

DRAFT
FOR DISCUSSION ONLY

REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (2015)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

February 20 – 21, 2015 Drafting Committee Meeting

Copyright © 2015
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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

February 12, 2015

DRAFTING COMMITTEE ON REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (2015)

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

JOAN ZELDON, District of Columbia Superior Court, 515 Fifth St. NW, Room 219,
Washington, DC 20001, *Chair*
WILLIAM W. BARRETT, 600 N. Emerson Ave., P.O. Box 405, Greenwood, IN 46142
MICHAEL A. FERRY, 200 N. Broadway, Suite 950, St. Louis, MO 63102
LYNN FOSTER, University of Arkansas at Little Rock, William H. Bowen School of Law,
1201 McMath Ave., Little Rock, AR 72202
CARL H. LISMAN, 84 Pine St., P.O. Box 728, Burlington, VT 05402
REED L. MARTINEAU, 5458 Merlyn Dr., Salt Lake City, UT 84117
ROBERT L. MCCURLEY, JR., Box 861287, Tuscaloosa, AL 35486
JANICE L. PAULS, 1634 N. Baker St., Hutchinson, KS 67401
KEVIN P.H. SUMIDA, 735 Bishop St., Suite 411, Honolulu, HI 96813
V. DAVID ZVENYACH, 1350 Pennsylvania Ave. NW, Suite 4, Washington, DC 20004
SHELDON F. KURTZ, University of Iowa College of Law, Boyd Law Bldg. – 446, Iowa City,
IA 52242, *Co-Reporter*
ALICE NOBLE-ALLGIRE, Southern Illinois University School of Law, Mail Code 6804,
1150 Douglas Dr., Lesar Law Bldg., Carbondale, IL 62901, *Co-Reporter*

EX OFFICIO

HARRIET LANSING, P.O. Box 1347, 1201 N. Market St., 18th Fl., Wilmington, DE 19899,
President
NORA WINKELMAN, Office of Chief Counsel, House Democratic Caucus, Pennsylvania
House of Representatives, Main Capitol Building, Room 620, Harrisburg, PA 17120,
Division Chair

AMERICAN BAR ASSOCIATION ADVISORS

PETER A. BUCHSBAUM, 126 Bowne Station Rd., Stockton, NJ 08559, *ABA Advisor*
STEVEN J. EAGLE, George Mason University School of Law, 3301 Fairfax Dr., Arlington, VA
22201-4426, *ABA Section Advisor*

AMERICAN LAW INSTITUTE ADVISOR

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

EXECUTIVE DIRECTOR

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

Copies of this Act may be obtained from:

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

REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (2015)

TABLE OF CONTENTS

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE.	1
SECTION 102. DEFINITIONS.	1
SECTION 103. SCOPE.	11
SECTION 104. ENFORCEMENT; DUTY TO MITIGATE.	12
SECTION 105. OBLIGATION OF GOOD FAITH.	12
SECTION 106. UNCONSCIONABILITY.	13
SECTION 107. KNOWLEDGE AND NOTICE.	14
SECTION 108. REQUIRED DISCLOSURES BY LANDLORD.	15
SECTION 109. REQUIRED DISCLOSURES BY TENANT.	17
SECTION 110. COMMON LAW AND PRINCIPLES OF EQUITY.	18

ARTICLE 2

GENERAL PROVISIONS APPLICABLE TO LEASE

SECTION 201. TERMS AND CONDITIONS OF LEASE; DELIVERY OF LEASE TO TENANT.	18
SECTION 202. EFFECT OF UNSIGNED LEASE; IMPLIED LEASE.	19
SECTION 203. PROHIBITED PROVISIONS IN LEASE.	20
SECTION 204. SEPARATION OF RENT FROM LANDLORD DUTY TO MAINTAIN PREMISES.	21
SECTION 205. ATTORNEY’S FEES AND COSTS.	22

ARTICLE 3

LANDLORD’S DUTIES

SECTION 301. DELIVERY OF POSSESSION OF DWELLING UNIT TO TENANT.	22
SECTION 302. LANDLORD’S DUTY TO MAINTAIN PREMISES IN HABITABLE CONDITION.	23
SECTION 304. LIMITATIONS ON LANDLORD’S LIABILITY.	27
SECTION 305. RULES GOVERNING USE AND ENJOYMENT.	28

ARTICLE 4

TENANT REMEDIES

SECTION 401. NOTICE AND OPPORTUNITY TO REMEDY.....	29
SECTION 402. NONCOMPLIANCE BY LANDLORD; IN GENERAL.....	30
SECTION 403. MATERIAL NONCOMPLIANCE BY LANDLORD; TERMINATION OF LEASE.....	32
SECTION 404. CIRCUMSTANCE BEYOND LANDLORD CONTROL.....	33
SECTION 405. LANDLORD FAILURE TO DELIVER POSSESSION TO TENANT.....	34
SECTION 406. REPAIR BY TENANT.....	35
SECTION 407. WRONGFUL FAILURE TO PROVIDE ESSENTIAL SERVICE BY LANDLORD.....	36
SECTION 408. LANDLORD NONCOMPLIANCE AS DEFENSE TO ACTION FOR POSSESSION OR NONPAYMENT OF RENT.....	37
SECTION 409. FIRE OR OTHER CASUALTY DAMAGE.....	39
SECTION 410. UNLAWFUL REMOVAL, EXCLUSION, OR DIMINUTION OF ESSENTIAL SERVICE.....	40

ARTICLE 5

TENANT'S DUTIES

SECTION 501. TENANT'S DUTIES.....	41
-----------------------------------	----

ARTICLE 6

LANDLORD REMEDIES

SECTION 601. TENANT'S FAILURE TO PAY RENT; OTHER NONCOMPLIANCE WITH LEASE.....	43
SECTION 602. WAIVER OF LANDLORD'S RIGHT TO TERMINATE.....	45
SECTION 603. DISTRAINT FOR RENT; LIENS.....	45
SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION.....	45
SECTION 605. RECOVERY OF POSSESSION LIMITED; INTERRUPTION OF ESSENTIAL SERVICE.....	48

ARTICLE 7

ACCESS TO DWELLING UNIT

SECTION 701. LANDLORD ACCESS TO DWELLING UNIT.....	48
SECTION 702. REMEDIES FOR ABUSE OF ACCESS.....	50

ARTICLE 8

PERIODIC AND HOLDOVER TENANCY; DEATH OF TENANT

SECTION 801. TERMINATION OF PERIODIC TENANCY.	50
SECTION 802. HOLDOVER TENANCY.	51
SECTION 803. DEATH OF TENANT.	52

ARTICLE 9

RETALIATION

SECTION 901. RETALIATION PROHIBITED.	53
SECTION 902. TENANT REMEDIES FOR RETALIATORY CONDUCT.	55
SECTION 903. PRESUMPTION OF RETALIATORY CONDUCT.	55

ARTICLE 10

DISPOSITION OF TENANT PERSONAL PROPERTY

SECTION 1001. DISPOSITION OF TENANT PERSONAL PROPERTY ON PREMISES.	56
SECTION 1002. DISPOSITION OF PERSONAL PROPERTY FOLLOWING TENANT DEATH.	58
SECTION 1003. EXERCISE OF RIGHT BY CONTACT PERSON.	60

ARTICLE 11

EFFECT OF DOMESTIC VIOLENCE

SECTION 1101. EARLY RELEASE OR TERMINATION OF LEASE BECAUSE OF ACT OF DOMESTIC VIOLENCE.	61
SECTION 1102. LANDLORD OBLIGATIONS ON EARLY RELEASE OR TERMINATION.	63
SECTION 1103. VERIFICATION.	64
SECTION 1104. PERPETRATOR'S LIABILITY FOR DAMAGES.	67
SECTION 1105. CHANGE OF LOCK OR OTHER SECURITY DEVICE BECAUSE OF DOMESTIC VIOLENCE.	67
SECTION 1106. EFFECT OF COURT ORDER TO VACATE.	68
SECTION 1107. TERMINATION WITHOUT COURT ORDER OF TENANCY OF PERPETRATOR.	69
SECTION 1108. LANDLORD CONDUCT WITH RESPECT TO VICTIM OF DOMESTIC VIOLENCE.	71

ARTICLE 12

SECURITY DEPOSITS, FEES, AND UNEARNED RENT

SECTION 1201. PAYMENT REQUIRED AT THE COMMENCEMENT OF TERM OF LEASE.	72
SECTION 1202. LANDLORD, TENANT, AND THIRD PARTY INTERESTS IN SECURITY DEPOSIT.	73
SECTION 1203. SAFEKEEPING OF SECURITY DEPOSIT.	75
SECTION 1204. RETURN OF SECURITY DEPOSIT AND UNEARNED RENT.	76
SECTION 1205. DISPOSITION OF SECURITY DEPOSIT AND UNEARNED RENT ON TERMINATION OF LANDLORD INTEREST IN PREMISES.	78

ARTICLE 13

MISCELLANEOUS PROVISIONS

SECTION 1301. UNIFORMITY OF APPLICATION AND CONSTRUCTION.	80
SECTION 1302. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.	80
SECTION 1303. APPLICATION.	80
SECTION 1304. REPEALS.	80
SECTION 1305. EFFECTIVE DATE.	80

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

2 **ARTICLE 1**

3 **GENERAL PROVISIONS**

4 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Revised Uniform
5 Residential Landlord and Tenant Act (2015).

6 **Comment**

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

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

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

16 (2) “Actual damages” means compensation for direct, consequential, or incidental
17 injuries or losses. The term includes fees payable to a landlord or tenant under the lease for a
18 violation of the lease.

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

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

23 (5) “Bank account” means a federally insured checking, demand, time, savings,
24 passbook, or similar account maintained at a bank.

25 (6) “Building, housing, fire, or health code” includes any law, ordinance, or
26 governmental regulation concerning fitness for habitation or the construction, maintenance,

operation, occupancy, use, or appearance of the premises.

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

(8) “Criminal act” or “criminal activity” means:

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

(B) activity that is illegal under the criminal law of this state and threatens the health or safety of another tenant on the premises, the landlord, or the landlord’s agents.

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

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

(11) “Domestic violence” means:

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

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

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

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

(B) a structure or part of a structure in which the tenant resides, together with

1 fixtures and appurtenances, and any other area of the land on which the structure is located to
2 which the tenant is given an exclusive right of possession during the term of the lease, including
3 a designated parking space or storage area.

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

6 (14) “Essential service” means heat, hot and cold running water, and electricity. The term
7 includes gas, air conditioning, or [other service if required to be supplied to a tenant by the lease
8 or by law which, if not supplied to the tenant, would create a serious threat to the health, safety,
9 or property of the tenant or an immediate family member.] **NOTE: Discuss bracketed part**
10 **with committee.**

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

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

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

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

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

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

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

2 (C) a foster child, stepchild, or [ward] of the tenant or an individual named in

3 subparagraph (A) or (B).

4 (20) “Landlord” means the owner of a dwelling unit rented to a tenant and a successor in
5 interest to the landlord. The term includes:

6 (A) a sublessor if the landlord did not consent to the sublease; and

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

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

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

14 (21) “Lease” means a contract, oral or in a record, between a landlord and tenant in which
15 the landlord rents to the tenant a dwelling unit for a tenancy for a fixed term or a periodic
16 tenancy subject to the terms and conditions set forth in the lease. The term includes all
17 amendments and modifications to the lease and all rules adopted by the landlord which were
18 disclosed to the tenant pursuant to Section 108(a)(4) and, subject to Section 305(b), rules adopted
19 by the landlord after the commencement of the lease.

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

1 member, or a guest.

2 (23) “Owner” means a person vested with all or part of:

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

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

6 (24) “Periodic rent” means the amount payable each month under a tenancy for a fixed
7 term or a periodic tenancy for month to month or payable each week under a periodic tenancy for
8 week to week. If rent is payable annually, periodic rent is the amount of the annual rent divided
9 by 12.

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

12 (26) “Perpetrator” means an individual who commits an act of domestic violence on a
13 tenant or an immediate family member.

14 (27) “Person” means an individual, estate, business or nonprofit entity, public
15 corporation, government or governmental subdivision, agency, or instrumentality, or other legal
16 entity.

17 (28) “Premises” means a dwelling unit and, to the extent owned by the landlord, any
18 structure of which the unit is a part. The term includes all areas associated with the structure held
19 out for the use of tenants generally.

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

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

1 (31) “Rent” means a payment made or to be made to the landlord, or another person for
2 the benefit of the landlord, for the use and enjoyment of a dwelling unit. The term does not
3 include a security deposit or fees.

4 (32) “Repairs” includes remediations.

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

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

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

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

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

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

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

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

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

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

1 term includes a sublessee who enters into possession of the unit with the landlord's consent, an
2 assignee, and an individual authorized to occupy the unit by a tenant who is not an individual.

3 (41) "Tenant representative" means:

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

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

8 (42) "Undisclosed owner" means the owner of a dwelling unit whose identity has not
9 been disclosed to the tenant by the property manager or other person entering into the lease on
10 the owner's behalf.

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

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

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

22 (46) "Willful" means the intentional performance of an act the actor knows to be
23 prohibited under this [act] or by a lease, an intentional failure to perform an act the actor knows

1 to be required under this [act] or by a lease, or a deliberate indifference to whether the
2 performance or failure to perform violates this [act] or a lease. Willfully has a corresponding
3 meaning.

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

10 11 **Comment**

12
13 The definition of “lease” (paragraph (21)) includes all rules of the landlord disclosed
14 under Section 108(a)(4) prior to the landlord’s acceptance of funds from the tenant or before
15 entering into the lease as well as later adopted rules of the landlord adopted under Section 305.
16 Rules of other persons that apply to the dwelling unit, such as rules of a condominium
17 association or a homeowner’s association, are not part of the lease even though they affect the
18 tenant’s use and enjoyment of the premises. See Section 305 for the rights of a tenant whose use
19 and enjoyment of the dwelling unit is affected by the rules of persons other than the landlord,
20 including homeowners, cooperative, or condominium associations.

21
22 The definition of criminal act (paragraph (8)) includes certain defined activities relating
23 to controlled substances “as defined by law other than this [act].” Such law could include federal
24 law even if that law conflicts with state law. This is appropriate because of the risk of forfeiture
25 of the landlord’s property if the landlord permits such activities on the premises.

26
27 The definition of “fees” (paragraph (15)) includes nonrefundable payments made by the
28 tenant to the landlord. Common examples include application fees, cleaning fees, short-term
29 lease fees, late-payment fees, dishonored check fees, credit card or other payment processing
30 fees, abandonment fees, special amenities fees, pet fees, or fees assessed for violating pet
31 policies or other rules governing the tenancy.

32
33 The definitions of “rent” (paragraph (31)) and “security deposit” (paragraph (33)) have
34 been included or updated from the 1972 act to reflect important distinctions in how these
35 payments are handled under Article 12.

36
37 The definition of “landlord” (paragraph (20)) includes not only the owner of the dwelling
38 unit, but also any person -- such as a management company -- that enters into a lease on behalf of
39 a landlord without making all of the disclosures required by Section 108. In that situation, the
40 management company qualifies as a “landlord” and has all of the rights and responsibilities of a
41 landlord under the act. Conversely, if a management company has disclosed the owner and the
42 other information required by Section 108 to the tenant, only the owner is the “landlord” and the
43 management company is merely the landlord’s agent for purposes of this act. Subparagraph (B)

1 provides the procedures for a person in that situation to be relieved of liability under the act. For
2 example, if after entering into the lease on behalf of the undisclosed owner the identity of the
3 owner is disclosed, the manager would no longer be the landlord as to events occurring after the
4 tenant received a notice in a record disclosing the landlord's identity and the other information
5 required by Sections 108(b) and (c), such as the landlord's addresses. **[Note to Committee: This**
6 **comment may need reworking after the February meeting.]**

7
8 The definition of "owner" (paragraph (23)) includes a mortgagee in possession. It would
9 not include a mortgagee in a title theory state unless the mortgagee became entitled to
10 possession.

11
12 The definition of "premises" (paragraph 28)) includes a tenant's dwelling unit and the
13 structure of which it is a part, as well as any areas associated with the structure held out for the
14 use of tenants generally. The definition was broadly written to cover both the exterior and
15 interior of a structure and any fixtures, facilities, and appurtenances to it, such as parking areas.

16
17 The definition of "tenant" (paragraph (40)) recognizes that some leases are entered into
18 by business entities for their employees or by a trust on behalf of a beneficiary. For example, an
19 LLC might rent an apartment for a member or a manager. Both the LLC and the member or
20 manager are tenants, the latter because the member or manager has been authorized to occupy
21 the dwelling unit by the LLC; the former because it is legally entitled to possession under the
22 lease.

23
24 In addition the definition treats as the tenant any assignee of the tenant and sublessee to
25 whom a sublet was made with the landlord's consent. By doing so the definition makes clear
26 that landlord's obligations under the lease run to the assignee and vice versa as they did at
27 common law. By adding assignee to the definition of tenant it is also clear that all of the
28 statutory duties run between them as well. By treating a sublessee as a tenant in cases where the
29 landlord consented to the sublease, the sublessee is also obligated to discharge a tenant's
30 statutory and lease obligations to the landlord and vice versa.

31
32 The term tenant excludes an individual who resides in the dwelling unit with the tenant's
33 permission but neither is a party to a lease nor pays rents. For example, if a tenant allows his
34 friend to live in the dwelling unit with him but the friend does not pay rent and is not a party to
35 the lease, the friend is not a tenant. Under other sections of the act, however, if, for example, the
36 friend damages the dwelling unit, the tenant would be liable to the landlord because the damage
37 was done by an individual invited on the premises by the tenant. *See, e.g.,* Sections 501(11) and
38 601.

39
40 "Premises" (paragraph (28)) do not include portions of a structure not owned by the
41 landlord. For example, if the dwelling unit is a condominium located in a 40-story building, the
42 premises do not include the common areas of the building. If the landlord owned an assigned
43 parking space in the structure that is leased to the tenant, then the space would be included within
44 the term "premises."

45
46 Prepaid rent (paragraph 29)) is rent paid before the first day of the rental period to which

1 it is to be applied. For example, assume on November 1 a landlord and tenant agree to the lease
2 of a dwelling unit with the term to begin the following January 1 at a monthly rent of \$500.
3 Tenant gives the landlord a check for \$1,000 to cover the January rent and the security deposit of
4 \$500. From November 1 until January 1, the \$500 for January's rent is "prepaid rent." After,
5 January 1 it is not prepaid rent.
6

7 The definition of "unearned rent" (paragraph (43)) contemplates two circumstances
8 where a refund will be due a tenant because the lease terminated. The first circumstance is
9 where "rent" (defined in Section 102(31)) was paid to the landlord on its due date but for any
10 period of time beyond the date the lease terminates. For example, assume a one-year lease with
11 rent payable on the first of each month. The tenant pays rent to the landlord on April 1 for the
12 month of April. However on April 10 the tenant properly terminates the lease. In this case
13 "unearned rent" includes the amount of rent attributable to the period April 11 to April 30.
14 Because rent is apportioned on a daily basis (see Section 201(b)(2)(B)), this means that two-
15 thirds of the April 1st payment would be "unearned rent." The second circumstance is where
16 "prepaid rent" (defined in Section 102(29)) was paid to the landlord for a rental period beyond
17 the date the lease terminates. For example, suppose before the commencement of the lease a
18 tenant pays the landlord an amount for the last month's rent. Three months into the lease tenant
19 properly terminates the lease. In this case, "unearned rent" includes the prepaid rent for the last
20 month. In both examples, Section 1204 requires amounts treated as unearned rent to be returned
21 by the landlord to the tenant after taking account of any proper charges against the unearned rent
22 as set forth in Section 1204.
23

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

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

1 **SECTION 103. SCOPE.**

2 (a) In this section:

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

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

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

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

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

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

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

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

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

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

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

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

22 (3) occupancy under a contract of sale of a dwelling unit or the building of which
23 it is a part, if the occupant is the purchaser or an individual who has succeeded to the purchaser’s

1 interest;

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

4 (5) transient occupancy;

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

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

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

10 (9) occupancy as a vacation rental.

11 **Comment**

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

16 **SECTION 104. ENFORCEMENT; DUTY TO MITIGATE.**

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

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

20 **Comment**

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

26 **SECTION 105. OBLIGATION OF GOOD FAITH.** Every duty under a lease, a
27 contract described in Section 303, or this [act] and every act that must be performed as a
28
29
30
31

1 condition to the exercise of a right or remedy or entitlement to a defense under the lease, the
2 contract, or this [act] must be discharged in good faith.

3 **Comment**

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

15 16 **SECTION 106. UNCONSCIONABILITY.**

17 (a) If a court finds a lease, a contract described in Section 303, or any provision of the
18 lease or contract is unconscionable when made, the court may refuse to enforce the lease or
19 contract, enforce the remainder of the lease or contract without the unconscionable provision, or
20 limit application of the unconscionable provision to avoid an unconscionable result.

21 (b) If a court finds a settlement agreement in which a party waives or agrees to forego a
22 claim or right under this [act] or under a lease or a contract described in Section 303 was
23 unconscionable when made, the court may refuse to enforce the agreement, enforce the
24 remainder of the agreement without the unconscionable provision, or limit application of the
25 unconscionable provision to avoid an unconscionable result.

26 (c) If a party or the court puts unconscionability in issue under subsection (a) or (b), the
27 court shall allow the parties to present evidence as to the setting, purpose, and effect of the lease,
28 contract, or settlement agreement.

1 **SECTION 107. KNOWLEDGE AND NOTICE.**

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

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

4 (1) knows of the fact;

5 (2) has received notice of the fact in accordance with subsection (e); or

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

8 (c) Subject to Section 1001(c), when this [act] specifically requires notice in a record to a
9 landlord or tenant, the notice must be signed by the person giving it and:

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

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

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

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

1 (e) In this [act], a person receives notice of a fact:

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

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

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

5 (B) sent or delivered in accordance with subsection (c)(2) or (c)(3).

6 **Comment**

7 A number of sections in this act require either a landlord or a tenant to give the other
8 notice in a record. When "notice in a record" is required, it must be given in accordance with
9 subsection (c).

10
11 Subsection (c) provides that notice shall be given by personal delivery, through the mail,
12 or "by another means of communication." This latter phrase is broadly worded so that it would
13 include electronic transmissions and other forms of communication that may emerge in the
14 future.

15
16 Under subsection (e)(1), a person receives notice when the fact comes to the person's
17 attention. A fact might come to the person's attention as the result of face-to-face conversation,
18 the telephone, or by a receipt of a record.

19
20 **SECTION 108. REQUIRED DISCLOSURES BY LANDLORD.**

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

24 (1) any condition of the premises which would breach a duty owed to a tenant
25 under Section 302 that would materially interfere with prospective tenant's use and enjoyment of
26 the premises and of which the landlord knows or on a reasonable inspection of the premises
27 should have known;

28 (2) whether the premises are in foreclosure;

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

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

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

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

7 (1) the name of:

8 (A) the landlord;

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

10 (C) the owner of the premises or the person authorized to act for the owner
11 for service of process and receiving a notice or demand;

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

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

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

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

20 **Comment**

21
22 Subsection (a)(1) imposes upon the landlord a duty to inform a prospective tenant of any
23 conditions that would make the premises uninhabitable or present an unreasonable risk of harm.
24 These conditions would include the standards for uninhabitability enumerated in Section 302 as
25 well as additional hazards.

26
27 Subsection (a)(4) requires the landlord to disclose to a prospective tenant any rules

1 affecting the tenant's use and enjoyment of the premises whether adopted by the landlord or
2 others. For example, the rented unit may be subject to externally imposed rules of a homeowners
3 or condominium association.

4
5 The purpose of subsection (b) is to enable the tenant to proceed with the appropriate legal
6 proceeding, to know to whom complaints must be addressed and, failing satisfaction, against
7 whom the appropriate legal proceedings may be instituted.

8
9 If the landlord failed to make the "foreclosure" disclosure required by subsection (a)(2),
10 subsection (d) would not apply unless the tenant's use and enjoyment of the premises had been
11 interfered with as a result of the foreclosure. For example, such damages might occur if the
12 premises were sold and the tenant was required to vacate the premises.

13
14 No specific remedies are provided for the failure to provide the information required by
15 subsections (b) and (c). If a landlord fails to provide an address to the tenant, however, the
16 landlord might not receive the rent in a timely manner.

17 18 **SECTION 109. REQUIRED DISCLOSURES BY TENANT.**

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

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

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

30 **Comment**

31 No specific remedies are provided for the failure to provide the information required by
32 subsections (a) and (b). If a tenant fails to provide an address to the landlord, however, the
33 tenant might not receive a refund of a security deposit.

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

Comment

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

ARTICLE 2

GENERAL PROVISIONS APPLICABLE TO LEASE

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

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

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

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

(2) rent is:

(A) payable without demand or notice:

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

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

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

2 (3) the rental period is determined on a monthly basis beginning with the first day

3 of the month for a tenancy for a fixed term of more than one month or a periodic tenancy of

4 month to month and, for all other tenancies, the rental period begins on the first day rent is paid.

5 (c) Except as otherwise provided in Section 202, unless the lease creates a tenancy for a

6 fixed term, the tenancy is a periodic tenancy for week to week if a tenant pays rent weekly and

7 otherwise is a periodic tenancy for month to month.

8 (d) A landlord shall provide the tenant with a copy of any lease that has been signed by

9 them or signed by either one of them if the lease is enforceable under Section 202.

10 (e) If a landlord willfully fails to comply with subsection (d), a court may award the

11 tenant the greater of actual damages or [one month's] periodic rent.

12 **Comment**

13
14 Under subsection (c), tenancies at will are effectively abolished; the only recognized
15 tenancies, other than a tenancy for a fixed term, are a periodic tenancy for month to month or the
16 less common periodic tenancy for week to week.

17
18 Subsection (b) applies when the lease inadvertently fails to fix the amount of rent as
19 might be the case for oral leases.

20
21 Subsection (d) requires the landlord to provide the tenant with a copy of an enforceable
22 lease whether signed by both of them or only one of them. Obviously the subsection does not
23 apply to oral leases which can be given effect under Section 202.

24
25 **SECTION 202. EFFECT OF UNSIGNED LEASE; IMPLIED LEASE.**

26 (a) Subject to subsection (b):

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

28 to sign the lease and return it to the tenant, acceptance of rent by the landlord without reservation

29 of rights gives the lease the same effect as if the lease had been signed and returned to the tenant

30 by the landlord; and

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

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

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

SECTION 203. PROHIBITED PROVISIONS IN LEASE.

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

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

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

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

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

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

(b) A provision in a lease prohibited by subsection (a) or by law of this state other than

1 this [act] is unenforceable. If a landlord seeks to enforce a provision in the lease which is
2 unenforceable under this section or accepts the tenant's voluntary compliance with the provision,
3 a court may award the tenant an amount not to exceed [three] times the periodic rent.

4 **Comment**

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

10
11 While subsection (a)(3) prohibits a lease from imposing the landlord's Section 302 duties
12 on the tenant, Section 303 permits the landlord and tenant to agree that the tenant will perform
13 one or more of the landlord's duties under Section 302 if that agreement is in *a contract separate*
14 *from the lease* and the tenant's failure to perform under the contract does not discharge the
15 landlord's duties under Section 302. Furthermore, if the tenant fails to perform the duties the
16 tenant contractually agreed to provide, the landlord could collect actual damages from the tenant.
17 See Section 303(c). In that case, damages are available because of tenant's breach of a contract
18 separate from the lease and thus are not inconsistent with subsection (a)(5).

19
20 The duty to mitigate is one of the rights and remedies that may not be waived under
21 subsection (a).
22

23 **SECTION 204. SEPARATION OF RENT FROM LANDLORD DUTY TO**

24 **MAINTAIN PREMISES.** Notwithstanding any other law of this state, a lease, assignment,
25 sublease, conveyance, trust deed, or security instrument may not authorize a person to receive
26 the payment of rent without assuming the duties imposed on the landlord by the lease or Section
27 302.

28 **Comment**

29
30 The mere assignment of rent as security does not subject the assignee to the landlord's
31 obligations to maintain the premises. However, if the assignee actually receives the rent, then
32 that obligation would arise. Section 204 is inconsistent with Section 13 of the Uniform
33 Assignment of Rents Act. Because that section of the UARA is more appropriately applied to
34 commercial rather than residential leases, Section 204 expressly provides that it supersedes other
35 law, including other statutes and prior case law of the state that would have allowed a person,
36 such as a mortgagee, to collect rents free of the obligation to maintain the premises.
37

1 **SECTION 205. ATTORNEY’S FEES AND COSTS.**

2 (a) In this section, “prevailing party” means a party that:

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

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

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

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

13 **ARTICLE 3**

14 **LANDLORD’S DUTIES**

15 **SECTION 301. DELIVERY OF POSSESSION OF DWELLING UNIT TO**
16 **TENANT.** A landlord shall deliver actual possession of the dwelling unit to the tenant at the
17 commencement of the term of the lease.

18 **Comment**

19 This section, like the 1972 act before it, adopts the position that actual possession, as
20 distinguished from a mere legal right to possession, must be delivered to the tenant at the
21 commencement of the term of the lease. The term of the lease commences on the date the tenant
22 is first entitled to possession. Thus, if a lease is signed on July 1 for a term to begin on August 1,
23 the commencement date is August 1. The landlord’s obligation to deliver actual possession,
24 therefore, begins on August 1.
25

1 **SECTION 302. LANDLORD’S DUTY TO MAINTAIN PREMISES IN**
2 **HABITABLE CONDITION.**

3 (a) A landlord has a nonwaivable duty to maintain the premises in a habitable condition,
4 including making all necessary repairs. At a minimum, the duty requires the landlord to ensure
5 that the premises:

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

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

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

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

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

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

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

21 (8) to the extent the premises include a common area or other areas under the
22 landlord’s control, have the area safe for normal and reasonably foreseeable use consistent with
23 the lease and in good repair, have the area clean and sanitary, and have reasonable measures in

1 place to control the presence in the area of debris, filth, rubbish, garbage, and the items listed in
2 paragraph (7);

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

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

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

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

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

14 (b) A landlord shall ensure the premises have essential services, but the lease may
15 provide that the periodic utility cost of the services be paid by the tenant, either to the landlord or
16 directly to a utility company or other provider of the services.

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

20 **Comment**

21 Consistent with the practice of nearly every state, Section 302 recognizes that modern
22 conditions require the proper maintenance and operation of rental housing. Subsection (a) begins
23 with the statement that there is a nonwaivable duty to maintain premises in a habitable condition.
24 It then sets out a number of obligations that “at minimum” must be met by the landlord for the
25 landlord to discharge the duty to maintain premises in a habitable condition. The phrase “at a
26 minimum” was used purposefully. It allows for an expansion of this list over time as law

1 expands to include other matters in the habitability standard. Section 501 imposes corresponding
2 duties of cleanliness and proper use within the dwelling unit upon the tenant.

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

9
10 If a tenant subleases a dwelling unit with the landlord's consent then the sublessor is not a
11 landlord under this act. *See* Section 102(20). If the tenant subleases the dwelling unit without the
12 landlord's consent, the sublessor is a landlord under this act. As a landlord, the sublessor is
13 obligated to comply with provisions of this act, including this section. However, under
14 subsection (c), the sublessor is not required to perform duties imposed on a landlord by this
15 section if performance of the duties would require the sublessor to access parts of the dwelling
16 unit or premises which are beyond the sublessor's control. For example, if a subtenant's furnace
17 ceased working but repairs would require access to a furnace outside of the dwelling unit, the
18 sublessor would not be required to repair the furnace.

19
20 Under subsection (a), the landlord has a duty to provide and maintain facilities on the
21 premises necessary for the provision of essential services, typically heat, water, plumbing and
22 electricity. Under subsection (b), the landlord has the duty to provide essential services, but the
23 costs of these services and the acquisition of these services could be shifted to the tenant by the
24 lease. For example, the lease might require the tenant to contact the electric company and obtain
25 electric services in the tenant's name alone. In such circumstance, a tenant cannot seek a court
26 order for the landlord to provide the service for which the tenant has failed to pay the utility
27 company.

28
29 Under subsection (a)(13) the landlord must maintain safety equipment required by
30 applicable law in good working order. Safety equipment might include smoke alarms, carbon
31 monoxide detectors, and fire extinguishers.

32 **[SECTION 303. REPAIRS PERFORMED BY TENANT.]**

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

35
36 (a) A landlord and tenant may agree that the tenant will perform specified repairs,
37 maintenance tasks, alterations, or remodeling of the premises if:

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

40 (2) the agreement does not diminish or affect the obligation of the landlord under

Section 302.

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

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

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

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

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

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

Comment

Section 303 permits a landlord and a tenant to enter into a contract separate from the lease in which the tenant agrees to perform one or more of the landlord's repairs or maintenance obligations under Section 302 without assuming the landlord's overarching duty to ensure the premises are habitable. Assume, for example, that a dwelling unit has broken windows that require repairs under Section 302(10). The landlord and tenant may agree that tenant, who is a carpenter, will repair the windows. This agreement, however, must be separate from the lease and, therefore, must be supported by consideration unrelated to the parties' rights under the lease. If the tenant unable or unwilling to make the repairs (e.g., if the tenant became disabled), that failure would not constitute a breach of the lease by the tenant and the landlord would not be entitled to possession of the dwelling unit or to refuse to perform the landlord's obligations under the lease or this act. Thus, the tenant would have the right under sections 401 and 402 to notify the landlord that the tenant is unable or unwilling to repair the windows, triggering the landlord's need to make the repairs in order to comply with the landlord's duty under Section 302. If the landlord failed to remedy the noncompliance (even though caused by the tenant's failure to make the repair) within the time set forth in Section 401), the tenant would be entitled to most of the remedies in Section 402 if the landlord failed to make the repairs. Section 303(c) would

1 prohibit the tenant from using the repair and deduct remedy of Section 406. This section also
2 recognizes that the landlord's claim for actual damages under this section may be used as an
3 offset against any claim the tenant has against the landlord for actual damages under Section 402.

4 Subsection (d) emphasizes that Section 303 does not apply to a tenant's agreement to pay
5 for utilities or other essential services under Section 302(b). Thus, if a tenant has agreed to pay
6 for electricity, gas, or water, the tenant's failure to make those payments is not a noncompliance
7 of the landlord that would entitle the tenant to remedies under Section 402. By contrast, if the
8 tenant had agreed to make repairs to the dwelling unit in order to use an essential service – e.g.,
9 to repair a water heater, furnace, or part of the electrical system – that repair agreement would
10 fall under Section 303 and, as indicated above, would not absolve the landlord of the duty to
11 make the repairs if the tenant were unable or unwilling to do so (but would entitle the landlord to
12 actual damages for tenant's failure to comply with the Section 303 agreement).]

13 **SECTION 304. LIMITATIONS ON LANDLORD'S LIABILITY.** Except to the
14 extent a landlord and tenant otherwise agree in a signed record, if the landlord conveys in a
15 good-faith sale to a bona fide purchaser premises that include a dwelling unit subject to the lease,
16 the following rules apply:

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

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

22 **Comment**

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

25
26 The landlord's release from liability occurs with respect to events occurring after the later
27 of the notice to the tenant of the conveyance or the conveyance to the purchaser. If an event
28 occurred prior to that time, the landlord could be liable. For example, suppose a landlord installs
29 a defective smoke alarm and later sells the building to a bona fide purchaser. Thereafter a fire on
30 the premises injures a tenant. The evidence establishes that the tenant would not have been
31 injured if the smoke alarm had not been defective. This section would not relieve the landlord
32 from potential liability as the smoke alarm was installed prior to the sale of the building to a third
33 party.
34

1 Under paragraph (2), the landlord remains liable for the tenant's security deposit and
2 unearned rent unless the landlord complies with Section 1205 to transfer the funds to the
3 successor landlord or return them to the tenant.
4

5 **SECTION 305. RULES GOVERNING USE AND ENJOYMENT.**

6 (a) Except as otherwise provided in subsection (c) or as required by law other than this
7 [act], a landlord may enforce a rule of the landlord in existence at the time the lease commenced
8 only if the rule was disclosed to the tenant pursuant to Section 108.

9 (b) After commencement of a lease, a landlord may adopt or modify a rule concerning a
10 tenant's use and enjoyment of the premises. If the rule or modification substantially modifies the
11 tenant's bargain and is not required by law other than this [act], it is not enforceable against the
12 tenant unless the tenant consents to it in a signed record.

13 (c) If a landlord does not disclose before the commencement of a lease a rule adopted by
14 a person, other than the landlord, which substantially modifies the tenant's bargain and is not
15 required by law other than this [act] and the rule is enforced against the tenant, the tenant may:

16 (1) seek actual damages from the landlord; or

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

20 (d) Except as otherwise provided in subsection (e), if, after the commencement of the
21 lease, a person, other than the landlord, adopts or modifies a rule that substantially modifies the
22 tenant's bargain which is not required by law other than this [act] and the rule is enforced against
23 the tenant, the tenant may terminate the lease by giving the landlord notice in a record that the
24 lease will terminate on a date specified in the notice which is not earlier than [30] days after the
25 notice is given.

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

Comment

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

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

ARTICLE 4

TENANT REMEDIES

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

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

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

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

(B) if the noncompliance by the landlord involves failure to provide an essential service or the noncompliance materially interferes with the health or safety of the tenant or an immediate family member, the landlord shall remedy the noncompliance as soon as practicable

but not later than [five] days after the tenant gave the landlord the notice.

SECTION 402. NONCOMPLIANCE BY LANDLORD; IN GENERAL

(a) Subject to Section 409, if a landlord's noncompliance with the lease or Section 302 materially interferes with the health or safety of the tenant or an immediate family member or materially interferes with the use and enjoyment of the premises by the tenant or an immediate family member and is not remedied during the applicable period specified in Section 401, the tenant may:

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

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

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

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

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

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

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

(b) If a landlord's noncompliance with the lease or Section 302 does not materially interfere with the tenant's use and enjoyment of the premises, the tenant has the remedies

1 provided in subsection (a)(2)(B), (C), and (D).

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

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

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

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

13 **Comment**

14 This section has been modified from the 1972 act to clarify the remedies available to a
15 tenant for a landlord's noncompliance with the warranty provisions in Section 302 or under the
16 lease. If there is a material noncompliance by the landlord with the lease or Section 302(a),
17 Section 402 allows the tenant to elect from among numerous remedies. However, the tenant's
18 ability to secure essential services which the landlord is obligated to provide or substitute
19 housing under Section 407 is only available for the landlord's material noncompliance in
20 providing those essential services. Not all services or obligations of the landlord described in
21 Section 302(a) are "essential services." See Section 102(14). See also Section 302(b) which
22 provides that the lease may absolve the landlord of the obligation to provide or to pay for
23 essential services.

24
25 This section also clarifies the measurement of damages when a tenant has occupied a
26 dwelling unit in a noncompliant condition. The 1972 Act permitted recovery of the "diminution
27 in the fair rental value" of the dwelling unit. That terminology is modified in this act to permit
28 recovery of damages based upon the "diminution in value of the dwelling unit," which is defined
29 in Section 102(10) as "a reduction from the rent provided in a lease that reflects the extent to
30 which a noncompliant condition of the premises impairs the tenant's use and enjoyment of the
31 dwelling unit." The intent is to permit a court to consider such factors as the nature and duration
32 of the defect, the proportion of the dwelling unit that is affected, the value of services to which
33 the tenant was deprived, the degree of discomfort imposed by the defect, and the effectiveness of

1 the landlord's remediation efforts. For example, if, as a result of noncompliance, the tenant is
2 deprived only of the use of office space, the diminution in value should be less than if the
3 noncompliance results in the loss of bath and kitchen facilities in the entire dwelling unit.

4
5 Remedies available to the tenant pursuant to Section 402 are not exclusive (see Section
6 110). For example, a tenant may have tort remedies for the landlord's noncompliance with the
7 lease of this act.

8
9 A duty to mitigate damages exists under Section 104(b).

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

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

18
19 **SECTION 403. MATERIAL NONCOMPLIANCE BY LANDLORD;**
20 **TERMINATION OF LEASE.**

21 (a) If a landlord's noncompliance with the lease or Section 302 materially interferes with
22 the health or safety of the tenant or an immediate family member, the tenant may terminate the
23 lease by giving the landlord notice in a record of the tenant's intent to terminate the lease
24 immediately or on a later date specified in the notice.

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

31 (c) In addition to terminating the lease as provided in subsection (a) or (b), the tenant may
32 recover actual damages as determined by the court based on evidence that need not include

expert testimony, including actual damages for the diminution in value of the dwelling unit for the period beginning on the date the tenant gave the landlord the notice under Section 401 and ending on the date of termination specified in the notice under subsection (a) or (b).

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

Comment

The timing of the tenant's right to terminate a lease can vary depending upon whether on the one hand, the noncompliance involves the failure to provide an essential service or a material interference with health or safety of the tenant or an immediate family member or, on the other hand merely a material interference with the tenant's use and enjoyment of the premises. With the former, if the noncompliance is not remedied promptly or within [5] days of the tenant giving the landlord notice to remedy, the tenant can terminate the lease immediately. For the latter, following the [14] day cure period, the tenant would only be able to terminate on a date at least [14] days after the end of the cure period.

SECTION 404. CIRCUMSTANCE BEYOND LANDLORD CONTROL. If a landlord's noncompliance with the lease or Section 302 materially interferes with the health and safety of a tenant or an immediate family or the use and enjoyment of the premises by the tenant or an immediate family member and the landlord is unable to remedy the noncompliance within the applicable period specified in Section 401 because of a circumstance beyond the landlord's control, including the unavailability of materials, labor, or utilities, fire or other casualty, a natural disaster, or the death of the landlord, the tenant's remedy is limited to termination of the lease as provided in Section 403(a) and (b).

Comment

This section recognizes that circumstances beyond the landlord's control may make it difficult or impossible for a landlord to make the repairs within the time limits set forth in Section 401. In such cases, the tenant's remedy is to terminate, but the tenant may not recover damages. This subsection refers to a number of circumstances that could excuse the landlord's timely performance in remedying a noncompliance. Included among these are fire and other casualties, such as tornados, hurricanes, earthquakes, etc. See Section 165(c)(3) of the Internal Revenue Code.

1 **SECTION 405. LANDLORD FAILURE TO DELIVER POSSESSION TO**
2 **TENANT.**

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

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

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

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

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

13 (b) If a tenant terminates the lease under subsection (a)(1), the landlord shall return any
14 security deposit and unearned rent to which the tenant is entitled under Section 1204. The
15 landlord also shall return any fees received from the tenant.

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

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

22 **Comment**

23 Under subsection (a)(2), a tenant may elect to file an action for possession directly
24 against a holdover tenant or other person in wrongful possession of the dwelling unit.

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

5 **SECTION 406. REPAIR BY TENANT.**

6 (a) Except as otherwise provided in this [act], if a landlord fails to comply with the lease
7 or Section 302, the tenant may give notice to the landlord pursuant to Section 401 specifying the
8 failure and, if the landlord fails to comply within the applicable period specified in Section 401
9 and the reasonable cost of compliance does not exceed one month's rent, the tenant may repair
10 the condition at the landlord's expense. **[Note to Committee: The introductory clause needs to**
11 **be revised to identify specific provisions that constitute exceptions.]**

12 (b) Subject to subsection (d), a tenant that makes repairs under subsection (a), after
13 submitting to the landlord an itemized statement, including receipts for purchased items and
14 services, may deduct from the rent the actual and reasonable cost incurred or the reasonable
15 value of the work performed to repair the condition, not exceeding one month's rent, unless the
16 tenant otherwise has been reimbursed by the landlord.

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

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

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

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

25 (e) A tenant's use of the remedy under this section is limited to one month's rent during

any 12-month period.

Comment

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

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

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

SECTION 407. WRONGFUL FAILURE TO PROVIDE ESSENTIAL SERVICE BY LANDLORD.

(a) If, contrary to a lease or Section 302, the landlord willfully or negligently fails to provide an essential service, the tenant may give notice to the landlord pursuant to Section 401 specifying the failure and, if the landlord fails to comply within the applicable period specified in Section 401, the tenant may:

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

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

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

3 (c) A tenant does not have rights under this section if the condition was caused by the act
4 or omission of the tenant, an immediate family member, or a guest.

5 **Comment**

6
7 This section would not apply if the landlord was absolved from providing essential
8 services. See Section 302(b).
9

10 Under subsection (b), a tenant's actual damages could include the difference between the
11 rent provided in the lease and the actual and reasonable cost of substitute housing as well as
12 moving expenses.
13

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

16 (a) A tenant may defend an action by the landlord based on nonpayment of rent, whether
17 for possession or for the unpaid rent, on the ground that no rent was due because of the
18 landlord's noncompliance with the lease or Section 302 and [counterclaim] for any amount the
19 tenant may recover under the lease or this [act].

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

24 (c) If the court orders a tenant to deposit funds in an escrow account outside the court
25 pursuant to subsection (b), the bank or entity authorized by the court to hold the funds in escrow
26 shall provide the landlord and tenant with a monthly statement for the funds unless the court
27 otherwise provides.

28 (d) If rent has been paid into escrow under this section and the court determines that the

1 landlord fully complied with the lease and Section 302, the court shall order the immediate
2 release to the landlord of rent held in escrow and direct the tenant to pay the landlord any
3 remaining rent owed.

4 (e) If rent is paid into escrow under this section and the court determines that the
5 landlord's noncompliance with the lease or Section 302 materially interferes with the tenant's
6 use and enjoyment of the premises, the court may order one or more of the following:

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

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

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

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

14 (C) other actual damages;

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

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

20 (f) If rent has not been paid into escrow under this section and the court determines that:

21 (1) the landlord complied with the lease and Section 302, the court shall order the
22 tenant to pay the landlord all unpaid rent; or

23 (2) the landlord's noncompliance with the lease or Section 302 materially

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

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

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

9 (2) failed to comply with the court's order to pay rent into escrow under
10 subsection (b) or to pay rent or other amounts owed to the landlord under subsections (d), (e), or
11 (f).

12 **Comment**

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

16 17 **SECTION 409. FIRE OR OTHER CASUALTY DAMAGE.**

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

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

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

1 complying with Section 401.

2 (b) If the premises are substantially damaged or destroyed by fire or other casualty and
3 repairs can be made only if the tenant vacates the dwelling unit, the landlord may give the tenant
4 [five] days' notice in a record of the landlord's intent to terminate the lease, in which case the
5 lease terminates [five] days after notice or on a later date specified in the notice.

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

10 (d) This section does not preclude a landlord from seeking actual damages from the
11 tenant under law of this state other than this [act] for damages to the premises caused by the
12 tenant, an immediate family member, or a guest.

13 **SECTION 410. UNLAWFUL REMOVAL, EXCLUSION, OR DIMINUTION OF**
14 **ESSENTIAL SERVICE.** If a landlord unlawfully removes or excludes the tenant from the
15 premises or willfully interrupts or causes the interruption of an essential service that the landlord
16 is obligated to provide to the tenant:

17 (1) the tenant may recover possession or terminate the lease and, in either case, the tenant
18 may recover [three] times periodic rent or [triple] damages, whichever is greater; and

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

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3

8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3

1
2
3
4
5
6
7
8
9
0
1
2
3

3
4
5
6
7
8
9
0
1
2
3

5
6
7
8
9
0
1
2
3

7
8
9
0
1
2
3

8
9
0
1
2
3

9
0
1
2
3

- 1
- 2
- 3

3

1 immediate family member or a guest to do the so;

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

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

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

9 (A) normal wear and tear;

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

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

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

16 **Comment**

17
18 Under paragraph (3) the tenant is obligated to keep the dwelling unit in a safe or sanitary
19 condition unless the duty to do so is imposed on another, such as the landlord. For example,
20 because Section 302 imposes a duty on the landlord to conform plumbing fixtures to applicable
21 law, that duty is not shifted to the tenant by this section.

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

30
31 Section 601(b) allows the landlord to terminate a lease for tenant's material

1 noncompliance with Section 501. If tenant's noncompliance is not material, landlord cannot
2 terminate the lease under Section 601 but could resort to other remedies under the act. For
3 example, if tenant's minor child draws on the rented apartment walls, the landlord could apply
4 the security deposit to the cost of repainting the wall.

6 **ARTICLE 6**

7 **LANDLORD REMEDIES**

8 **SECTION 601. TENANT'S FAILURE TO PAY RENT; OTHER** 9 **NONCOMPLIANCE WITH LEASE.**

10 (a) Except as otherwise provided in this [act] or by law of this state other than this [act], a
11 landlord may terminate a lease for nonpayment of rent if the rent is unpaid when due and
12 remains unpaid [14] days after the landlord gives the tenant notice in a record of the landlord's
13 intent to terminate the lease at the end of the [14]-day period if the rent is not paid within that
14 period.

15 (b) Except as otherwise provided in this [act] or by law of this state other than this [act],
16 if there is a material noncompliance with a lease or this [act] by the tenant, other than the
17 nonpayment of rent, the landlord may give the tenant notice in a record specifying the act or
18 omission constituting the noncompliance and stating that the lease will terminate on a date
19 specified in the notice which is not earlier than [30] days after the landlord gives the tenant the
20 notice if the noncompliance is not remedied not later than [14] days after the landlord gave the
21 notice. If the tenant does not remedy the noncompliance during the [14]-day remediation period,
22 the landlord may terminate the lease.

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

25 (1) by giving the tenant a notice in a record that the lease will terminate
26 immediately or on a day specified in the notice if the landlord reasonably believes:

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

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

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

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

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

13 (d) Except as otherwise provided in this [act], if a tenant's noncompliance with Section
14 501 materially affects the health or safety of another tenant on the premises or is a material
15 noncompliance with the lease, the landlord may:

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

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

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

21 22 **Comment**

23
24 Section 601 gives a landlord the right to terminate a lease for tenant's nonpayment of rent
25 and other noncompliance with the lease or this act. The section should be read in conjunction
26 with Section 801, which gives a landlord the unconditional right to terminate a periodic tenancy
27 upon compliance with the notice provisions in that section.
28

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

3
4 While not required by this act, good practice would suggest that a landlord taking
5 advantage of subsection (c)(2) would include in the notice a statement of the noncompliance that
6 had previously occurred with the time periods set forth in that subsection.

7
8 **SECTION 602. WAIVER OF LANDLORD'S RIGHT TO TERMINATE.**

9 Acceptance of rent for two or more successive rental periods by a landlord with knowledge of
10 noncompliance by the tenant with the lease or this [act] or acceptance by the landlord of the
11 tenant's performance that varies from the terms of the lease or this [act] is a waiver of the
12 landlord's right to terminate the lease for that noncompliance, unless the landlord and tenant
13 otherwise agree after the noncompliance occurs.

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

15 (a) Distraint for rent is abolished.

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

20 **Comment**

21
22 This section prohibits the landlord from seizing the tenant's tangible personal property to
23 satisfy the landlord's claims against the tenant or filing a lien against the tenant's tangible
24 personal property to secure the tenant's obligations under the lease. It also prohibits a landlord
25 from taking a security interest in any of the tenant's tangible personal property to secure the
26 tenant's performance. On the other hand, it would not preclude a landlord taking a lien or
27 security interest to secure performance of a tenant's contractual promises unrelated to the lease.
28 For example, if the landlord also owned an appliance store from which tenant purchased an
29 appliance under a monthly payment plan, a landlord's lien on the appliance to secure tenant's
30 payment of the debt incurred in purchasing the appliance is not prohibited by this act.

31
32 **SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION.**

33 (a) In this section, "reasonable efforts" means steps a landlord would take to rent a

1 dwelling unit if the unit is vacated at the end of a term, including showing the unit to prospective
2 tenants or advertising the availability of the unit.

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

4 (1) the tenant delivers possession of the unit to the landlord by returning the keys
5 or other means of access or otherwise notifies the landlord the unit has been vacated; or

6 (2) the tenant fails to pay rent for at least [five] days and has:

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

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

11 (c) If a tenant abandons the dwelling unit before the end of the term, the landlord may
12 recover possession of the unit and may elect to:

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

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

16 (B) the landlord and tenant are liable to each other under the lease or this
17 act only for breaches occurring before the lease terminates; and

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

20 (2) treat the abandonment as wrongful.

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

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

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

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

10 (4) If the landlord fails to use reasonable efforts to lease the abandoning tenant's
11 unit, the lease terminates as of the date of the abandonment and the landlord and tenant are liable
12 to each other under the lease or this [act] only for breaches occurring before the date of the
13 abandonment.

14 (5) After deducting the landlord's actual damages, the landlord shall return the
15 amount of any security deposit and unearned rent to which the tenant is entitled under Section
16 1204.

17 **Comment**

18
19 Under subsection (a) the reasonable steps include advertising the unit and showing the
20 unit to any prospective tenants. Advertising can be by a variety of means including sending
21 emails to prospective tenants, hiring a real estate agent to locate prospective tenants, posting for
22 rent signs on the premises, and advertising the unit for rent in newspapers or other media.

23
24 Under subsection (b)(2)(B), the tenant might cause termination of utility services by
25 cancelling the services or merely not paying the bill.

26
27 In light of subsection (c), a landlord who wishes to hold an abandoning tenant liable for
28 breaches of the lease after the tenant abandons the premises should not accept the abandonment
29 but should treat the abandonment as wrongful. Thus, if tenant abandons the premises on the date
30 rent would otherwise be due, rather than accepting the abandonment which would result in the

1 tenant owing no rent, the landlord should treat the abandonment as wrongful under subsection
2 (c)(2).
3

4 In light of subsection (d)(1), when at the time the landlord is fulfilling the duty to
5 mitigate the landlord has other vacant units to rent, the landlord can show and lease the other
6 units to prospective tenants before showing the abandoned unit to prospective tenants.
7

8 If a tenant abandons the dwelling unit, the landlord may choose to accept the
9 abandonment, thus agreeing to a termination of the lease. If, at the time of the abandonment, the
10 tenant is in arrears on rent, the landlord would still have a cause of action to recover the past due
11 rent. However, by accepting the abandonment the landlord would not have a cause of action for
12 actual damages resulting from the abandonment.
13

14 Conversely, if the landlord does not accept the abandonment, the landlord can seek to
15 recover damages from the tenant for anticipatory breach or actual damages as provided in
16 subsection (d)(3).
17

18 **SECTION 605. RECOVERY OF POSSESSION LIMITED; INTERRUPTION OF**
19 **ESSENTIAL SERVICE.**

20 (a) Except as permitted by this [act], a landlord may not recover or take possession of a
21 dwelling unit by an action or self-help.

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

24 **ARTICLE 7**

25 **ACCESS TO DWELLING UNIT**

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

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

29 (1) inspect it;

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

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

32 (4) exhibit the unit to a prospective or actual purchaser, mortgagee, tenant,

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

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

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

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

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

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

19 (2) entry is pursuant to a court order; or

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

21 **Comment**

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

1 will be performed on the dates indicated in the schedule.

2
3 **SECTION 702. REMEDIES FOR ABUSE OF ACCESS.**

4 (a) If a tenant unreasonably refuses to allow the landlord or the landlord's agent access to
5 a dwelling unit, a court may compel the tenant to grant the landlord or agent access or may
6 terminate the lease. In either case, the landlord may recover actual damages.

7 (b) If a landlord or a landlord's agent makes an unlawful entry of a tenant's dwelling unit,
8 a lawful entry in an unreasonable manner, or repeated demands for entry which are otherwise
9 lawful but have the effect of harassing the tenant, the tenant may seek injunctive relief to prevent
10 the recurrence of the conduct or an order terminating the lease. If the court awards injunctive
11 relief or terminates the lease, the court shall award the tenant actual damages or [one] month's
12 rent, whichever is greater.

13 **ARTICLE 8**

14 **PERIODIC AND HOLDOVER TENANCY; DEATH**
15 **OF TENANT**

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

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

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

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

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

1 **Comment**

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

12 **SECTION 802. HOLDOVER TENANCY.**

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

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

22 (c) If a tenant remains in possession after expiration of a tenancy for a fixed term or
23 termination of the lease and the lease provides specific consequences, the terms of the lease
24 control and, to the extent the tenant's continued possession is consistent with the lease,
25 subsections (a) and (b) do not apply.

26 **Comment**

27 Although subsection (c) recognizes that a lease may provide its own remedy for holding
28 over at the expiration of a term, the provision is subject to Section 106. Thus, a court should
29 refuse to enforce any holdover penalties that are unconscionable.
30

1 **SECTION 803. DEATH OF TENANT.**

2 (a) If a tenant who is the only party to a lease dies before the end of a tenancy for a fixed
3 term or a periodic tenancy, the tenant's surviving spouse [or partner in a civil union] [or
4 domestic partner] who resides in the dwelling unit may assume the lease by giving the landlord
5 notice in a record not later than [20] days after the tenant's death stating the spouse's [or
6 partner's] intent to assume the lease. On assuming the lease, the spouse [or partner] becomes the
7 tenant under the lease.

8 (b) Except as otherwise provided in subsection (a) or (c) or law of this state other than
9 this [act], the landlord or a tenant representative may terminate the lease of a deceased tenant
10 who was the only party to the lease by giving to the other notice in a record of the intent of the
11 person signing the notice to terminate the lease on a date specified in the notice which is not
12 earlier than [30] days after the giving of the notice in the case of a tenancy for a fixed term or a
13 specified date consistent with Section 801(b) in the case of a periodic tenancy.

14 (c) If a deceased tenant was the only party to the lease and the landlord is unable to
15 contact a tenant representative for purposes of termination under subsection (b), the landlord may
16 terminate the lease without notice if rent that was due was not paid for at least [25] days.

17 **Comment**

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

19 Under subsection (a) the surviving spouse [partner in a civil union, or domestic partner]
20 may assume the lease. Upon such assumption, the spouse becomes the tenant upon the lease.
21 An assumption does not require the landlord's consent.
22

23 If a tenant dies during the term of a lease, either the landlord or tenant representative (as
24 defined in Section 102(41)) can elect to terminate the lease under subsection (b) unless
25 subsection (a) or other law would prohibit the termination.
26

27 If the tenant was the only party to the lease, the landlord may unilaterally terminate the
28 lease if subsection (c) applies. To illustrate the operation of subsection (c), suppose the tenant of

1 a fixed term tenancy to end on December 31 and who is the sole occupant of the dwelling unit
2 dies on March 5 having paid rent on March 1. The landlord learns of the tenant's death on March
3 10. Because rent was paid for March, the landlord will not be able to terminate this lease in
4 March. If no rent was paid on April 1, however, and the landlord is unable to contact a tenant
5 representative, the landlord would be free to unilaterally terminate the lease on or after April 25.
6 If the landlord has contact with a tenant representative, the landlord could not terminate under
7 subsection (c), but may terminate the lease under subsection (b).

8 9 **ARTICLE 9**

10 **RETALIATION**

11 **SECTION 901. RETALIATION PROHIBITED.**

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

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

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

17 or

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

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

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

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

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

25 (b) Conduct that may be retaliatory under subsection (a) includes taking or threatening to
26 take any of the following actions:

27 (1) increasing the rent or fees;

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

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

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

8 (5) terminating a periodic tenancy; or

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

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

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

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

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

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

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

22 (6) the landlord is seeking to recover possession based on a notice to terminate the
23 lease and the notice was given to the tenant before the tenant engaged in conduct described in

subsection (a); or

(7) compliance with a building, housing, fire, or health code requires repairs, alteration, remodeling, or demolition that effectively would deprive the tenant of the use of the premises.

Comment

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

SECTION 902. TENANT REMEDIES FOR RETALIATORY CONDUCT.

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

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

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

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

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

SECTION 903. PRESUMPTION OF RETALIATORY CONDUCT.

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

(b) A presumption does not arise under subsection (a) if the tenant engaged in conduct

1 described in Section 901(a) after the landlord gave notice to the tenant of the landlord's intent to
2 take one of the actions described in Section 901(b).

3 (c) If a presumption arises under subsection (a), the landlord may rebut the presumption
4 by a preponderance of evidence showing that the landlord had sufficient justification under
5 Section 901(b) for taking the action and would have taken the action in the same manner and at
6 the same time the action was taken regardless of whether the tenant having engaged in an action
7 described in Section 901(a).

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

12 **ARTICLE 10**

13 **DISPOSITION OF TENANT PERSONAL PROPERTY**

14 **SECTION 1001. DISPOSITION OF TENANT PERSONAL PROPERTY ON**
15 **PREMISES.**

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

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

19 (2) the landlord regains actual possession under a court order; or

20 (3) the tenant abandons the unit under Section 604.

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

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

3 (2) store or leave the property in the premises or other place of safekeeping and
4 exercise reasonable care in moving or storing the property.

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

6 (1) sent to any forwarding address the tenant provided to the landlord or an
7 address provided by the tenant to the landlord pursuant to Section 109 or, if no address is
8 provided, to the address of the unit;

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

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

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

18 (e) A landlord may require the tenant to pay the reasonable moving and storage costs
19 before retrieving personal property under subsection (b).

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

23 (g) Unless a landlord and tenant otherwise agree, if the tenant fails to contact the landlord

as provided in subsection (d) or retrieve personal property as provided in subsection (e), the property is deemed abandoned and:

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

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

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

Comment

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

SECTION 1002. DISPOSITION OF PERSONAL PROPERTY FOLLOWING TENANT DEATH.

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

(b) If a landlord terminates the lease pursuant to Section 803(c) because the landlord is unable to contact a tenant representative, the landlord:

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

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

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

2 (C) that the premises contain personal property subject to disposal by the

3 landlord if not claimed within [60] days after the notice was sent; and

4 (D) the landlord's name, telephone number, and mail or electronic mail

5 address at which the landlord may be contacted to claim the property; and

6 (2) with the exercise of reasonable care, may inventory the property, remove it

7 from the premises, and store it in another place for safekeeping.

8 (c) A tenant representative may retrieve the deceased tenant's personal property from the

9 landlord not later than [60] days after the landlord gave the notice in subsection (b). Before

10 retrieving the property, the representative shall pay the landlord's reasonable cost of

11 inventorying, moving, and storing the property.

12 (d) If a deceased tenant's personal property is not retrieved within the period in

13 subsection (c), the landlord may dispose of the property in compliance with Section 1001(g).

14 **Comment**

15

16 Subsection (a) permits a tenant's representative to exercise a deceased tenant's rights and

17 responsibilities regarding removal of the deceased tenant's personal property from the premises.

18 When a tenant who is the sole occupant of the dwelling unit dies, the tenant's representative or

19 the landlord may elect to terminate the lease pursuant to Section 803. If that election is made

20 and the dwelling unit is vacated, possession of the dwelling unit is relinquished to the landlord

21 pursuant to Section 1001(a), triggering the provisions of that section governing the disposition of

22 the deceased tenant's personal property. The tenant representative typically will be the personal

23 representative of the deceased tenant's estate, but if no personal representative has been

24 appointed, the tenant representative will be the contact person under Section 109 or, in the

25 absence of a contact person, an heir of the deceased tenant under the state's intestate succession

26 laws. See Section 102(41). In the latter case, the landlord has no obligation to identify all of the

27 deceased tenant's heirs and may give possession to *any* individual the landlord knows to be an

28 heir of the deceased tenant.

29

30 Subsections (b) through (d) provide a process through which the landlord may dispose of

31 the personal property if no tenant representative is identified. Although the procedures in

32 subsections (b)-(d) generally parallel the provisions regarding disposition of the deceased

33 tenant's personal property in Section 1001, some variation is required in the type of notice that

1 must be given and the time period for a tenant representative to retrieve the property.
2

3 Sections 1001 and 1002 do not govern the ultimate disposition of the personal property
4 removed from the property by a tenant representative; those rights are determined under the
5 state's law governing decedents' estates. Thus, the tenant representative takes possession of the
6 personal property subject to those other laws.
7

8 **SECTION 1003. EXERCISE OF RIGHT BY CONTACT PERSON.**

9 (a) If a landlord learns of the death of a tenant who, at the time of death, was the sole
10 occupant of the dwelling unit under a lease and had designated a contact person under Section
11 109(b), and the landlord, on reasonable inquiry, has no knowledge that a personal representative
12 has been appointed for the deceased tenant's estate, the landlord:

13 (1) shall notify the contact person of the death;

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

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

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

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

23 (c) Once a contact person or the landlord knows of the appointment of a personal
24 representative for the deceased tenant's estate, the contact person's authority to act under this
25 [act] terminates.

26 (d) A landlord that complies with this section is not liable to another person that has a
27 claim or interest in the security deposit, unearned rent, or personal property removed from the

premises.

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

Comment

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

ARTICLE 11

EFFECT OF DOMESTIC VIOLENCE

SECTION 1101. EARLY RELEASE OR TERMINATION OF LEASE BECAUSE OF ACT OF DOMESTIC VIOLENCE.

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

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

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

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

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

1 (1) states the tenant's intent to be released from the lease on a date no earlier than
2 [30] days from the date of the notice or, if the perpetrator is a cotenant of the dwelling unit, an
3 earlier date;

4 (2) states facts giving rise to the fear of suffering an act of further domestic
5 violence if the victim continues to reside in the unit; and

6 (3) is given to the landlord:

7 (A) not later than [90] days after an act of domestic violence against the
8 tenant or an immediate family member;

9 (B) when a court order exists preventing contact by the perpetrator with
10 the tenant because of an act of domestic violence; or

11 (C) if the perpetrator was incarcerated, not later than [90] days after the
12 tenant learns that the perpetrator is no longer incarcerated.

13 (c) If only one tenant is a party to the lease:

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

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

19 (d) If more than one tenant is a party to the lease:

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

23 (2) a tenant released from the lease is not liable to the landlord or any other person

1 for rent accruing after the tenant's release or actual damages resulting from the tenant's release
2 from the lease;

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

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

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

10 **Comment**

11 Section 1101 is self-executing. Upon filing the appropriate documentation the tenant is
12 released from the lease; no additional action is required or expected on the part of the landlord as
13 would be the case when a tenant abandons the dwelling unit and an issue arises regarding the
14 landlord's acceptance of the tenant's surrender.

15
16 Under subsection (a)(1) and (b)(3)(B), the court order could be issued by a state or
17 federal court, a tribal court order, or a court of a foreign jurisdiction.

18
19 Under subsection (d)(2), a tenant who is released from the lease is not liable to the
20 landlord or another person for rent or actual damages. Thus, if T and T-1 are cotenants but T is
21 released from the lease as a result of an act of domestic violence committed by P, T would not be
22 liable for rent to the landlord for the period after the release. Furthermore, T would not be liable
23 to T-1 when, following T's release from the lease, T-1 is liable to the landlord for all of the rent
24 accruing after T's release. Under subsection (d)(3), however, T-1 could make a claim against the
25 perpetrator for the additional rent T-1 owes.

26 27 **SECTION 1102. LANDLORD OBLIGATIONS ON EARLY RELEASE OR**

28 **TERMINATION.** If a tenant is released from a lease under Section 1101, the landlord:

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

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

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

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

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

SECTION 1103. VERIFICATION.

(a) A verification given by a tenant under Section 1101(a)(3) must include the following:

(1) from the tenant:

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

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

(C) the approximate date of the most recent act of domestic violence;

(D) a statement that because of an act of domestic violence, the tenant or an immediate family member has a reasonable fear that the tenant or the family member will suffer a further act of domestic violence if the tenant or the family member continues to reside in the dwelling unit;

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

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

provided in subsection (b) for making a verification that contains a representation of a material fact known by the tenant to be false; and

(2) from an attesting third party:

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

(B) the capacity in which the third party received the information regarding the act of domestic violence;

(C) a statement that the third party has read the tenant's verification and has been advised by the tenant that the tenant or an immediate family member is the victim of an act of domestic violence and has a reasonable fear that the tenant or family member will suffer a further act of domestic violence if the tenant or family member continues to reside in the dwelling unit; and

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

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

Comment

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

Verification

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

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

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

6
7 (c) The most recent act of domestic violence occurred on or about _____
8 [insert date]; and

9
10 (d) The date in the notice accompanying this verification that I have specified as the date
11 on which I am released from the lease is [check one]:

12
13 ☐ earlier than 90 days after the date of the most recent act of domestic violence,

14
15 ☐ during a time when there is an outstanding court order preventing the
16 perpetrator's contact with the undersigned, or

17
18 ☐ not later than [90] days after the undersigned learned that the perpetrator has
19 been released from incarceration.

20
21 I declare that the above statement is true and accurate to the best of my knowledge and
22 belief and that I understand it could be used as evidence in court. I further understand that if I
23 submit to the landlord a verification that contains a representation of material fact known by me
24 to be false, I could be subject to a penalty for perjury and the landlord may recover from me the
25 greater of three months' rent or three times the landlord's actual damages.

26
27 _____
28 [Tenant's signature]

29
30 I, _____ [insert name of attesting third party] state that:

31
32 (a) I am a _____ [insert whichever is applicable: law
33 enforcement official, a licensed health care professional, a victim advocate, or a victim-services
34 provider];

35
36 (b) My business address and phone number is: _____;

37
38 (c) The individual who signed the preceding statement has informed me that the individual
39 or an immediate family member is a victim of an act of domestic violence based upon the acts
40 listed in the preceding statement which acts have created a reasonable fear that the tenant or an
41 immediate family member will suffer a further act of domestic violence by continued residence in
42 the dwelling unit described in the preceding statement; and

43
44 (d) I have read and reasonably believe the preceding statement recounting an act of
45 domestic violence and understand that the tenant who made the statement may use this document
46

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

3
4

[Attesting third party's signature]
5

6 **SECTION 1104. PERPETRATOR'S LIABILITY FOR DAMAGES.**

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

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

13 **SECTION 1105. CHANGE OF LOCK OR OTHER SECURITY DEVICE**
14 **BECAUSE OF DOMESTIC VIOLENCE.**

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

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

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

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

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

7 **Comment**

8
9 The tenant is not required to comply with Section 1101 to cause a change of the locks to
10 the dwelling unit.

11
12 When a perpetrator is a tenant under the lease, subsection (c) would permit a change of
13 locks only if a court has expressly ordered the perpetrator to vacate the dwelling unit or have no
14 contact with the tenant.

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

22 23 **SECTION 1106. EFFECT OF COURT ORDER TO VACATE.**

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

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

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

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

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

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

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

9 **Comment**

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

19 **SECTION 1107. TERMINATION WITHOUT COURT ORDER OF TENANCY** 20 **OF PERPETRATOR.**

21 (a) If a landlord has a reasonable belief that a tenant is a perpetrator, the landlord may
22 terminate the interest of the perpetrator under the lease by giving the perpetrator notice in a
23 record of the landlord's intent to terminate the interest immediately or on a later date specified in
24 the notice. The notice shall specify the act of domestic violence for which the landlord is
25 terminating the perpetrator's interest.

26 (b) If a perpetrator's interest under a lease is terminated by the landlord under this
27 section, any other tenant under the lease may recover actual damages from the perpetrator

1 resulting from the termination.

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

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

8 (e) In an action between a landlord and a tenant involving the right of the landlord to
9 terminate the tenant's interest under this section, the landlord must prove by a preponderance of
10 the evidence that the tenant is a perpetrator.

11 **Comment**

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

21
22 Under this section the landlord could terminate the perpetrator's interest as a tenant even
23 though there is no judicial determination that the perpetrator committed an act of domestic
24 violence so long as the landlord reasonably believes the tenant is a perpetrator. This is entirely
25 consistent with the right of a landlord to terminate the interest of any tenant who engages in other
26 types of criminal activity on the premises in violation of Section 501, even though the tenant has
27 not been found guilty of a crime. See Section 601. In either case, of course, if the tenant refuses
28 to surrender possession of the premises to the landlord upon termination of the lease and the
29 landlord sues for possession, the defendant (tenant) could defend on the ground that the tenant
30 did not commit the acts alleged by the landlord. In this case, the landlord would have the burden
31 to prove by a preponderance of the evidence that the landlord had the right to terminate the
32 tenancy. This means the landlord has the burden to prove the defendant was a perpetrator or
33 otherwise committed a criminal act entitling the landlord to terminate the lease.
34

1 **SECTION 1108. LANDLORD CONDUCT WITH RESPECT TO VICTIM OF**
2 **DOMESTIC VIOLENCE.**

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

5 (b) Except as otherwise provided in subsection (c), a landlord may not take or threaten to
6 take any of the actions in Section 901(b) or refuse or threaten to refuse to let a dwelling unit
7 when the landlord’s dominant purpose for engaging in the conduct is that:

8 (1) the tenant or an immediate family member is or has been the victim of
9 domestic violence;

10 (2) domestic violence against a tenant or an immediate family member resulted in
11 a violation of the lease or this [act] by the tenant; or

12 (3) a complaint of domestic violence against the tenant or an immediate family
13 member resulted in a law enforcement or emergency response.

14 (c) A landlord may terminate the lease of a tenant by giving the tenant notice in a record
15 of the landlord’s intent to terminate the lease on a date specified in the notice not earlier than
16 [30] days after the giving of the notice if:

17 (1) without the landlord’s permission, the tenant invites a perpetrator on to the
18 premises or allows the perpetrator to occupy the dwelling unit:

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

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

23 (2) the landlord demonstrates that:

1 (A) there is an actual or imminent threat to an individual on the premises if
2 the lease is not terminated, or

3 (B) the perpetrator has damaged the premises.

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

5 (1) the tenant may:

6 (A) terminate the lease;

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

9 (C) obtain appropriate injunctive relief; and

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

12 **ARTICLE 12**

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

14 **SECTION 1201. PAYMENT REQUIRED AT THE COMMENCEMENT OF** 15 **TERM OF LEASE.**

16 (a) Except as otherwise provided in subsections (b) and (c), at or before commencement
17 of the term of a lease, a landlord may not require a security deposit, prepaid rent, or any
18 combination thereof, in an amount that exceeds [two] times periodic rent.

19 (b) The limit established in subsection (a) does not include the first month's rent or fees.

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

1 **Comment**

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

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

11 This section does not preclude a landlord from charging fees. Common fees include
12 application fees, surety bonds fees, cleaning fees, and pet fees. (See Section 102(15)).
13

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

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

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

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

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

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

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

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

31 (2) The tenant's interest is not adversely affected if the security deposit is

1 commingled with the security deposits of other tenants in a bank account pursuant to Section
2 1203(a)(2).

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

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

9 (d) Subsection (a)(3) does not abrogate generally applicable rules of law enabling a
10 transferee of funds to take the funds free of competing claims.

11 **Comment**

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

22
23 Subsection (b)(1) prohibits a bank from setting off any claim it has against the landlord
24 other than for charges normally associated with the maintenance of the account. The section is
25 mandatory and neither the landlord nor the tenant nor the landlord nor the bank can contract
26 otherwise.

27
28 If the bank imposes a maintenance fee, the landlord would then have a duty to replenish
29 the account for those charges.

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

34
35 Subsection (c) addresses the common misconception of tenants that the security deposit
36 may be used in lieu of paying rent, particularly the last month's rent. The primary purpose of a

1 security deposit is to provide the landlord with funds to reimburse the landlord for the costs
2 incurred in remedying any damages to the dwelling unit by the tenant. If the tenant could
3 withhold rent only to have it charged against the security deposit, the landlord would have no
4 funds to pay for any damages. A tenant that withholds the last month's rent is subject to the
5 penalty imposed by this section.

6
7 Under subsection (d), whether a transferee of funds from a bank account maintained for
8 the purpose of holding security deposits takes the funds free from the tenant's interest is
9 governed by other law. *See, e.g.,* Restatement (Third) of Restitution and Unjust Enrichment § 67,
10 *cmt. d.*

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

12
13 (a) With respect to funds constituting a security deposit, a landlord:

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

15 (A) by holding the funds in a bank account used exclusively for security
16 deposits that is maintained by a federally insured bank doing business in this state; and

17 (B) if funds from tenants are commingled as allowed by paragraph (2), by
18 maintaining records that indicate at all times the amount of the funds attributable to each tenant
19 whose funds are being held in the account;

20 (2) may commingle the funds received from other tenants as security deposits in
21 the same bank account but may not commingle other funds, including the landlord's personal or
22 business funds, in the account[; and

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

25 (b) If a landlord fails to comply with subsection (a), a court may award the tenant [one
26 month's] periodic rent or actual damages, whichever is greater.

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

29 (d) Unless a lease provides otherwise, the landlord is not required to deposit a security

1 deposit into an interest-bearing account or to pay the tenant interest on the deposit.

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

7
8 A jurisdiction that wishes to require the payment of interest on a security deposit should delete
9 subsection (d) and replace it with a provision governing the parties' rights regarding the interest
10 payments.

11 12 **Comment**

13
14 Section 1203 introduces a new requirement that landlords segregate security deposits
15 from the landlord's other funds. Imposing the safekeeping requirements ensures that an amount
16 equivalent to the deposited funds is available for return as required under various provisions in
17 the act.

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

27
28 Subsection (b) does not preclude the landlord or tenant from recovering other damages to
29 which the landlord or tenant may be entitled under this [act].

30 31 **SECTION 1204. RETURN OF SECURITY DEPOSIT AND UNEARNED RENT.**

32 (a) At the termination of a lease, the landlord shall pay the tenant the amount by which
33 the security deposit and any unearned rent exceeds the amount the landlord is owed for unpaid
34 rent due under the lease and any other amount the landlord is owed under the lease or this [act].

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

38 (c) A landlord may satisfy the landlord's obligation to pay the amount determined under

subsection (b) by:

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

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

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

(d) If the amount paid by a landlord under subsection (b) is less than the sum of the tenant's security deposit and any unearned rent, the landlord shall provide the tenant or tenant representative with a record specifying each item of property damage or other unfulfilled obligation of the tenant to which the security deposit or unearned rent was applied and the amount applied to each item.

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

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

(g) Notwithstanding law of this state other than this [act], a security deposit or unearned rent to which the tenant or tenant representative is entitled but which is unclaimed for more than

[180] days after the tenancy has ended, including any amount returned to the landlord or that remains in the landlord's control at the end of the [180]-day period as the result of checks never paid or fund transfers attempted but not completed, is unclaimed property under [cite to state unclaimed property act].

(h) If the amount of a security deposit and unearned rent held by a landlord is insufficient to reimburse the landlord for damages resulting from the tenant's noncompliance with the lease or this act, the landlord may recover the difference from the tenant.

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

Comment

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

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

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

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

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

(1) if the lease continues, shall transfer to the person succeeding the landlord's interest in the premises any security deposit being held by the landlord and notify the tenant in a

1 record of the successor's name and address, the amount transferred, and any claim previously
2 made against the security deposit; or

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

6 (b) If the landlord dies before the termination of the lease, the personal representative of
7 the landlord's estate becomes the landlord until the representative distributes the premises to the
8 successor as determined by the law of this state other than this [act]. If the representative
9 distributes the premises to the successor before the termination of the lease, the representative
10 shall distribute to the successor any security deposit held by the representative and notify the
11 tenant in a record of the successor's name and address, the amount transferred to the successor,
12 and any claim previously made against the security deposit.

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

16 (d) Subject to subsection (e), the successor to the landlord's interest in the premises has
17 all rights and obligations of the landlord under this [act] with respect to any security deposit held
18 by the predecessor landlord which has not been returned to the tenant, whether or not the security
19 deposit was transferred or distributed to the successor.

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

22 **Comment**

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

1 **ARTICLE 13**

2 **MISCELLANEOUS PROVISIONS**

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

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

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

7 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the
8 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
9 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
10 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
11 U.S.C. Section 7003(b).

12 **SECTION 1303. APPLICATION.** This [act] applies only to a lease made on or after

13 the effective date of this [act].

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

15 (a)

16 (b)

17 (c)

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