lease on October 1 but the tenant  
21 remains in possession until November 5. Unearned rent includes the prepaid rent for December  
22 but does not include any rent that might be due the landlord for October and the first five days of  
23 November. Under Section 1204, the landlord is obligated to return the unearned rent (along with  
24 any security deposit) to the tenant. However under Section 1204(a) and (ed), the landlord may  
25 reduce the amount returned by amounts of “unfilled obligations” to which the unearned rent was  
26 applied and this could include the rent due for October and the five days in November if not  
27 already paid.

28  
29 The date on which a lease terminates is determined by the lease or this act. For example,  
30 for a fixed term tenancy or a periodic tenancy, the lease terminates on the last day of the term or  
31 the period unless the lease or this act allows for an earlier termination date. Under this act, a  
32 lease can terminate for any number of other reasons. Because termination requires a notice in a  
33 record that specifies the termination date, the date of termination is easily determined from the  
34 notice. For example, under Section 601(~~ba~~)(2) (allowing a landlord to terminate the tenancy for a  
35 material noncompliance by the tenant, other than the nonpayment of rent) the notice must set  
36 forth a specified date for termination not earlier than [30] days after the giving of the notice. If  
37 there is any unearned rent due the tenant, it would be for the period following the date of  
38 termination in the notice assuming the tenant timely vacated the premises.

### 40 SECTION 103. SCOPE.

41 (a) In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (5) transient occupancy;

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

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

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

6 (9) occupancy as a vacation rental; and

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

### 9 **Comment**

10 This act applies to the lease of a ~~mobile home~~ manufactured or factory-built home but  
11 does not apply to a mere ground lease of land upon which ~~a mobile~~ the home is placed. Thus, if O  
12 owns a land-lease community (a/k/a mobile home park) and leases space to T who causes places  
13 a manufactured or factory--built home to be sited on the space--, that ground lease is not subject  
14 to this act. However, if T ~~brings a mobile home onto O's land and~~ later leases the home to X, the  
15 T-X lease is subject to this act. Likewise, if the owner of the land-lease community sites a  
16 manufactured home on the space and leases the home to another person, that lease would be  
17 subject to this act.

18  
19 Paragraph (10) refers to a manufactured or mobile home.

20  
21 [Add comment re manufactured vs. factory-built home]

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

### 26 27 **SECTION 104. ENFORCEMENT; DUTY TO MITIGATE.**

28 (a) A right or obligation under this [act] is enforceable by an action unless the provision  
29 creating the right or obligation provides otherwise.

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

### 31 32 **Comment**

33  
34 Under the common law a landlord had no duty to mitigate damages. The no-mitigation

1 rule was abrogated by the 1972 version of this act, and this act is consistent with that policy  
2 choice and the conceptualization of the lease as a contract. Unlike the 1972 act, however, this act  
3 provides a safe harbor in Section 604 for a landlord who makes reasonable efforts to relet the  
4 dwelling unit following a tenant’s abandonment.

5  
6 **SECTION 105. OBLIGATION OF GOOD FAITH.** Every duty under a lease, ~~a~~  
7 ~~contract described in Section 303,~~ or this [act] and every act that must be performed as a  
8 condition to the exercise of a right or remedy or entitlement to a defense under the lease, ~~the~~  
9 ~~contract,~~ or this [act] must be discharged-performed in good faith.

10 **Comment**

11 The ability to seek a remedy, exercise a right, or claim a defense under this act requires  
12 that the individual seeking the right, remedy, or defense have acted in good faith. Good faith as  
13 defined by Section 102(~~1814~~) means “honesty in fact and the observance of reasonable  
14 commercial standards of fair dealing.” By way of example, a tenant under Section 901 may have  
15 the right to complain of a retaliatory termination of a periodic tenancy if the notice to terminate  
16 follows on the heels of the tenant’s complaint to a governmental agency. However, the tenant  
17 would have no such right if the tenant’s complaint was not in good faith. Similarly, Section  
18 1001 requires a landlord to store a tenant’s personal property under the circumstances set forth in  
19 that section. If the landlord complies with that section, the landlord has a defense against another  
20 person who claims an interest in that property. But, in light of Section 105, that defense is  
21 available only if the landlord acted in good faith.

22  
23 **SECTION 106. UNCONSCIONABILITY.**

24 (a) If a court as a matter of law finds a lease, ~~a contract described in Section 303,~~ or any  
25 provision of the lease ~~or contract~~ is unconscionable at the time it was~~when~~ made, the court may  
26 refuse to enforce the lease ~~or contract~~, enforce the remainder of the lease ~~or contract~~ without the  
27 unconscionable provision,~~;~~ or limit application of the unconscionable provision to avoid an  
28 unconscionable result.

29 (b) If a court as a matter of law finds a settlement agreement in which a party waives or  
30 agrees to forego a claim or right under this [act] or under a lease ~~or a contract described in~~  
31 ~~Section 303~~ was unconscionable at the time it was ~~when~~ made, the court may refuse to enforce  
32 the agreement, enforce the remainder of the agreement without the unconscionable provision, or

1 limit application of the unconscionable provision to avoid an unconscionable result.

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

6 **SECTION 107. KNOWLEDGE AND NOTICE.**

7 ~~(a) In this [act], a person knows of a fact if the person has actual knowledge of the fact.~~

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

- 9 (1) has actual knowledge of ~~knows of~~ the fact;  
10 (2) has received notice of the fact in accordance with subsection (~~ed~~); or  
11 (3) has reason to know the fact exists from all facts known to the person at the  
12 time in question.

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

- 16 (1) delivered personally to the landlord or tenant;  
17 (2) deposited in the mail with proper postage and, if sent to the landlord, properly  
18 addressed to the mailing address specified in Section 108, and if sent to the tenant, properly  
19 addressed to the mailing address specified in Section 109, or if there is no address specified, to  
20 an address reasonable under the circumstances; or  
21 (3) unless the landlord or tenant notifies the other at any time that the notice may  
22 be given only by personal delivery or by mail as provided in paragraph (2), delivered by another  
23 means of communication with cost of transmission provided for and, if sent to the landlord,

1 properly addressed to an address specified in Section 108, and if sent to the tenant to an address  
2 specified in Section 109, or if there is no address specified, to an address reasonable under the  
3 circumstances.

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

7 (ed) In this [act], a person receives notice of a fact:

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

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

10 (A) personally delivered under subsection (eb)(1); or

11 (B) sent or delivered in accordance with subsection (eb)(2) or (eb)(3).

12 **Comment**

13 A number of sections in this act require either a landlord or a tenant to give the other  
14 notice in a record. When “notice in a record” is required, it must be given in accordance with  
15 subsection (eb).  
16

17 Subsection (eb) provides that notice shall be given by personal delivery, through the mail,  
18 or “by another means of communication.” This latter phrase is broadly worded so that it would  
19 include electronic transmissions and other forms of communication that may emerge in the  
20 future.  
21

22 Under subsection (ed)(1), a person receives notice when the fact comes to the person’s  
23 attention. A fact might come to the person’s attention as the result of face-to-face conversation,  
24 the telephone, or by a receipt of a record.  
25

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

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

30 (1) any condition of the premises that would constitute a noncompliance which

1 ~~would breach a duty owed to a tenant~~ under Section 302 ~~and that~~ would materially interfere with  
2 the health or safety of the prospective tenant or an immediate family member or would  
3 materially interfere with the prospective tenant's use and enjoyment of the premises by the  
4 tenant or the immediate family member and of which the landlord knows or on a reasonable  
5 inspection of the premises should have known;

6 (2) whether ~~the premises are in a~~ foreclosure action has been commenced against  
7 the premises, if known to the landlord;

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

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

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

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

16 (1) the name of:

17 (A) the landlord;

18 (B) ~~any other~~ person authorized to manage the premises; ~~and~~

19 (C) the owner of the premises; and

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

22 (2) the mailing address and any address to be used for the receipt of electronic  
23 communications by the landlord or a person designated by the landlord to which a notice or

1 demand must be sent; and

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

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

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

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

9 **Comment**

10

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

15

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

20

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

24

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

29

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

33

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

35 (a) At or before the commencement of the term of a lease, the tenant shall give the

36 landlord a notice in a record specifying the tenant’s mailing address and any address to be used

37 by the tenant for the receipt of electronic communications.

1 (b) At ~~a~~the landlord's request, the tenant shall designate a contact person to act for the  
2 tenant on the tenant's death by giving the landlord a record specifying the name of the contact  
3 person and, if known, the mailing address, any address to be used for the receipt of electronic  
4 communications, and telephone number of the contact person. Absent a request by the landlord,  
5 a tenant may designate a contact person in the same manner.

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

9 **Comment**

10 No specific remedies are provided for the failure to provide the information required by  
11 ~~subsections (a) and (b)~~this section. If a tenant fails to provide an address to the landlord,  
12 however, the tenant might not receive timely notices or thea refund of a security deposit.  
13

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

16 **Comment**

17  
18 In light of this section, contract principles generally apply to the construction and  
19 interpretation of leases, including provisions relating to mutuality or dependency of lease  
20 covenants. By construing leases as contracts, for example, performance of promises the landlord  
21 and tenant make to each other are dependent upon one another. Thus, the tenant's promise to pay  
22 rent is conditioned upon (dependent upon) the landlord's compliance with Section 302.  
23

24 **ARTICLE 2**

25 **GENERAL PROVISIONS APPLICABLE TO LEASE**

26 **SECTION 201. TERMS AND CONDITIONS OF LEASE; DELIVERY OF LEASE**  
27 **TO TENANT.**

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

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

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

5 (2) rent is:

6 (A) payable without demand or notice:

7 (i) at the address or place the landlord designates under Section  
8 108(b)(3) or, if no designation is made, at the landlord's place of business at the time the lease  
9 was made; and

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

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

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

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

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

22 (e) If a landlord willfully fails to comply with subsection (d), a tenant may recover court  
23 shall award the tenant actual damages and may award the tenant or [one month's] periodic rent,

1 ~~whichever is greater. if that amount is greater than the actual damages to which the tenant is~~  
2 ~~entitled. the greater of actual damages or [one month's] periodic rent.~~

### 3 **Comment**

4  
5 Under subsection (c), tenancies at will are effectively abolished; the only recognized  
6 tenancies, other than a tenancy for a fixed term, are a periodic tenancy for month to month or the  
7 less common periodic tenancy for week to week.

8  
9 Subsection (b) applies when the lease inadvertently fails to fix the amount of rent as  
10 might be the case for oral leases.

11  
12 Subsection (d) requires the landlord to provide the tenant with a copy of an enforceable  
13 lease whether signed by both of them or only one of them. Obviously the subsection does not  
14 apply to oral leases which can be given effect under Section 202.

### 15 **SECTION 202. EFFECT OF UNSIGNED LEASE; IMPLIED LEASE.**

16  
17 (a) Subject to subsection (b):

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

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

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

28 (c) In the absence of a lease signed by the landlord or tenant which is delivered to the  
29 other, if the tenant accepts possession and pays rent to the landlord without reservation of rights  
30 and the landlord accepts rent from the tenant without reservation of rights, the tenancy created is

1 a periodic tenancy for week to week in the case of a tenant that pays rent weekly and in all other  
2 cases a periodic tenancy for month to month.

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

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

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

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

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

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

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

14 (b) A provision in a lease prohibited by subsection (a) or by law of this state other than  
15 this [act] is unenforceable. If a landlord seeks to enforce a provision in the lease which is  
16 unenforceable under this section or accepts the tenant's voluntary compliance with the provision,  
17 a court may award the tenant an amount not to exceed [three] times the periodic rent.

18 **Comment**

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

24  
25 ~~While subsection (a)(3) prohibits a lease from imposing the landlord's Section 302 duties~~  
26 ~~on the tenant, Section 303 permits the landlord and tenant to agree that the tenant will perform~~  
27 ~~one or more of the landlord's duties under Section 302 if that agreement is in a contract separate~~  
28 ~~from the lease and the tenant's failure to perform under the contract does not discharge the~~

1 ~~landlord's duties under Section 302. Furthermore, if the tenant fails to perform the duties the~~  
2 ~~tenant contractually agreed to provide, the landlord could collect actual damages from the tenant.~~  
3 ~~See Section 303(c). In that case, damages are available because of tenant's breach of a contract~~  
4 ~~separate from the lease and thus are not inconsistent with subsection (a)(5).~~  
5

6 The duty to mitigate is one of the rights and remedies that may not be waived under  
7 subsection (a).  
8

9 A landlord might inadvertently use a ~~If a landlord, for example using a standard form~~  
10 lease that had not been revised after enactment of this act which includes a prohibited provision.  
11 Under subsection (b), includes a prohibited provision in the lease, the landlord, in such case,  
12 would only be liable for damages if the landlord sought to enforce the unenforceable provision or  
13 accepts the ~~the tenant's voluntarily compliance with it.~~  
14

#### 15 **SECTION 204. SEPARATION OF RENT FROM LANDLORD DUTY TO**

16 **MAINTAIN PREMISES.** Notwithstanding any other law of this state, a lease, assignment,  
17 sublease, conveyance, trust deed, or security instrument may not authorize a person to receive  
18 the payment of rent without assuming the duties imposed on the landlord by the lease or Section  
19 302.

#### 20 **Comment**

21  
22 The mere assignment of rent as security does not subject the assignee to the landlord's  
23 obligations to maintain the premises. However, if the assignee actually receives the rent, then  
24 that obligation would arise. Section 204 is inconsistent with Section 13 of the Uniform  
25 Assignment of Rents Act. Because ~~that section~~ Section 13 of the UARA is more appropriately  
26 applied to commercial rather than residential leases, Section 204 of this act expressly provides  
27 that it supersedes other law, including other statutes and prior case law of the state that would  
28 have allowed a person, such as a mortgagee, to collect rents free of the obligation to maintain the  
29 premises.  
30

#### 31 **SECTION 205. ATTORNEY'S FEES AND COSTS.**

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

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

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

1 (b) In an action to enforce a right or remedy arising under the lease or this [act], the court  
2 shall award the prevailing party costs and may award the prevailing party reasonable attorney’s  
3 fees ~~and costs~~ if the court determines that the other party did not act in good faith, willfully  
4 performed an act prohibited by the lease or this [act], or willfully refrained from performing an  
5 act required by the lease or this [act].

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

### 8 ARTICLE 3

### 9 LANDLORD’S DUTIES

#### 10 SECTION 301. DELIVERY OF POSSESSION OF DWELLING UNIT TO

11 **TENANT.** A landlord shall deliver actual-physical possession of the dwelling unit to the tenant  
12 at the commencement of the term of the lease.

#### 13 Comment

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

18  
19 The term of the lease commences on the date the tenant is first entitled to possession.  
20 Thus, if a lease is signed on July 1 for a term to begin on August 1, the commencement date is  
21 August 1. The landlord’s obligation to deliver actual-physical possession, therefore, begins on  
22 August 1.

#### 23 SECTION 302. LANDLORD’S DUTY TO MAINTAIN PREMISES IN 24 HABITABLE CONDITION.

25 (a) A landlord has a non-waivable duty to maintain the premises in a habitable condition,  
26 including making all necessary repairs. At a minimum, the~~The~~ duty requires the landlord to  
27 ensure that the premises:

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

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

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

7 (4) have access to a water supply approved under applicable law which can  
8 provide- hot and cold running water;

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

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

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

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

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

23 (10) have in good repair floors, doors, windows, walls, ceilings, stairways, and

1 railings;

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

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

7 (13) have safety equipment required by applicable law which is maintained in  
8 good working order.

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

11 (1) ~~provide that an~~ account with a utility provider of an essential service to the  
12 dwelling unit be titled in the name of the tenant; and

13 (2) ~~provide that the tenant pay the periodic utility cost for the an~~ essential service  
14 to the dwelling unit, in which case if the service is not provided because the ~~the tenant fails~~  
15 tenant fails to pay to pay for the service, the landlord has not failed to comply with the duty  
16 under this subsection. ~~, but the lease may provide that the periodic utility cost of the services be~~  
17 paid by the tenant, either to the landlord or directly to a utility company of other provider of the  
18 services.

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

## 22 **Comment**

23 Consistent with the practice of nearly every state, Section 302 recognizes that modern  
24 conditions require the proper maintenance and operation of rental housing. Subsection (a) begins

1 with the statement that there is a non-waivable duty to maintain premises in a habitable  
2 condition. Thus, the duty can neither be waived nor shifted to the tenant by an agreement  
3 between the landlord and tenant to have the tenant perform any of the landlord’s duties relating  
4 to habitability. The 1972 act contained several provisions that permitted the landlord and tenant  
5 to enter into an agreement in which the tenant would assume some of the landlord’s duties in  
6 limited situations or agree to do some specified repairs. Those provisions have been removed  
7 from this revised act; thus, this act does not regulate such agreements beyond providing that the  
8 landlord’s Section 302(a) duties are non-waivable. In other words, the landlord by a separate  
9 agreement with the tenant cannot shift the landlord’s duties under Section 302(a) to the tenant.

10  
11 Section 302(a) ~~It then~~ sets out a number of obligations that “at minimum” must be met  
12 by the landlord for the landlord to discharge the duty to maintain premises in a habitable  
13 condition. The phrase “at a minimum” was used purposefully. This list is not intended to be  
14 exhaustive. The more elastic “habitability” requirement in the first sentence of Section 302(a)  
15 allows for ~~It allows for an~~ expansion of this list over time if the law expands to include other  
16 matters in the habitability standard. Section 501 imposes corresponding duties of cleanliness and  
17 proper use within the dwelling unit upon the tenant.

18  
19 Because many jurisdictions do not have building, housing, or health codes applicable to  
20 rental housing, it is appropriate that this statute incorporate minimum standards of maintenance.  
21 A lease could impose other maintenance obligations on the landlord. It could also impose other  
22 maintenance obligations on the tenant so long as those obligations do not absolve the landlord of  
23 the landlord’s obligations under this section. *See* Section 203(a)(3).

24  
25 If a tenant subleases a dwelling unit with the landlord’s consent then the sublessor is not a  
26 landlord under this act. *See* Section 102(2016). If the tenant subleases the dwelling unit without  
27 the landlord’s consent, however, the sublessor is a landlord under this act. As a landlord, the  
28 sublessor is obligated to comply with the provisions of this act, including this section. However,  
29 under subsection (c), the sublessor is not required to perform duties imposed on a landlord by  
30 this section if performance of the duties would require the sublessor to access parts of the  
31 dwelling unit or premises which are beyond the sublessor’s control. For example, if a subtenant’s  
32 furnace ceased working but repairs would require access to a furnace outside of the dwelling  
33 unit, the sublessor would not be required to repair the furnace.

34  
35 Under subsection (a), the landlord has a duty to provide and maintain facilities on the  
36 premises necessary for the provision of essential services, typically heat, water, plumbing and  
37 electricity. Under subsection (b), the landlord has the duty to ensure the tenant has access to  
38 provide essential services, but the costs of these services and the acquisition of these services  
39 could be shifted to the tenant by the lease. For example, the lease might require the tenant to  
40 contact the electric company and obtain electric services in the tenant’s name alone. In such  
41 circumstance, a tenant cannot seek a court order for the landlord to provide the service for which  
42 the tenant has failed to pay the utility company. Likewise, the landlord is not in noncompliance  
43 with this act if the tenant fails to pay the utility bill and an essential service is discontinued.

44  
45  
46 Under subsection (a)(13) the landlord must maintain safety equipment required by

1 applicable law in good working order. Safety equipment might include smoke alarms, carbon  
2 monoxide detectors, and fire extinguishers.

3 ~~[SECTION 303. REPAIRS PERFORMED BY TENANT.]~~

4 ~~**Note to Committee: The Chair recommends that this section be deleted while the**~~  
5 ~~**reporters are up in the air.**~~

6 ~~(a) A landlord and tenant may agree that the tenant will perform specified repairs,~~  
7 ~~maintenance tasks, alterations, or remodeling of the premises if:~~

8 ~~(1) their agreement is supported by [adequate] consideration and is contained in a~~  
9 ~~record that is separate from the lease; and~~

10 ~~(2) the agreement does not diminish or affect the obligation of the landlord under~~  
11 ~~Section 302.~~

12 ~~(b) A landlord may not treat performance of the agreement under this section as a~~  
13 ~~condition to the landlord's performance of any obligation of the landlord under the lease or this~~  
14 ~~[act].~~

15 ~~(c) If a tenant fails to comply with an agreement under this section:~~

16 ~~(1) the landlord may recover actual damages, which may be recovered through a~~  
17 ~~separate action or as a [counterclaim] to a tenant's action seeking actual damages for the~~  
18 ~~landlord's noncompliance with the lease or with this [act];~~

19 ~~(2) the tenant may not use the remedy under Section 406; and~~

20 ~~(3) the tenant must comply with Section 401 before seeking any other remedy~~  
21 ~~under Section 402 for noncompliance with the lease or Section 302 which exists because of the~~  
22 ~~tenant's failure.~~

23 ~~(d) This section does not affect an obligation of a tenant under Section 302(b) to pay the~~  
24 ~~periodic utility cost related to an essential service.~~

1 **Comment**

2 ~~Section 303 permits a landlord and a tenant to enter into a contract separate from the~~  
3 ~~lease in which the tenant agrees to perform one or more of the landlord’s repairs or maintenance~~  
4 ~~obligations under Section 302 without assuming the landlord’s overarching duty to ensure the~~  
5 ~~premises are habitable. Assume, for example, that a dwelling unit has broken windows that~~  
6 ~~require repairs under Section 302(10). The landlord and tenant may agree that tenant, who is a~~  
7 ~~carpenter, will repair the windows. This agreement, however, must be separate from the lease~~  
8 ~~and, therefore, must be supported by consideration unrelated to the parties’ rights under the~~  
9 ~~lease. If the tenant unable or unwilling to make the repairs (e.g., if the tenant became disabled),~~  
10 ~~that failure would not constitute a breach of the lease by the tenant and the landlord would not be~~  
11 ~~entitled to possession of the dwelling unit or to refuse to perform the landlord’s obligations under~~  
12 ~~the lease or this act. Thus, the tenant would have the right under sections 401 and 402 to notify~~  
13 ~~the landlord that the tenant is unable or unwilling to repair the windows, triggering the landlord’s~~  
14 ~~need to make the repairs in order to comply with the landlord’s duty under Section 302. If the~~  
15 ~~landlord failed to remedy the noncompliance (even though caused by the tenant’s failure to make~~  
16 ~~the repair) within the time set forth in Section 401), the tenant would be entitled to most of the~~  
17 ~~remedies in Section 402 if the landlord failed to make the repairs. — Section 303(e) would~~  
18 ~~prohibit the tenant from using the repair and deduct remedy of Section 406. This section also~~  
19 ~~recognizes that the landlord’s claim for actual damages under this section may be used as an~~  
20 ~~offset against any claim the tenant has against the landlord for actual damages under Section 402.~~

21  
22 ~~Subsection (d) emphasizes that Section 303 does not apply to a tenant’s agreement to pay~~  
23 ~~for utilities or other essential services under Section 302(b). Thus, if a tenant has agreed to pay~~  
24 ~~for electricity, gas, or water, the tenant’s failure to make those payments is not a noncompliance~~  
25 ~~of the landlord that would entitle the tenant to remedies under Section 402. By contrast, if the~~  
26 ~~tenant had agreed to make repairs to the dwelling unit in order to use an essential service—e.g.,~~  
27 ~~to repair a water heater, furnace, or part of the electrical system—that repair agreement would~~  
28 ~~fall under Section 303 and, as indicated above, would not absolve the landlord of the duty to~~  
29 ~~make the repairs if the tenant were unable or unwilling to do so (but would entitle the landlord to~~  
30 ~~actual damages for tenant’s failure to comply with the Section 303 agreement).]~~

31  
32 **SECTION 304303. LIMITATIONS ON LANDLORD’S LIABILITY.** Except to the  
33 extent a landlord and tenant otherwise agree in a signed record, if the landlord conveys in a  
34 good-faith sale to a bona fide purchaser premises that include a dwelling unit subject to the lease,  
35 the following rules apply:

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

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

### 3 **Comment**

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

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

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

### 19 **SECTION 305304. RULES OF LANDLORD GOVERNING USE AND** 20 **ENJOYMENT.**

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

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

30 (c) In the case of a periodic tenancy for month to month, a rule or modification adopted  
31 under subsection (b) is enforceable without the tenant's consent immediately after the shall take

1 effect no earlier than the expiration of the period described in Section 801(b)(2) during which the  
2 tenant or landlord could have exercised the right to terminate the periodic tenancy.

3 (d) In the case of a tenancy for a fixed term, ~~if~~ the rule or modification substantially  
4 modifies the tenant’s bargain and is not required by law other than this [act], ~~if the rule~~ is not  
5 enforceable against the tenant unless the tenant consents to it in a signed record.

6 **Comment**

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

11  
12 This section governs rules adopted by the landlord. A companion section, Section 305,  
13 governs rules ~~that~~ adopted by a third party, such as a homeowner or condominium association,  
14 that may apply to the leased property.

15  
16 [Reporters and chair will expand this comment regarding periodic tenants].

17  
18 **SECTION 305. RULES OF THIRD PARTIES GOVERNING USE AND**  
19 **ENJOYMENT.**

20 (ea) If, before the commencement of a lease, a landlord ~~does not~~ fails to disclose ~~before~~  
21 ~~the commencement of a lease~~ a rule adopted by a person, other than the landlord, which  
22 substantially modifies the tenant’s bargain and is not required by law other than this [act] and the  
23 rule is enforced against the tenant, the tenant may:

24 (1) ~~seek-recover~~ actual damages from the landlord; or

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

28 (db) Except as otherwise provided in subsection (ec), if, after the commencement of the  
29 lease, a person, other than the landlord, adopts or modifies a rule that substantially modifies the

1 tenant's bargain which is not required by law other than this [act] and the rule is enforced against  
2 the tenant, the tenant [of a tenancy for a fixed term](#) may terminate the lease by giving the landlord  
3 notice in a record that the lease will terminate on a date specified in the notice which is not  
4 earlier than [30] days after the notice is given, [or, in the case of a periodic tenancy, terminate the](#)  
5 [tenancy in accordance with Section 801.-](#)

6 (ec) A tenant may not terminate a lease under subsection (db) if the lease provides that  
7 the dwelling unit is subject to rules of a person, other than the landlord, and that the rules may be  
8 modified by the person after the commencement of the lease.

### 9 **Comment**

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

14  
15 ~~Subsections (c) and (d)~~ This section addresses rules adopted by persons other than the  
16 landlord, such as homeowners and condominium associations, that may affect how the tenant can  
17 use the premises. If the landlord does not disclose such rules in existence when the lease  
18 commences, the tenant can seek damages or ~~termination~~ [terminate the lease](#) but only if the rule is  
19 enforced against the tenant and enforcement substantially modifies the tenant's bargain. If the  
20 rule is adopted after the lease commences, it is inappropriate to hold the landlord liable for  
21 damages. At the same time, if the rule substantially modifies the tenant's bargain and it is  
22 enforced against the tenant, it is appropriate to allow the tenant to terminate the lease.

## 23 **ARTICLE 4**

### 24 **TENANT REMEDIES**

25 **SECTION 401. NOTICE AND OPPORTUNITY TO REMEDY.** Subject to Section  
26 409, if a landlord fails to comply with the lease or Section 302, the tenant has the remedies under  
27 Section 402 if the tenant gives the landlord:  
28

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

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

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

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

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

8 (a) Subject to Section 409, if a landlord's noncompliance with the lease or Section 302  
9 ~~results in causes the tenant not to receive an failure to receive an essential service or~~ materially  
10 interferes with the health or safety of the tenant or an immediate family member or materially  
11 interferes with the use and enjoyment of the premises by the tenant or an immediate family  
12 member and is not remedied during the applicable period specified in Section 401, the tenant  
13 may:

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

15 (2) except as otherwise provided in Section 404, continue the lease and, ~~without~~  
16 ~~any additional notice,~~ elect ~~one~~ one or more of the following remedies:

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

19 (B) recover actual damages; ~~including actual damages based on the~~  
20 ~~diminution in value of the dwelling unit for the period beginning on the date the tenant gave the~~  
21 ~~landlord the notice under Section 401 and ending on the date the noncompliance is remedied as~~  
22 ~~determined by the court based on evidence that need not include expert testimony;~~

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

1 (D) make repairs and deduct the cost from the rent as provided in Section  
2 406; or

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

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

10 (c) ~~Except as otherwise provided in subsection (d),~~ a tenant may not seek a remedy  
11 under this section to the extent:

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

14 (2) the tenant prevented the landlord from having access to the dwelling unit to  
15 make repairs ~~or provide a remedy~~ for the act or omission described in the tenant's notice under  
16 Section 401.

17 ~~(d) If a landlord's noncompliance with the lease or Section 302 was caused by the~~  
18 ~~tenant's failure to perform an obligation the tenant agreed to perform under an agreement~~  
19 ~~permitted by Section 303, the tenant's remedy is limited to termination of the lease as provided~~  
20 ~~in Section 403(a) and (b).~~

## 21 **Comment**

22 This section has been modified from the 1972 act to clarify the remedies available to a  
23 tenant for a landlord's noncompliance with the ~~warranty~~ provisions in Section 302 or under the  
24 lease. If the tenant does not receive an essential service the landlord has a duty to provide under  
25 Section 302(b) or there there is a material noncompliance by the landlord with the lease or

1 Section 302(a) affecting the health or safety of the tenant or an immediate family member or that  
2 materially interferes with their use and enjoyment of the premises, the tenant can elect from  
3 Section 402 allows the tenant to elect from among the numerous remedies under this section.  
4 However, the tenant's ability to secure essential services which the landlord is obligated to  
5 provide or substitute housing under Section 407 is only available for the landlord's material  
6 noncompliance in providing those essential services. Under Section 302(b), the landlord has the  
7 duty to ensure the dwelling unit has access to essential services, such as water. However, if the lease  
8 shifts the cost of providing an essential service to the tenant and the tenant fails to pay the cost of the  
9 service, the failure of the tenant to receive the essential service is not the result of the landlord's  
10 noncompliance. Conversely, if the landlord fails to assure the dwelling unit has access to an essential  
11 service and the cost thereof has not been shifted to the tenant, the landlord would be in breach of a duty  
12 under Section 302(b) for which a remedy could be available under this section. ~~Not all services or~~  
13 ~~obligations of the landlord described in Section 302(a) are "essential services." See Section 102(14). See~~  
14 ~~also Section 302(b) which provides that the lease may absolve the landlord of the obligation to provide or~~  
15 ~~to pay for essential services.~~

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

33  
34  
35 Under this section the tenant may be entitled to "actual damages." Actual damages could  
36 include diminution in the value of the dwelling unit. See Section 102(2) and (7). Under this  
37 section such damages would be for the period beginning on the date the tenant gave the landlord  
38 notice under Section 401 and ending on the date the noncompliance was remediated. The  
39 concept of diminution in value of the dwelling unit was also in the ~~This section also clarifies the~~  
40 measurement of damages when a tenant has occupied a dwelling unit in a noncompliant  
41 condition. ~~The 1972 Act act~~ although slightly different, permitted recovery of the "diminution in  
42 the fair rental value" of the dwelling unit. That terminology is modified in this act to permit  
43 recovery of damages based upon ~~The~~ phrase is defined in paragraph 102(97) "diminution in  
44 value of the dwelling unit," which is defined in Section 102(10) as "a reduction from the rent  
45 provided in a lease that reflects the extent to which a noncompliant condition of the premises  
46 impairs the tenant's use and enjoyment of the dwelling unit." The intent is to permit a court to  
47 consider, ~~without the need for expert testimony,~~ such factors as the nature and duration of the

1 defect, the proportion of the dwelling unit that is affected, the value of services to which the  
2 tenant was deprived, the degree of discomfort imposed by the defect, and the effectiveness of the  
3 landlord's remediation efforts. ~~For example, if, as a result of noncompliance, the tenant is~~  
4 ~~deprived only of the use of office space, the diminution in value should be less than if the~~  
5 ~~noncompliance results in the loss of bath and kitchen facilities in the entire dwelling unit.~~

6  
7 Remedies available to the tenant pursuant to Section 402 are not exclusive (see Section  
8 110). For example, a tenant may have tort remedies for the landlord's noncompliance with the  
9 lease ~~of or~~ this act.

10  
11 A duty to mitigate damages exists under Section 104(b).

12  
13 If the dwelling unit or premises are substantially damaged or destroyed as the result of a  
14 fire or other casualty to which Section 409 would apply, then the remedies in Section 409 rather  
15 than this section apply.

16  
17 The remedies in subsection ~~(b)~~(a)(2) are not available when the landlord's inability to  
18 remedy a noncompliance is caused by reasons beyond the landlord's control. Thus Section 404  
19 provides that the tenant's remedy under those circumstances is limited to termination of the  
20 lease.

## 21 22 **SECTION 403. MATERIAL NONCOMPLIANCE BY LANDLORD;**

### 23 **TERMINATION OF LEASE.**

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

29 (b) If a landlord's noncompliance with the lease or Section 302 materially interferes with  
30 the use and enjoyment of the premises unrelated to the health and safety of the tenant or an  
31 immediate family member and the noncompliance has not been remedied within the period of  
32 Section 401(2)(A), the tenant may terminate the lease by giving the landlord notice in a record of  
33 the tenant's intent to terminate the lease on a date specified in the notice which is not earlier than  
34 [14] days after the expiration of the period allowed under Section 401 for the noncompliance to

1 be remedied by the landlord.

2 (c) In addition to terminating the lease as provided in subsection (a) or (b), the tenant may  
3 recover actual damages, ~~as determined by the court based on evidence that need not include~~  
4 ~~expert testimony, including actual damages for the diminution in value of the dwelling unit for~~  
5 ~~the period beginning on the date the tenant gave the landlord the notice under Section 401 and~~  
6 ~~ending on the date of termination specified in the notice under subsection (a) or (b).~~

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

9 **Comment**

10 ~~The timing of the tenant's right to terminate a lease can vary depending upon whether on~~  
11 ~~the one hand, the noncompliance involves the failure to provide an essential service or a material~~  
12 ~~interference with health or safety of the tenant or an immediate family member or, on the other~~  
13 ~~hand merely a material interference with the tenant's use and enjoyment of the premises. With~~  
14 ~~the former, if the noncompliance is not remedied promptly or within [5] days of the tenant giving~~  
15 ~~the landlord notice to remedy, the tenant can terminate the lease immediately. For the latter,~~  
16 ~~following the [14] day cure period, the tenant would only be able to terminate on a date at least~~  
17 ~~[14] days after the end of the cure period. This section provides the notice procedures for~~  
18 ~~terminating a lease. In the usual case, where the landlord's noncompliance materially interferes~~  
19 ~~with the tenant's use and enjoyment of the premises, the tenant may terminate no earlier than~~  
20 ~~[14] days after the notice period in 401 has expired. When the situation is of some urgency –~~  
21 ~~i.e., when the tenant failed to pay for an essential service the tenant agreed to pay, for~~  
22 ~~a noncompliance that involves the failure to receive an essential service or materially interferes~~  
23 ~~with the health and safety of the tenant or an immediate member, the tenant could terminate the~~  
24 ~~lease immediately without the landlord having any time to cure the noncompliance. [Note that if~~  
25 ~~the inability to receive essential services was due to the tenant's failure to pay for the service as~~  
26 ~~provided under Section 302(b), this section would not apply.]-On the other hand for a~~  
27 ~~noncompliance that interferes with the use and enjoyment of the premises by the tenant or an~~  
28 ~~immediate family member, the tenant cannot terminate during the 14-day cure period or earlier~~  
29 ~~than 14 days after the 14-day cure period has expired.~~

30  
31 Under subsection (c), the tenant could recover actual damages that could include  
32 diminution in the value of the dwelling unit. Given that this remedy is in addition to terminating  
33 the lease, where the tenant has terminated the lease damages for the diminution in value should  
34 be for the period beginning on the date the tenant gave the landlord the Section 401 notice and  
35 the date the lease terminates.

36  
37



1 diminution in value damages are limited to the period that the premises were in noncompliance.  
2 ; ~~e the lease.~~

3  
4 ~~Because this section is subject to Section 302(b), if~~ a tenant is obligated to pay for  
5 utilities under Section 302(b) and tenant's failure to do so causes the tenant not to receive an  
6 essential service, this section would not apply. However, if the tenant was paying for the  
7 essential service but could not receive the service because of circumstances beyond the  
8 landlord's control, the tenant could exercise the right to terminate the lease or stay in possession  
9 and obtain damages.

10  
11 **SECTION 405. LANDLORD FAILURE TO DELIVER POSSESSION TO**  
12 **TENANT.**

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

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

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

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

21 (B) ~~recover actual damages and~~ obtain possession of the unit from any  
22 person wrongfully in possession, by any lawful means that could have been used by the landlord.

23 (b) If a tenant terminates the lease under subsection (a)(1), the landlord shall return to the  
24 tenant any security deposit and unearned rent to which the tenant is entitled under Section 1204.  
25 ~~The landlord also shall return~~ any fees amounts received from the tenant prior to the  
26 commencement of the lease.

27 (c) In addition to the rights provided to a tenant in subsections (a) and (b), if a landlord's  
28 failure to deliver possession to the tenant ~~pursuant to~~under Section 301 is willful, the tenant may

1 recover [three] times periodic rent or [triple] the actual damages, whichever is greater.

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

### 6 Comment

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

13  
14 Under subsection (a)(2), a tenant may elect to file an action for possession directly  
15 against a holdover tenant or other person in wrongful possession of the dwelling unit. If the  
16 tenant elects to sue the holdover tenant for possession, the tenant effectively elects to continue  
17 the lease with the landlord and thus, under subsection (d), is liable to the landlord for rent for the  
18 period beginning with the commencement of the term of the lease.

### 19 SECTION 406. REPAIR BY TENANT.

20  
21 (a) ~~Except as otherwise provided in this [act], if~~ Subject to subsection (d), if a landlord  
22 fails to comply with the lease or Section 302, the tenant may give notice to the landlord pursuant  
23 under ~~to~~ Section 401 specifying the failure. If and, if the landlord fails to comply within the  
24 applicable period specified in Section 401 and the reasonable cost of compliance does not exceed  
25 one month’s periodic rent, the tenant may repair the condition at the landlord’s expense. ~~[Note to~~  
26 ~~Committee: The introductory clause needs to be revised to identify specific provisions that~~  
27 ~~constitute exceptions.]~~

28 (b) ~~Subject to subsection (d), a~~ A tenant that makes repairs under subsection (a), after  
29 submitting to the landlord an itemized statement, ~~including accompanied by~~ receipts for  
30 purchased items and services, may deduct from the rent the actual and reasonable cost incurred

1 or the reasonable value of the work performed to repair the condition, not exceeding one month's  
2 periodic rent, unless the tenant otherwise has been reimbursed by the landlord.

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

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

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

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

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

### 13 **Comment**

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

18  
19 Under subsection (d), the tenant may not repair at a landlord's expense to the extent the  
20 damage that was repaired was caused by the tenant, an immediate family member, or a guest.  
21 For example, if the tenant breaks the door lock, the tenant cannot deduct the cost of the repair the  
22 tenant makes from the rent, ~~even if the repair was undertaken by the tenant.~~ Subsection (d)  
23 would not preclude the tenant from making the repair, but would preclude the deduction of the  
24 costs from the rent.

25  
26 Subsection (e) is intended to assure the landlord that over any given 12-month period the  
27 landlord's costs arising as the result of the tenant's election of this self-help remedy do not  
28 exceed one month's rent. The 12-month look back period begins to run 12 months immediately  
29 before the completion of the immediate repair for which the tenant has exercised the tenant's  
30 rights under this section. For example, suppose the tenant paying monthly rent of \$500 properly  
31 contracts for a plumber to make a repair that costs \$300. The repair is completed on November  
32 10. The tenant is entitled to be reimbursed the entire \$300 if over the last 12 months, beginning  
33 with November 10 of the preceding year, the tenant never used this remedy. If over that period

1 the tenant has previously used the remedy to the extent of \$400, the tenant would be able to  
2 recoup only \$100 of the cost of the current \$300 repair.  
3

#### 4 SECTION 407. WRONGFUL FAILURE TO PROVIDE ESSENTIAL SERVICE

##### 5 BY LANDLORD.

6 (a) If a tenant fails to receive an essential service, the landlord has a duty to provide  
7 under Section 302(b), contrary to a lease or Section 302, the landlord willfully or negligently  
8 fails to provide an essential service, the tenant may give notice to the landlord pursuant to  
9 Section 401 specifying the failure. ~~If and, if~~ the landlord fails to comply within the applicable  
10 period specified in Section 401, the tenant may:

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

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

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

17 (c) This section does not apply if the tenant's failure to receive the essential service was  
18 A tenant does not have rights under this section if the condition was caused by ~~the~~ an act or  
19 omission of the tenant, an immediate family member, or a guest.

#### 20 Comment

21  
22 This section applies when the tenant fails to receive an essential service but decides to  
23 continue the lease rather than to terminate it. See Section 402(a)(2)(E). It would not apply if the  
24 tenant terminates the lease.

25  
26 Under subsection (b), a tenant's actual damages could include the difference between the  
27 rent provided in the lease and the actual and reasonable cost of substitute housing as well as  
28 moving expenses. It also could include diminution in the value of the dwelling unit. See Section  
29 102(2) and (7).  
30

~~This section would not apply if the landlord was absolved from providing essential services. This section is inapplicable if the reason the tenant failed to receive an essential service was the tenant's failure to pay the utility bill the tenant was obligated to pay. See Section 302(b)(2).~~

~~Under subsection (b), 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. and (7)~~

**SECTION 408. LANDLORD NONCOMPLIANCE AS DEFENSE TO ACTION FOR POSSESSION OR 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 ground that no rent was due because of the landlord's noncompliance with the lease or Section 302 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 a bank or other entity authorized by the court to hold funds in escrow.

~~(c) If the court orders a 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 a monthly statement for the funds unless the court otherwise provides.~~

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

~~(e)~~ If rent is paid into escrow under this section and the court determines that the

1 landlord's noncompliance with the lease or Section 302 materially interferes with the health or  
2 safety of the tenant or an immediate family member or with the ~~tenant's~~ use and enjoyment of  
3 the premises by the tenant or an immediate family member, the court may order one or more of  
4 the following:

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

7 (2) return to the tenant of all or part of the rent held in escrow in compensation  
8 for:

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

10 (B) actual damages; ~~based on the diminution in value of the dwelling unit~~  
11 ~~as determined by the court based on evidence that need not include expert testimony; or~~

12 ~~(C) other actual damages;~~

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

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

18 ~~(e)~~ If rent has not been paid into escrow under this section and the court determines that ~~;~~  
19 ~~(1)~~ the landlord complied with the lease and Section 302, the court shall order the tenant  
20 to pay the landlord all unpaid rent. ~~;~~ ~~or~~

21 (f) If rent has not been paid into escrow under this section and the court determines that  
22 ~~(2)~~ the landlord's noncompliance with the lease or Section 302 materially interferes with the  
23 health or safety of the tenant or an immediate family member or with the ~~with the tenant's use~~

1 and enjoyment of the premises by the tenant or an immediate family member, the court shall  
2 order the tenant to pay the landlord the unpaid rent less any amount expended by the tenant in  
3 compliance with Section 406 to repair the premises and; actual damages ~~based on the diminution~~  
4 ~~in value of the dwelling unit, as determined by the court based on evidence that need not include~~  
5 ~~expert testimony, and other actual damages.~~

6 (g) In addition to the other remedies provided in this subsections (d), (e) and (f), the court  
7 may award judgment for possession or other appropriate ~~sanctions-relief~~ if the court determines  
8 the tenant:

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

10 (2) failed to comply with the court's order to pay rent into escrow under

11 subsection (b) or to pay rent or other amounts owed to the landlord under ~~subsections (d), (e), or~~  
12 ~~(f)~~this section.

13 (h) A court may not award a judgment of possession if the court determines that the  
14 tenant withheld rent in good faith and the tenant complies with the court's order to pay unpaid  
15 rent into escrow or to the landlord under ~~subsection (e) or (f)~~this section.

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

#### 20 21 **Comment**

22 ~~Under subsection (b), if either party seeks a court order for the escrow of rent, the~~  
23 ~~court, in its discretion, will determine whether to order an escrow of rent. If the court~~  
24 ~~orders rent to be escrowed, it shall also specify the amount to be escrowed.~~

25 ~~This act does not deal with eviction process. State laws may differ whether a~~  
26 ~~landlord can bring in one expedited summary proceedings a claim both for possession and~~

1 ~~rent.~~

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

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

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

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

13 (b) If the dwelling unit or premises are substantially damaged or destroyed by fire or  
14 other casualty and repairs can be made only if the tenant vacates the dwelling unit, the landlord  
15 may terminate the lease by giving the tenant notice in a record of the landlord's intent to  
16 ~~terminate the lease that the lease will terminate on a date specified in the notice which is not~~  
17 ~~earlier than [five] days after giving of the notice or on a later date specified in the notice~~the  
18 notice is given. give the tenant [five] days' notice in a record of the landlord's intent to terminate  
19 ~~the lease, in which case the lease terminates [five] days after notice or on a later date specified in~~  
20 ~~the notice.~~

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

1 date of the fire or other casualty.

2 (d) This section does not preclude:

3 (1) a landlord from seeking actual damages from the tenant under law of this

4 state other than this [act] for damages to the premises caused by the tenant, an immediate family

5 member, or a guest; or

6 (2) a tenant from seeking actual damages from the landlord under law of this state

7 other than this [act] if the fire or other casualty was caused by the landlord or the landlord's

8 agent.

9 **Comment**

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

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

24 (a) If a landlord unlawfully removes or excludes the tenant from the premises or willfully  
25 interrupts or causes the interruption of an essential service that the landlord ~~is obligated~~ has the  
26 duty to provide to the tenant;

27 (1) ~~the tenant, the~~ tenant may:

28 (1) recover possession; or

29 (2) terminate the lease by giving the landlord a notice in a record of the tenant's

30 intent to terminate the lease immediately or on a later date ~~day~~ specified in the notice; and



1 (5) shall keep all plumbing fixtures in the unit ~~or used by the tenant as~~reasonably  
2 clean ~~as their condition permits~~;

3 (6) shall use in a reasonable manner all electrical, plumbing, heating, ventilating,  
4 and air-conditioning systems and other facilities and appliances, ~~including elevators~~, on the  
5 premises;

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

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

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

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

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

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

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

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

21 (A) normal wear and tear;

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

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

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

### 5 **Comment**

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

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

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

## 25 **ARTICLE 6**

### 26 **LANDLORD REMEDIES**

#### 27 **SECTION 601. TENANT'S FAILURE TO PAY RENT; OTHER**

#### 28 **NONCOMPLIANCE WITH LEASE.**

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

30 (1) a landlord may terminate a lease for nonpayment of rent by giving the tenant a  
31 notice in a record stating that if the rent remains unpaid [14] days after the notice is given, the  
32

1 lease will terminate upon the expiration of the [14]-day period or on a later date specified in the  
2 notice;

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

10 (b) Notwithstanding subsections (a), the landlord may terminate the lease without giving  
11 the tenant an opportunity to remedy a noncompliance by giving the tenant the notice described in  
12 subsections (c) if:

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

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

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

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

23 (c) A notice in a record terminating a lease under subsection (b) shall specify the reason

1 for the termination and act or omission constituting the noncompliance, or, in the case of  
2 subsection (c)(3) the landlord's reasonable belief of the noncompliance and state that:

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

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

8 (d) Except as otherwise provided in this [act], if a tenant's noncompliance with Section  
9 501 materially affects the health or safety of another tenant on the premises or is a material  
10 noncompliance with the lease, the landlord may:

11 (1) obtain injunctive relief or specific performance; or

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

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

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

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

19 (a) ~~Except as otherwise provided in this [act] or by law of this state other than this [act], a~~  
20 landlord may terminate a lease for nonpayment of rent by giving the tenant a notice in a record  
21 stating that if the rent remains unpaid [14] days after the notice is given, the lease will terminate  
22 immediately upon the expiration of the [14]-day period or on a later date specified in the notice if  
23 the rent is unpaid when due and remains unpaid [14] days after the landlord gives the tenant

1 notice in a record of the landlord's intent to terminate the lease at the end of the [14] day period  
2 if the rent is not paid within that period.

3 (b) ~~Except as otherwise provided in this [act] or by law of this state other than this [act],~~  
4 ~~if there is a material noncompliance with a lease or this [act] by the tenant, other than the~~  
5 ~~nonpayment of rent, the landlord may give the tenant notice in a record specifying the act or~~  
6 ~~omission constituting the noncompliance and stating that the lease will terminate on a date~~  
7 ~~specified in the notice, which is not earlier than [30] days after the landlord gives the tenant the~~  
8 ~~notice, if the noncompliance is not remedied not later than [14] days after the landlord gave the~~  
9 ~~notice. If the tenant does not remedy the noncompliance during the [14] day remediation period,~~  
10 ~~the landlord may terminate the lease.~~

11 (c) ~~Notwithstanding subsections (a) and (b), Unless otherwise provided in the lease, tthe~~  
12 ~~landlord may terminate the lease without giving the tenant an opportunity to remedy a~~  
13 ~~noncompliance:~~

14 ~~(1) by giving the tenant notice in a record specifying the act or omission~~  
15 ~~constituting the noncompliance and stating that the lease will terminate on a date specified in the~~  
16 ~~notice which is not earlier than [14] days after the landlord gave the notice if the noncompliance:~~

17 ~~(A) is for nonpayment of rent and the tenant failed to pay rent in a timely~~  
18 ~~manner on at least [two] occasions within the [four] month period preceding the notice to~~  
19 ~~terminate the lease; or~~

20 ~~(B) is substantially the same act or omission that constituted a prior~~  
21 ~~noncompliance for which notice under subsection (b) was given within six months preceding the~~  
22 ~~latest noncompliance.~~

23 ~~(12) by giving the tenant a notice in a record specifying an act or omission constituting~~

~~the noncompliance and stating that the lease will terminate immediately or on a later day date specified in the notice if the landlord reasonably believes that by the act or omission the landlord reasonably believes:~~

~~(A) the tenant, an immediate family member, or a guest has committed a criminal act on the premises; or~~

~~(B) the tenant's noncompliance poses an actual and imminent threat to the health and safety of another tenant on the premises, the landlord, or the landlord's agent; or~~

~~(2) by giving the tenant notice in a record that the lease will terminate on a date specified in the notice which is not earlier than [14] days after the landlord gave the notice if the noncompliance:~~

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

~~(B) is substantially the same act or omission that constituted a prior noncompliance for which notice under subsection (b) was given within six months preceding the latest noncompliance.~~

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

~~(1) obtain injunctive relief or specific performance; or~~

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

~~termination notice under is not effective and tookakes reasonable steps to ensure~~

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

1 **Comment**

2  
3 Section 601 gives a landlord the right to terminate a lease for tenant’s nonpayment of rent  
4 and other noncompliance with the lease or this act. The section should be read in conjunction  
5 with Section 801, which gives a landlord the unconditional right to terminate a periodic tenancy  
6 upon compliance with the notice provisions in that section.  
7

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

10  
11 ~~While not required by this act, good practice would suggest that the notice of termination~~  
12 ~~under subsection (b) include a statement of the reason for termination. Similarly, a landlord~~  
13 ~~taking advantage of subsection (c)(2) would include in the notice a statement of the~~  
14 ~~noncompliance that had previously occurred with the time periods set forth in that subsection.~~

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

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

22 (b) This section does not prevent the landlord or tenant ~~of a periodic tenancy from~~  
23 ~~exercising their rights under Section 801 to terminate a periodic tenancy.~~

24 **SECTION 603. DISTRAINT FOR RENT; LIENS.**

25 (a) Distraint for rent is abolished.

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

30 **Comment**

31 This section prohibits the landlord from seizing the tenant’s tangible personal property to  
32

1 satisfy the landlord’s claims against the tenant or filing a lien against the tenant’s tangible  
2 personal property to secure the tenant’s obligations under the lease. It also prohibits a landlord  
3 from taking a security interest in any of the tenant’s tangible personal property to secure the  
4 tenant’s performance. On the other hand, it would not preclude a landlord taking a lien or  
5 security interest to secure performance of a tenant’s contractual promises unrelated to the lease.  
6 For example, if the landlord also owned an appliance store from which tenant purchased an  
7 appliance under a monthly payment plan, a landlord’s lien on the appliance to secure tenant’s  
8 payment of the debt incurred in purchasing the appliance is not prohibited by this act.

9  
10 **SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION.**

11 (a) In this section, “reasonable efforts” means steps a landlord would take to rent a  
12 dwelling unit if the unit is vacated at the end of a term, including showing the unit to prospective  
13 tenants or advertising the availability of the unit.

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

15 (1) the tenant delivers possession of the unit to the landlord before the end of the  
16 term by returning the keys or other means of access or otherwise notifies the landlord the unit  
17 has been vacated; or

18 (2) ~~the tenant’s rent that was due was not paid~~ fails to pay rent for at least [five]  
19 days and the tenant has:

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

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

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

26 (1) accept the tenant’s abandonment of the unit by notice in a record given to the  
27 tenant accepting the abandonment, in which case:

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

1 (B) the landlord and tenant are liable to each other under the lease or this  
2 [act] only for ~~breaches~~ a noncompliance with the lease that ~~occurred~~ing before the lease  
3 terminates; and

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

6 (2) treat the abandonment as wrongful.

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

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

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

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

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

23 (5) After deducting the landlord's actual damages, the landlord shall return the

1 amount of any security deposit and unearned rent to which the tenant is entitled under Section  
2 1204.

3 **Comment**  
4

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

10 Under subsection (b)(2)(B), the tenant might cause termination of utility services by  
11 cancelling the services or merely not paying the bill.  
12

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

20 In light of subsection (d)(1), when at the time the landlord is fulfilling the duty to  
21 mitigate the landlord has other vacant units to rent, the landlord can show and lease the other  
22 units to prospective tenants before showing the abandoned unit to prospective tenants.  
23

24 If a tenant abandons the dwelling unit, the landlord may choose to accept the  
25 abandonment, thus agreeing to a termination of the lease. If, at the time of the abandonment, the  
26 tenant is in arrears on rent, the landlord would still have a cause of action to recover the past due  
27 rent. However, by accepting the abandonment, the landlord would not have a cause of action for  
28 actual damages resulting from the abandonment.  
29

30 Conversely, if the landlord does not accept the abandonment, the landlord can seek to  
31 recover damages from the tenant for anticipatory breach or actual damages as provided in  
32 subsection (d)(3).  
33

34 **SECTION 605. RECOVERY OF POSSESSION LIMITED; INTERRUPTION OF**  
35 **ESSENTIAL SERVICE.**

36 Except as provided in Section 604, a landlord:

37 (a1) Except as permitted by this [act], a landlord may not recover or take  
38 possession of a dwelling unit by an action or act of self-help, including willful interruption or  
39 causing the willful interruption of an essential service to the unit; and-

1 ~~(b2) Except as permitted by this [act], Section 604, a landlord may not recover possession~~  
2 ~~of premises following the termination of a lease except in a manner only through an action~~  
3 ~~permitted by law of this state other than this [act].~~

4 ~~(be) Except in a case of abandonment of a dwelling unit under Section 604, a landlord~~  
5 ~~may not willfully interrupt or cause the interruption of an essential service to the unit.~~

### 6 Comment

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

## 17

## 18

## 19 **ARTICLE 7**

### 20 **ACCESS TO DWELLING UNIT**

#### 21 **SECTION 701. LANDLORD ACCESS TO DWELLING UNIT.**

22 (a) A tenant may not unreasonably withhold consent to the landlord ~~or the landlord's~~  
23 ~~agent~~ to enter the dwelling unit to:

- 24 (1) inspect it;
- 25 (2) make a necessary or agreed-to repair, alteration, or improvement;
- 26 (3) supply a necessary or agreed-to service; or
- 27 (4) exhibit the unit to a prospective or actual purchaser, mortgagee, tenant,
- 28 worker, contractor, or a public official responsible for enforcement of a building, housing, fire,
- 29 or health code.

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

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

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

15 (e) Except as otherwise provided in this section, a landlord ~~or a landlord's agent~~ has no  
16 other right to enter a dwelling unit unless:

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

18 (2) entry is ~~pursuant to~~ under a court or administrative order; or

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

### 20 **Comment**

21  
22 If a landlord performs routine maintenance and pest control pursuant to a fixed schedule  
23 of entry dates, the landlord will be in compliance with the advance notice requirement of  
24 subsection (b)(2) if the landlord delivers that schedule to the tenant at the commencement of the  
25 term of the lease and includes a reasonable time ~~frame-period~~ in which the maintenance or pest  
26 control will be performed on the dates indicated in the schedule. [Review]  
27

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

2           (a) If a tenant unreasonably refuses to allow the landlord ~~or the landlord's agent~~ access to  
3 a dwelling unit:

4                   (1) ~~a court may compel the tenant to grant the landlord or agent access to the~~  
5                   unit; or

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

10           In either case, the ~~landlord court may shall award the landlord may recover actual~~  
11 ~~damages and may award the landlord or [one] month's periodic rent, whichever is greater if that~~  
12 ~~amount is greater than the actual damages to which the landlord is entitled.~~ recover actual  
13 damages.

14           (b) If a landlord ~~or a landlord's agent~~ makes an unlawful entry of a tenant's dwelling unit,  
15 a lawful entry in an unreasonable manner, or repeated demands for entry which are otherwise  
16 lawful but have the effect of harassing the tenant, the tenant may seek injunctive relief to prevent  
17 the recurrence of the conduct or terminate the lease by giving the landlord a notice in a record  
18 that the lease will terminate immediately or on a later date specified in the notice. ~~an order~~  
19 ~~terminating the lease.~~ In either case, the ~~If the court awards injunctive relief or terminates the~~  
20 ~~lease, the court court shall award the tenant may recover actual damages and may award the~~  
21 ~~tenant shall award the tenant actual damages~~ or [one] month's rent periodic rent, whichever is  
22 greater.

1 **ARTICLE 8**

2 **PERIODIC AND HOLDOVER TENANCY; DEATH**

3 **OF TENANT**

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

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

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

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

11 (2) for month to month, by giving the other at least [one] month's notice in a  
12 record of the party's intent to terminate the ~~lease~~ periodic tenancy at the end of the monthly  
13 period.

14 **Comment**

15  
16 Under subsection (b)(2), a month to month tenancy can be terminated by giving one  
17 month's notice. The termination date in the notice must coincide with the normal end of the  
18 monthly period. Thus, if the tenancy begins on the first of the month, the termination date in the  
19 notice must be on the last day of at least the next month or it could be on the last date of any  
20 month at least one month after the notice is given. If the month-to-month tenancy begins on the  
21 15<sup>th</sup> of the month, the one-month notice must have a termination date no earlier than the 14<sup>th</sup> of  
22 the next month but could have a termination date on the 14<sup>th</sup> for subsequent months. Consistent  
23 with common law, this [act] would not require the notice to include a reason for the termination.  
24

25 **SECTION 802. HOLDOVER TENANCY.**

26 (a) Except as otherwise provided in subsections (b) and ~~(c) and in~~ Section 405(a)(2), if a  
27 tenant remains in possession without the landlord's consent after expiration of a tenancy for a  
28 fixed term or termination of a periodic tenancy, the landlord may bring an action for possession.  
29 If the tenant's holdover is willful and not in good faith, the landlord may recover [three] times

1 periodic rent or [triple] the actual damages, whichever is greater.

2 (b) Unless the landlord and the tenant otherwise agree in a record, Except as otherwise  
3 provided in subsection (c), if a tenant remains in possession with the landlord’s consent after  
4 expiration of a tenancy for a fixed term ~~or termination of the lease~~, a periodic tenancy for month  
5 to month arises under the same terms as the lease ~~unless the landlord and tenant otherwise agree.~~

6 ~~(c) If a tenant remains in possession after expiration of a tenancy for a fixed term or~~  
7 ~~termination of the lease and the lease provides specific consequences, the terms of the lease~~  
8 ~~control and, to the extent the tenant’s continued possession is consistent with the lease,~~  
9 ~~subsections (a) and (b) do not apply.~~

10 **Comment**

11 ~~Although subsection (c) recognizes that a lease may provide its own remedy for holding~~  
12 ~~over at the expiration of a term, the provision is subject to Section 106. Thus, a court should~~  
13 ~~refuse to enforce any holdover penalties that are unconscionable~~Under the common law, largely  
14 reflected in this section, if a tenant holds over beyond the end of the term, the landlord may elect  
15 to treat the holdover tenant as a trespasser (subsection (a)) or treat the tenant as a periodic tenant.  
16 Under the common law, the periodic tenancy arising from a holdover was a year to year. Under  
17 this act it is limited to month to month. Additionally, the terms of the periodic tenancy are the  
18 same as the lease that terminated. However, this is not true if the landlord and tenant otherwise  
19 agreed. Such agreement may be in the terms of the original lease or determined from subsequent  
20 agreements. For example, the parties may have agreed in a record that if the tenant held over rent  
21 would increase by 10%. To be effective, however, that another agreement must be in a record.  
22 Thus, oral agreements would not change the terms of the holdover tenancy.

23  
24 The landlord’s rights under this section are subject to Section 405(a)(2). That subsection  
25 gives a succeeding tenant the right to bring the action for possession against the holdover tenant.

26  
27 **SECTION 803. DEATH OF TENANT.**

28 (a) If ~~a the sole~~ tenant under a lease ~~who is the only party to a lease~~ dies before the end of  
29 a tenancy for a fixed term or a periodic tenancy, the tenant’s surviving spouse [or partner in a  
30 civil union] [or domestic partner] who resides in the dwelling unit may assume the lease by  
31 giving the landlord notice in a record not later than [20] days after the tenant’s death stating the

1 spouse's [or partner's] intent to assume the lease. On assuming the lease, the spouse [or partner]  
2 becomes the tenant under the lease.

3 (b) Except as otherwise provided in subsection (a), ~~(c)~~, or ~~(ed)~~ or law of this state other  
4 than this [act] ~~and subject to subsection (e)~~, the landlord or a tenant representative may terminate  
5 the lease of ~~a the~~ deceased tenant ~~who was the only party to the lease~~ by giving to the other  
6 notice in a record ~~of the intent of the person signing the notice to terminate the lease~~ that the lease  
7 will terminate on a date specified in the notice which is not earlier than [30] days after the ~~giving~~  
8 ~~of the~~ notice is given in the case of a tenancy for a fixed term or a specified date consistent with  
9 Section 801(b) in the case of a periodic tenancy.

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

13 ~~(de)~~ If ~~a deceased tenant was the only party to the lease and~~ the landlord is unable to  
14 contact the deceased tenant's surviving spouse, [or partner in a civil union] [or domestic  
15 partner]a -who resides in the dwelling unit or tenant representative for purposes of termination  
16 under subsection (b), the landlord may terminate the lease without notice if rent that was due was  
17 not paid for at least [25] days.

### 18 Comment

19 Any notice in a record given under this section must comply with Section 107(~~eb~~).

20 Under subsection (a) the surviving spouse ~~-,~~ partner in a civil union, or domestic partner]  
21 who resides in the dwelling unit may assume the lease. Upon such assumption, the spouse  
22 becomes the tenant ~~upon~~ under the lease. An assumption does not require the landlord's  
23 consent.

24  
25 If a tenant dies during the term of a lease, either the landlord or tenant representative (as  
26 defined in Section 102(~~4+34~~)) can elect to terminate the lease under subsection (b) unless  
27 subsection (a) or other law would prohibit the termination. A notice to terminate may not be

1 given, however, until the surviving spouse, [partner in a civil union] or [domestic partner] has the  
2 opportunity to exercise the right granted under subsection (a).

3  
4 If ~~the a~~ tenant who lived alone was the only party to the lease, the landlord may  
5 unilaterally terminate the lease if subsection (~~ed~~) applies. To illustrate the operation of  
6 subsection (~~ed~~), suppose the tenant of a fixed term tenancy to end on December 31 and who is  
7 the sole occupant of the dwelling unit dies on March 5 having paid rent on March 1. The  
8 landlord learns of the tenant's death on March 10. Because rent was paid for March, the landlord  
9 will not be able to terminate this lease in March. If no rent was paid on April 1, however, and the  
10 landlord is unable to contact a tenant representative, the landlord would be free to unilaterally  
11 terminate the lease on or after April 25. If the landlord has contact with a tenant representative,  
12 the landlord could not terminate under subsection (~~ed~~), but may terminate the lease under  
13 subsection (b).

## 14 15 **ARTICLE 9**

### 16 **RETALIATION**

#### 17 **SECTION 901. RETALIATION PROHIBITED.**

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

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

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

23 or

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

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

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

27 (4) exercised or attempted to exercise a legal right or remedy under a lease, this  
28 [act],<sub>1</sub> or law of this state other than this [act]; or

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

1 (b) Conduct that may be retaliatory under subsection (a) includes taking or threatening to  
2 take any of the following ~~actions~~acts:

3 (1) increasing the rent or fees;

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

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

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

12 (5) terminating a periodic tenancy; or

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

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

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

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

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

22 (4) the tenant, an immediate family member, or a guest engaged in conduct that  
23 ~~presented a threat~~end ~~to~~ the health or safety of another tenant on the premises;

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

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

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

9 **Comment**

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

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

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

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

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

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

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

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

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

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

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

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

## 18 **ARTICLE 10**

### 19 **DISPOSITION OF TENANT PERSONAL PROPERTY**

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

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

1 (1) the tenant vacates the unit at the termination of the tenancy; or  
2 ~~(2) the landlord regains actual possession under a court order; or~~  
3 ~~(3) the tenant abandons the unit under Section 604.~~

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

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

9 (2) ~~store or~~ leave the property in the dwelling unit or store the property on ~~the~~  
10 premises ~~premises~~ or in an other place of safekeeping and exercise reasonable care in moving or  
11 storing the property.

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

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

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

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

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

1 parties agree.

2 (e) A landlord may require the tenant to pay the reasonable [inventorying](#), moving, and  
3 storage costs before retrieving personal property under subsection (~~bd~~).

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

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

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

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

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

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

## 22 Comment

23  
24 This section applies, for example, if a lease terminates early as the result of an act of  
25 domestic violence. However, if there are cotenants to the lease such that the lease does not

1 terminate then this section does not apply. In the latter case, control of the dwelling unit remains  
2 with the other tenants; it does not belong to the landlord. Thus, if the tenant whose interest in the  
3 lease is released leaves personal property at the dwelling unit, that tenant would need to contact  
4 the remaining tenants to retrieve that property.

5  
6 While a landlord is not required to inventory the tenant's property, if the landlord does,  
7 the landlord is entitled to recover the inventory costs.

8  
9 **SECTION 1002. REMOVAL OF DECEASED TENANT'S PERSONAL**  
10 **PROPERTY BY TENANT REPRESENTATIVE.**

11 (a) If a landlord ~~learns~~knows of the death of a tenant who, at the time of death, was the  
12 sole occupant of the dwelling unit under a lease, the landlord:

13 (1) shall notify a tenant representative of the death; \_\_\_\_\_

14 (2) shall give the tenant representative access to the premises at a reasonable time  
15 to remove any personal property from the unit and other personal property of the tenant  
16 elsewhere on the premises; \_\_\_\_\_

17 (3) may require the tenant representative ~~or any person that removes personal~~  
18 ~~property from the premises~~ to prepare and sign an inventory of the property being removed; and

19 (4) shall ~~return to~~pay ~~to~~ the tenant representative the deceased tenant's security  
20 deposit and unearned rent to which the tenant would otherwise have been entitled under Section  
21 1204.

22 (b) A contact person or an heir accepts appointment as a tenant representative by  
23 exercising authority ~~pursuant to~~under this [act] or any other assertion or conduct indicating  
24 acceptance.

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

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

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

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

### 8 Comment

9  
10 The purpose of this section is to authorize a tenant representative to remove a deceased  
11 tenant's personal property and receive the return of the security deposit and unearned rent. The  
12 tenant representative typically will be the personal representative of the deceased tenant's estate,  
13 but if no personal representative has been appointed, the tenant representative will be the contact  
14 person under Section 109 or, in the absence of a contact person, an heir of the deceased tenant  
15 under the state's intestate succession laws. See Section 102(34). In the latter case, the landlord  
16 has no obligation to identify all of the deceased tenant's heirs and may give possession to any  
17 individual the landlord ~~knows~~ reasonably believes to be an heir of the deceased tenant.

18  
19 Subsection (f) applies if the lease is terminated by the landlord or the tenant  
20 representative under Section 803(b). In that case, the tenant representative would have the rights  
21 and obligations of a tenant under Section 1001 if any personal property remained in the dwelling  
22 unit after possession of the dwelling unit had been relinquished to the landlord.

23  
24 This section works in tandem with Section 1003, which provides procedures for a  
25 landlord to follow in disposing of personal property when the landlord has been unable to  
26 identify or contact a tenant representative who can act under this section.

27  
28 Whether the tenant representative is entitled to keep any of the tenant's personal property  
29 or security deposit will depend on law other than this act.

30  
31 **SECTION ~~1002~~1003. DISPOSITION OF DECEASED TENANT'S PERSONAL**  
32 **PROPERTY FOLLOWING TENANT DEATH ABSENT A TENANT**  
33 **REPRESENTATIVE.**

34 (a) ~~Except as otherwise provided in this section, if the landlord ~~learns~~ knows of the death~~  
35 of a tenant ~~who, at the time of death, was the sole occupant of the dwelling unit under a lease~~who

1 ~~is the sole occupant of a dwelling unit dies, and leaving personal property in the premises, the~~  
2 ~~deceased tenant's rights and responsibilities under Section 1001 apply to a tenant representative.~~

3 ~~(b) If thea~~ landlord terminates the lease ~~pursuant to~~under Section 803(~~de~~) because the landlord is  
4 unable to ~~contact~~notify ~~aa~~ tenant representative, ~~the~~ landlord:

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

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

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

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

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

14 (2) with the exercise of reasonable care, may ~~inventory the property, leave the~~  
15 property in the dwelling unit or inventory the property and store it on ~~the premises or in~~  
16 another ~~remove it~~ place of safekeeping. from the premises, and store it in another place for  
17 safekeeping.

18 (~~eb~~) A tenant representative may retrieve the deceased tenant's personal property from the  
19 landlord not later than [60] days after the landlord gave the notice in subsection (~~ba~~). Before  
20 retrieving the property, the representative shall pay the landlord's reasonable cost of  
21 inventorying, moving, and storing the property.

22 (~~dc~~) If a deceased tenant's personal property is not retrieved within the time period in  
23 subsection (~~eb~~), the landlord may dispose of the property in compliance with Section 1001(g).

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 deceased tenant’s personal property from the premises.  
5 When a tenant who is the sole occupant of the dwelling unit dies, the tenant’s representative or  
6 the landlord may elect to terminate the lease pursuant to Section 803. If that election is made  
7 and the dwelling unit is vacated, possession of the dwelling unit is relinquished to the landlord  
8 pursuant to Section 1001(a), triggering the provisions of that section governing the disposition of  
9 the deceased tenant’s personal property. The tenant representative typically will be the personal  
10 representative of the deceased tenant’s estate, but if no personal representative has been  
11 appointed, the tenant representative will be the contact person under Section 109 or, in the  
12 absence of a contact person, an heir of the deceased tenant under the state’s intestate succession  
13 laws. See Section 102(41). In the latter case, the landlord has no obligation to identify all of the  
14 deceased tenant’s heirs and may give possession to *any* individual the landlord knows to be an  
15 heir of the deceased tenant.

16  
17 ~~Subsections (b) through (d)~~This section provides a process through which ~~the a~~ landlord  
18 may dispose of ~~the a deceased tenant’s~~ personal property if the landlord is unable to identify or  
19 contact a tenant representative ~~is identified~~. Although the procedures ~~in subsections (b)–(d)~~  
20 generally parallel the provisions regarding disposition of ~~the deceased a~~ tenant’s personal  
21 property in Section 1001, some variation is required in the type of notice that must be given and  
22 the time period for a tenant representative to retrieve the property.

23  
24 Sections 100~~21~~ and 100~~32~~ do not govern the ultimate disposition of the personal property  
25 removed from the property by a tenant representative. T; those rights are determined under the  
26 state’s law governing decedents’ estates. Thus, the tenant representative takes possession of the  
27 personal property subject to those other laws.

28 **ARTICLE 11**

29 **EFFECT OF DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING, OR**

30 **SEXUAL ASSAULT**

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

32 (1) “Attesting third party” means a law enforcement official, licensed health-care  
33 professional, victim advocate, or victim-services provider.

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

36 (3) “Domestic violence” means :  
37

1 ~~(A) domestic violence as defined by [insert reference to definition in other state~~  
2 ~~law].; and~~

3 ~~(B) dating violence, stalking, and sexual assault.~~

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

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

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

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

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

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

1           **SECTION ~~1101~~1102. EARLY RELEASE OR TERMINATION OF LEASE**

2           ~~**BECAUSE OF ACT OF DOMESTIC VIOLENCE.**~~

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

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

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

14                   (3) a verification ~~in a record signed by the tenant and attesting third party~~ which  
15                    complies with Section ~~1103~~1104.

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

18                   (1) states the tenant's intent to be released from the lease on a date no earlier than  
19                    [30] days from the date of the notice or, if the perpetrator is a cotenant of the dwelling unit, an  
20                    earlier date;

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

1 (3) is given to the landlord:

2 (A) not later than [90] days after an act of domestic violence, dating  
3 violence, stalking, or sexual assault against the tenant or an immediate family member;

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

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

8 (c) If there is only one individual tenant of the dwelling unit: ~~only one tenant is a party to~~  
9 the lease:

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

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

15 (d) If there are multiple individual tenants of the dwelling unit: ~~more than one tenant is a~~  
16 party to the lease:

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

21 (2) -athe tenant released from the lease is not liable to the landlord or any other  
22 person for rent accruing after the tenant's release or actual damages resulting from the tenant's  
23 release from the lease;

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

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

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

### 8 Comment

9 Section ~~1101~~ 1102 is self-executing. Upon filing the appropriate documentation the  
10 tenant is released from the lease; no additional action is required or expected on the part of the  
11 landlord as would be the case when a tenant abandons the dwelling unit and an issue arises  
12 regarding the landlord's acceptance of the tenant's surrender. Of course, if the tenant vacates and  
13 subsequently the landlord sues for rent claiming the tenant had no reasonable fear of suffering  
14 psychological harm or a further act of domestic violence, dating violence, stalking, or sexual  
15 assault, the court would have to decide that question.

16 ~~, on the ground that the tenant did not satisfy the requirements for release under this section~~  
17 ~~Under subsection (a)(1) and (b)(3)(B), the court order could be issued by a state or~~  
18 ~~federal court, a tribal court order, or a court of a foreign jurisdiction.~~

19  
20 If a dwelling unit is rented by a revocable trust for the benefit of the settlor or a limited  
21 liability company for the benefit of its president, under Section 102(33)(C) the settlor or  
22 president is a tenant. If the settlor or president became the victim of domestic violence, dating  
23 violence, stalking, or sexual assault, and there were no other individual tenants of the dwelling  
24 unit, the lease would terminate under subsection (c).

25  
26  
27 ~~—~~ Under subsection (d)(2), a tenant who is released from the lease is not liable to the  
28 landlord or another person for rent or actual damages. Thus, if T and T-1 are cotenants but T is  
29 released from the lease as a result of an act of domestic violence committed by P, T would not be  
30 liable for rent to the landlord for the period after the release. Furthermore, T would not be liable  
31 to T-1 when, following T's release from the lease, T-1 is liable to the landlord for all of the rent  
32 accruing after T's release. Under subsection (d)(3), however, T-1 could make a claim against ~~the~~  
33 ~~perpetrator~~ P for the additional rent T-1 owes.

34  
35 **SECTION ~~1102~~ 1103. LANDLORD OBLIGATIONS ON EARLY RELEASE OR**  
36 **TERMINATION.** If a tenant is released from a lease under Section ~~1101~~ 1102, the landlord:

1 (1) except as otherwise provided in Section ~~1101~~1102(d)(4), shall return the amount of  
2 any security deposit and unearned rent to which the tenant is entitled under Section 1204 after  
3 the tenant vacates the dwelling unit;

4 (2) may not assess a fee or other penalty against the tenant for exercising a right granted  
5 under Section ~~1101~~1102; and

6 (3) may not disclose information required to be reported to the landlord under Section  
7 ~~1101~~1102 unless:

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

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

12 **SECTION ~~1103~~1104. VERIFICATION.**

13 (a) A verification under oath given by a tenant under Section ~~1101~~1102(a)(3) must  
14 include the following:

15 (1) from the tenant:

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

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

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

21 (D) a statement that because of an act of domestic violence, dating  
22 violence, stalking, or sexual assault, the tenant or an immediate family member has a reasonable  
23 fear that the tenant or the family member will suffer psychological harm or a further act of

1 domestic violence, dating violence, stalking, or sexual assault if the tenant or the family member  
2 continues to reside in the dwelling unit;

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

5 (F) a statement that the representations in the verification are true and  
6 accurate to the best of the tenant's knowledge and the tenant understands that the verification  
7 could be used as evidence in court; ~~tenant understands that the statements could be used in court~~  
8 and that the tenant could be liable for criminal sanction as well as the damages provided in  
9 subsection (b) for making a verification that contains a representation of a material fact known  
10 by the tenant to be false; and

11 (2) from an attesting third party:

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

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

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

22 (D) a statement that the third party, based on the tenant's verification,  
23 believes the tenant and understands that the verification may be used as the ground for releasing

1 the tenant from a lease or terminating the tenant's interest under the lease.

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

5 [Legislative Note: Jurisdictions should consider including the form in the comment in the statute.](#)

6 **Comment**

7  
8 The following is an example of a verification that would comply with this section.

9 **Verification**

10  
11 I, \_\_\_\_\_ [insert name of tenant], state that:

12  
13 (a) I am a tenant of a dwelling unit located at \_\_\_\_\_ [insert  
14 address of dwelling unit];

15  
16 (b) I or an immediate family member has been a victim of an act [or acts](#) of domestic  
17 violence, [dating violence, stalking, or sexual assault](#) occurring to the best of my knowledge on or  
18 over a period \_\_\_\_\_ [insert time period over which ~~acts of~~ one or  
19 more ~~act~~[acts](#) of domestic violence, [dating violence, stalking, or sexual assault](#) occurred] which [act](#)  
20 [or acts](#) have created a reasonable fear that I or an immediate family member will suffer  
21 [psychological harm or](#) a further act of domestic violence, [dating violence, stalking, or sexual](#)  
22 [assault](#) by continued residence in the dwelling unit;

23  
24 (c) The most recent act [or acts](#) of domestic violence, [dating violence, stalking, or sexual](#)  
25 [assault](#) occurred on or about \_\_\_\_\_ [insert date]; and

26  
27 (d) The date in the notice accompanying this verification that I have specified as the date  
28 on which I am released from the lease is [check one]:

29  
30  earlier than 90 days after the date of the most recent act of domestic violence,  
31 [dating violence, stalking, or sexual assault](#),

32  
33  during a time when there is an outstanding court order preventing the  
34 perpetrator's contact with the undersigned, or

35  
36  not later than [90] days after the undersigned learned that the perpetrator has  
37 been released from incarceration.

38  
39 I declare [under penalty of perjury](#) that the above ~~statement~~[representations are](#) ~~is~~ true and  
40 accurate to the best of my knowledge and belief and that I understand ~~it~~[this verification](#) could be

1 used as evidence in court. ~~I further understand that if I submit to the landlord a verification that~~  
2 ~~contains a representation of material fact known by me to be false, I could be subject to a penalty~~  
3 ~~for perjury and the landlord may recover from me the greater of three months' rent or three times~~  
4 ~~the landlord's actual damages.~~

5  
6 \_\_\_\_\_  
7 [Tenant's signature]

8  
9 I, \_\_\_\_\_ [insert name of attesting third party] state that:

10  
11 (a) I am a \_\_\_\_\_ [insert whichever is applicable: law  
12 enforcement official, a licensed health care professional, a victim advocate, or a victim-services  
13 provider];

14  
15 (b) My business address and phone number is: \_\_\_\_\_;

16  
17 (c) The individual who signed the preceding statement has informed me that the individual  
18 or an immediate family member is a victim of an act or acts of domestic violence, dating violence,  
19 stalking, or sexual assault -based upon the act or acts listed in the preceding statement which act  
20 or acts have created a reasonable fear that the tenant or an immediate family member will suffer  
21 psychological harm or a further act of domestic violence, dating violence, stalking, or sexual  
22 assault by continued residence in the dwelling unit described in the preceding statement; and

23  
24 (d) I have read and ~~reasonably~~ believe the preceding statement recounting an act or acts of  
25 domestic violence, dating violence, stalking, or sexual assault and understand that the tenant who  
26 made the statement may use this document  
27 as a ground for terminating the tenant's lease for the dwelling unit described in the preceding  
28 statement.

29 \_\_\_\_\_  
30 [Attesting third party's signature]

31  
32 **SECTION ~~1104~~1105. PERPETRATOR'S LIABILITY FOR DAMAGES.**

33 (a) A landlord may recover from a perpetrator actual damages resulting from a tenant's  
34 exercise of a right under Section ~~1101~~1102 and, if the perpetrator is a party to the lease who  
35 remains in possession of the dwelling unit, hold the perpetrator liable on the lease for all  
36 obligations under the lease or this [act].

37 (b) A perpetrator may not recover actual damages or other relief resulting from the  
38 exercise of a right by a tenant under Section ~~1101~~1102 or a landlord under this section.

39 **SECTION ~~1105~~1106. CHANGE OF LOCK OR OTHER SECURITY DEVICE.**

1 ~~BECAUSE OF DOMESTIC VIOLENCE.~~

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

10 (b) If the locks or other security devices are changed or rekeyed under subsection (a), the  
11 landlord may thereafter change or rekey them ~~a second time~~, at the tenant's expense, to ensure  
12 compatibility with the landlord's master key or other means of access or otherwise accommodate  
13 the landlord's reasonable commercial needs.

14 (c) If a perpetrator is a party to the lease, the locks or other security devices may not be  
15 changed or rekeyed under subsection (a) unless there is a court order, other than an ex parte  
16 order, expressly requiring the perpetrator to vacate the dwelling unit or to have no contact with  
17 the tenant ~~for an immediate family member~~ and a copy of the order has been given to the  
18 landlord. ~~[NOTE: The bracketed provision is for committee discussion.]~~

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

21 **Comment**

22  
23 This section is designed to allow a tenant who is the victim of domestic violence to  
24 change the locks or other security devices without first giving the landlord an opportunity to  
25 change them, thus allowing the victim to make the change as quickly as possible. Nothing in this  
26 section would prohibit the landlord on the landlord's own initiative to change the locks or other

1 security devices on behalf of the tenant at the tenant's expense or for the tenant to contact the  
2 landlord for the change.

3  
4 The tenant is not required to comply with Section ~~1101-1102~~ to cause a change of the  
5 locks to the dwelling unit.

6  
7 When a perpetrator is a tenant under the lease, subsection (c) would permit a change of  
8 locks only if a court has expressly ordered the perpetrator to vacate the dwelling unit or have no  
9 contact with the tenant.

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

17  
18 **SECTION ~~1106~~1107. EFFECT OF COURT ORDER TO VACATE.**

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

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

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

25 (b) If a perpetrator is a party to the lease, on issuance of a court order requiring the  
26 perpetrator to vacate the dwelling unit, other than an ex parte order, the perpetrator's interest  
27 under the lease terminates and the landlord and any remaining tenants may recover any actual  
28 damages from the perpetrator as a result of the termination.

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

32 (d) A landlord is not required to return to a perpetrator whose interest under the lease

1 terminates under this section or to any remaining tenant any security deposit or unearned rent  
2 until the lease terminates with respect to all tenants.

3 **Comment**

4 Because of subsection (c), the landlord cannot increase the tenant-victim's rent or other  
5 obligation because the perpetrator who might also have been a tenant on the lease has been  
6 ordered to vacate the dwelling unit. For example, suppose V and P are cotenants on a lease  
7 providing monthly rent in the amount of \$500. V is the victim of domestic violence committed  
8 by P; P has been ordered to vacate the apartment. V continues to be liable for the monthly rent of  
9 \$500, and the landlord cannot increase that rent to take account of the fact that P is no longer a  
10 tenant. The landlord also may not increase the tenant's security deposit or require additional  
11 prepaid rent even if the landlord believes that the remaining tenant might lack the financial  
12 ability to comply with lease because the perpetrator is no longer a party to the lease.

13 **SECTION ~~1107~~1108. TERMINATION WITHOUT COURT ORDER OF**  
14 **TENANCY OF PERPETRATOR.**

15 (a) If a landlord has a reasonable belief that a tenant or an immediate family member is  
16 the victim of an act of domestic violence, dating violence, stalking, or sexual assault; and another  
17 tenant on the lease is the perpetrator, ~~and~~  
18 the landlord may terminate the perpetrator's interest under the lease by giving the perpetrator  
19 notice in a record ~~that of the landlord's intent to a~~ tenant is a perpetrator, the landlord may  
20 terminate the interest of the perpetrator under the lease by giving the perpetrator notice in a  
21 record of the landlord's intent to ~~terminate~~ the perpetrator's interest ~~will terminate~~ immediately  
22 or on a later date specified in the notice. The notice shall state that the landlord has a reasonable  
23 belief that the perpetrator has committed an act of domestic violence, dating violence, stalking,  
24 or sexual ass~~ault~~ual and the approximate date of the act. ~~specify the act of domestic violence for~~  
25 which the landlord is terminating the perpetrator's interest.

26 (b) Prior to giving the notice to the perpetrator pursuant to under subsection (a), the  
27 landlord shall notify the tenant who was a victim of an act of domestic violence, dating violence,

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

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

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

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

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

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

## 22 **Comment**

23 Under this section, the landlord, upon being advised that a tenant is the perpetrator of an  
24 act of domestic violence, could terminate the perpetrator's interest under the lease but not

1 terminate the victim’s interest under the lease. The landlord’s decision to terminate is wholly  
2 discretionary. If the landlord chooses to terminate the perpetrator’s interest under the lease, the  
3 landlord may not alter the obligations of another tenant under the lease. For example, the  
4 landlord could not increase the rent of the remaining tenant. If the lease, however, had treated  
5 the perpetrator and the remaining tenant as jointly liable for the rent, the remaining tenant would  
6 be liable for all of the remaining rent. In this case, the remaining tenant would have a cause of  
7 action for damages against the perpetrator.  
8

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

23 **SECTION ~~1108~~1109. LANDLORD CONDUCT WITH RESPECT TO VICTIM-~~OF~~**  
24 **~~DOMESTIC VIOLENCE.~~**

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

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

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

33 (2) an act of domestic violence, dating violence, stalking, or sexual assault  
34 committed against ~~against~~ a tenant or ~~an immediate~~an immediate family member resulted in a

1 violation of the lease or this [act] by the tenant; or

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

5 (c) Evidence that any of the events described in subsection (b)(1), (2), or (3) occurred  
6 within [twosix] months before the landlord's conduct creates a presumption that the landlord's  
7 purpose of the landlord's conduct was retaliation. The landlord may rebut this presumption by  
8 [a preponderance of][clear and convincing] evidence showing that the landlord had sufficient  
9 justification for engaging in the ~~would have engaged in the~~ conduct described in Section  
10 901 subsection (b) and would have engaged in the conduct in ~~in~~ the same manner and at the same  
11 time regardless of whether ~~of the events~~ described in subsection (b) had occurred.

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

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

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

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

21 (2) the landlord demonstrates that:

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

1 terminated, or

2 (B) the perpetrator has damaged the premises.

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

4 (1) the tenant may:

5 (A) terminate the lease;

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

8 (C) obtain appropriate injunctive relief; and

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

11 **ARTICLE 12**

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

13 **SECTION 1201. PAYMENT REQUIRED AT THE COMMENCEMENT OF**  
14 **TERM OF LEASE.**

15 (a) In this For purposes of this Article, 12, “bank account” means a federally insured  
16 checking, demand, time, savings, passbook, or similar account maintained at a bank.

17 (ab) Except as otherwise provided in subsections (bc) and (ed), at or before  
18 commencement of the term of a lease, a landlord may not require the tenant to pay a security  
19 deposit, prepaid rent, or any combination thereof, in an amount that exceeds [two] times periodic  
20 rent.

21 (bc) The limit established in subsection (ab) does not include the first month’s rent or  
22 fees.

23 (ed) Except as otherwise provided by law of this state other than this [act], if a tenant

1 keeps a pet on the premises or is permitted by the lease to make alterations to the premises, the  
2 landlord may require the tenant to pay an additional security deposit in an amount commensurate  
3 with the additional risk of damage to the premises.

#### 4 **Comment**

5 The intent of subsection (~~a~~b) is to limit the payments that a landlord may require a tenant  
6 to make at the beginning of the lease to the equivalent of the first and last month's rent plus a  
7 one-month security deposit. The number of months is bracketed, however, to give legislatures  
8 the option to choose a number appropriate for market conditions within their own states.  
9

10 Nothing in this section prohibits a tenant from voluntarily making other payments. Thus a  
11 tenant may prepay rent for several more months in advance – or even the full term – if the tenant  
12 is in the financial position to do so.  
13

14 This section does not preclude a landlord from charging fees. Common fees include  
15 application fees, surety bonds fees, cleaning fees, and pet fees. (See Section 102(~~45~~11)).  
16

17 The landlord's ability to require a higher security deposit or a fee for pets may be limited  
18 by other state or federal law governing a disabled tenant's right to keep a service animal.  
19

### 20 **SECTION 1202. LANDLORD, TENANT, AND THIRD PARTY INTERESTS IN** 21 **SECURITY DEPOSIT.**

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

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

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

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

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

30 (1) Notwithstanding law ~~of this state~~ other than this [act], the tenant's interest in a  
31 security deposit held in a bank account has priority over any right of setoff the bank in which the

1 account is maintained may have for obligations owed to the bank other than charges normally  
2 associated with the bank's maintenance of the account.

3 (2) The tenant's interest is not adversely affected if the security deposit is  
4 commingled with the security deposits of other tenants in a bank account ~~pursuant to~~under  
5 Section 1203(a)(2).

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

8 ~~(e) Unless a landlord and tenant otherwise agree, if at the termination of the lease the~~  
9 ~~tenant owes unpaid rent and the landlord applies the security deposit toward the payment of rent~~  
10 ~~that is due, a court may award the landlord an amount not to exceed [two] times periodic rent in~~  
11 ~~addition to actual damages.~~

12 ~~(dc)~~ Subsection (a)(3) does not abrogate generally applicable rules of law enabling a  
13 transferee of funds to take the funds free of competing claims.

#### 14 **Comment**

15

16 Subsection (a) protects the tenant, ~~e.g., if,~~ e.g., if, if the landlord enters bankruptcy. It limits the  
17 landlord's interest in the funds constituting a security deposit to a security interest and provides  
18 that a creditor of or transferee from the landlord (including the landlord's trustee in bankruptcy)  
19 generally cannot obtain any greater interest in those funds. Likewise, it protects the landlord if  
20 the tenant enters bankruptcy. Under subsection (a)(2), the landlord's security interest in a  
21 security deposit is superior to any competing claim of a creditor of or transferee from the tenant,  
22 including the tenant's trustee in bankruptcy. If the tenant is in financial stress, subsection (a) is a  
23 useful clarification that can benefit the tenant's creditors whether or not the tenant files a  
24 bankruptcy petition because it makes clear that the security deposit is an asset of the tenant.

25

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

31

32 Under subsection (b)(3), the effect of commingling not permitted by this [act], as, for  
33 example, when the landlord commingles the landlord's personal funds with the security deposit,

1 is governed by law other than this act.

2  
3 ~~Subsection (c) addresses the common misconception of tenants that the security deposit~~  
4 ~~may be used in lieu of paying rent, particularly the last month's rent. The primary purpose of a~~  
5 ~~security deposit is to provide the landlord with funds to reimburse the landlord for the costs~~  
6 ~~incurred in remedying any damages to the dwelling unit by the tenant. If the tenant could~~  
7 ~~withhold rent only to have it charged against the security deposit, the landlord would have no~~  
8 ~~funds to pay for any damages. A tenant that withholds the last month's rent is subject to the~~  
9 ~~penalty imposed by this section.~~

10  
11 Under subsection (~~dc~~), whether a transferee of funds from a bank account maintained for  
12 the purpose of holding security deposits takes the funds free from the tenant's interest is  
13 governed by other law. *See, e.g.*, Restatement (Third) of Restitution and Unjust Enrichment § 67,  
14 *cmt. d.*

15  
16 **SECTION 1203. SAFEKEEPING OF SECURITY DEPOSIT.**

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

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

19 (A) by holding the funds in a bank account used exclusively for security  
20 deposits that is maintained by a federally insured bank doing business in this state that is titled as  
21 an account holding security deposits; and

22 (B) ~~if funds from tenants are commingled as allowed by paragraph (2)~~; by  
23 maintaining records that indicate at all times the amount of the funds attributable to each tenant  
24 whose funds are being held in the account; and

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

28 ~~(3) shall notify the bank that maintains the account in a signed record that the~~  
29 ~~account is a special account used exclusively for security deposits].~~

30 (b) If a landlord fails to comply with subsection (a), a ~~court shall award the tenant may~~  
31 ~~recover actual damages and may award the tenant or~~ recover actual damages and may award the tenant or [one month's] periodic rent ~~or actual~~

1 damages, whichever is greater.

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

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

6 *Legislative Note: Subsection (a)(3), which requires that a landlord inform a bank that a deposit*  
7 *account contains security deposits, is designed to protect both tenants and the banks that hold*  
8 *security deposits. A bank that is so informed is less likely to exercise a setoff in violation of the*  
9 *tenant's rights. See Section 1202(b)(1). Each enacting jurisdiction should consider whether this*  
10 *provision should be included.*

11  
12 *A jurisdiction that wishes to require the payment of interest on a security deposit should delete*  
13 *subsection (d) and replace it with a provision governing the parties' rights regarding the interest*  
14 *payments.*

### 15 16 Comment

17  
18 Section 1203 introduces a new requirement that a landlords segregate security deposits  
19 from the landlord's other funds. Imposing the safekeeping requirements ensures that an amount  
20 equivalent to the deposited funds is available for return as required under various provisions in  
21 the act.

22  
23 It is not necessary for a landlord to deposit the specific funds received from a tenant into  
24 the account. A landlord who places the landlord's own funds into a security deposit account to  
25 cover the amounts received from be distributed to tenants pursuant to this article is not engaged  
26 in an act of commingling as these funds are no longer the landlord's personal funds.

27  
28  
29 The segregation requirement does not apply to prepaid rent. By definition, rent payments  
30 made by or on behalf of the tenant for future dates, even if required by the terms of the lease or  
31 as a condition of entering into the lease, are not security deposits. Rather, they are payment for  
32 those future dates, discharging, to the extent of the payment, the obligation to pay rent for those  
33 dates. Accordingly, unlike security deposits, the tenant no longer owns the funds paid as rent.  
34 Several provisions of this act require a landlord to return to the tenant the amount of unearned  
35 rent. If a landlord fails to comply with such a requirement, the aggrieved tenant would have a  
36 right to a money judgment but would have no in rem claim to the unearned rent. A landlord who  
37 places the landlord's own funds into a security deposit account to be distributed to tenants  
38 pursuant to this article is not engaged in an act or commingling as these funds are no longer the  
39 landlord's personal funds.

40  
41 Subsection (b) does not preclude the landlord or tenant from recovering other damages to

1 which the landlord or tenant may be entitled under this [act].

2  
3 **SECTION 1204. RETURN-DISPOSITION OF SECURITY DEPOSIT AND**  
4 **UNEARNED RENT ON TERMINATION OF LEASE.**

5 (a) At the termination of a lease, the ~~tenant is entitled to~~~~landlord shall pay the tenant~~ the  
6 amount by which the security deposit and any unearned rent exceeds the amount the landlord is  
7 owed for unpaid rent due under the lease and any other amount the landlord is owed under the  
8 lease or this [act].

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

13 (c) A landlord ~~may~~shall satisfy the landlord's obligation to pay the amount determined  
14 under subsection (b) by:

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

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

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

21 (d) If the amount paid by a landlord under subsection (b) is less than the sum of the  
22 tenant's security deposit and any unearned rent, the landlord shall provide the tenant or tenant  
23 representative, within the [30] days specified under subsection (b), with a record specifying each  
24 item of property damage or other unfulfilled obligation of the tenant to which the security

1 deposit or unearned rent was applied and the amount applied to each item.

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

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

11 ~~(g) Notwithstanding law of this state other than this [act], a security deposit or unearned~~  
12 ~~rent to which the tenant or tenant representative is entitled but which is unclaimed for more than~~  
13 ~~[180] days after the tenancy has ended, including any amount returned to the landlord or that~~  
14 ~~remains in the landlord's control at the end of the [180]-day period as the result of checks never~~  
15 ~~paid or fund transfers attempted but not completed, is unclaimed property under [cite to state~~  
16 ~~unclaimed property act].~~

17 (g~~G~~h) If the amount of a security deposit and unearned rent held by a landlord is  
18 insufficient to satisfy the tenant's obligations under the lease and this [act], the landlord may  
19 recover actual damages. ~~reimburse the landlord for damages resulting from the tenant's~~  
20 ~~noncompliance with the lease or this act, the landlord may recover the difference from the tenant.~~

21 *Legislative Note: Consideration should be given to appropriate amendments to the state's*  
22 *unclaimed property act to implement the provisions of subsection (g), if necessary.*

23  
24  
25

### Comment

26 The amount paid to a tenant need not be in cash but could be by check, money order,

1 electronic transfer, or the like.

2  
3 Subsection (f) provides a penalty when the landlord fails to comply with any of the  
4 requirements of subsections (b), ~~(c), or and~~ (d), including the failure to act within the applicable  
5 time period, the failure to provide a record to explain why the security deposit was not returned  
6 in full, and the failure to return an amount equal to the landlord's good faith calculation of the  
7 sum to which the tenant is entitled.

8  
9 Subsection (f) would not apply if the landlord has acted in good faith, but merely erred in  
10 determining the amount owed. In that case, the landlord has complied with subsection (b) by  
11 making a good faith computation. Thus, subsection (e) permits the tenant to recover the amount  
12 to which the tenant is entitled, but the landlord would not be subject to the penalty in subsection  
13 (f).

14  
15 ~~The time frame period set forth in subsection (g) may supersede the time limits for other~~  
16 ~~forms of unclaimed property provided in other law of the state.~~

17  
18 **SECTION 1205. DISPOSITION OF SECURITY DEPOSIT AND UNEARNED**  
19 **RENT ON TERMINATION OF LANDLORD INTEREST IN PREMISES.**

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

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

26 (2) if the lease terminates as a result of the termination of the landlord's interest,  
27 shall, shall return the security deposit and an amount equal to the unearned rent to which the  
28 tenant is entitled ~~pursuant to under~~ Se-Section 1204.

29 (b) If the landlord dies before the termination of the lease, the personal representative of  
30 the landlord's estate becomes the landlord until the ~~representative distributes the~~ premises are  
31 distributed to the ~~successor as determined by the law of this state other than this [act]~~ successor.  
32 If the premises are distributed to the ~~representative distributes the premises to the~~ successor

1 before the termination of the lease, the ~~representative shall distribute to the successor any~~  
2 security deposit held by the personal representative shall be transferred to the successor and the  
3 personal representative shall ~~and~~ notify the tenant in a record of the successor's name and  
4 address, the amount transferred to the successor, and any claim previously made against the  
5 security deposit.

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

9 (d) Subject to subsection (e), the successor to the landlord's interest in the premises has  
10 all rights and obligations of the landlord under this [act] with respect to any security deposit held  
11 by the predecessor landlord which has not been returned to the tenant, whether or not the security  
12 deposit was transferred or distributed to the successor.

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

### 15 **Comment**

16  
17 Section 1205 is a new section that provides for disposition of security deposits and  
18 unearned rent after a transfer of the landlord's interest in the premises.

## 19 **ARTICLE 13**

### 20 **MISCELLANEOUS PROVISIONS**

21  
22 **SECTION 1301. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
23 applying and construing this uniform act, consideration must be given to the need to promote  
24 uniformity of the law with respect to its subject matter among states that enact it.

25 **SECTION 1302. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**  
26 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the

1 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but  
2 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
3 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
4 U.S.C. Section 7003(b).

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

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

8 (a) . . . .

9 (b) . . . .

10 (c) . . . .

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