

D R A F T

FOR DISCUSSION ONLY

**REVISED UNIFORM RESIDENTIAL LANDLORD
AND TENANT ACT**

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-THIRD YEAR
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**REVISED UNIFORM RESIDENTIAL LANDLORD
AND TENANT ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 5, 2014

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REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (201_)

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

2 **ARTICLE 1**

3 **GENERAL PROVISIONS**

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

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

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

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

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

14 (4) “Attesting third party” means a law enforcement official, licensed health-care
15 professional, victim’s advocate, or victim-services provider that has had contact with a victim of
16 domestic violence who is a tenant or an immediate family member.

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

19 (6) “Bank account” means a federally insured checking, demand, time, savings,
20 passbook, or similar account maintained at a bank.

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

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

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

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

7 (11) “Domestic violence” means domestic violence as defined by [insert reference to
8 definition in other state law]. The term includes dating violence, stalking, and sexual assault.

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

13 (A) a single family residence, the land on which it is located, and any other
14 structures on the land; and

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

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

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

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

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

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

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

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

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

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

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

(19) “Landlord” means an owner of a dwelling unit or the building of which it is a part, a successor in interest to the landlord, and any person that enters into a lease on behalf of an undisclosed owner. The term includes a sublessor if the landlord did not consent to the sublease and a person described in Section 108(d).

(20) “Lease,” when used as a noun, means a contract between a landlord and tenant in which the landlord rents to the tenant a dwelling unit for a tenancy for a fixed term or a periodic tenancy.

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

7 (22) “Owner” means a person vested with:

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

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

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

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

17 (25) “Perpetrator” means an individual who commits an act of domestic violence on a
18 tenant or an immediate family member.

19 (26) “Person” means an individual, estate, business or nonprofit entity, public
20 corporation, government or governmental subdivision, agency, or instrumentality, or other legal
21 entity.

22 (27) “Premises” means a dwelling unit and the structure of which it is a part. The term
23 includes all areas associated with the structure, whether exterior or interior to it, including the

1 fixtures, facilities, and appurtenances thereto, which are held out for the use of tenants generally
2 but are excluded from the definition of dwelling unit.

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

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

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

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

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

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

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

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

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

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

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

1 the United States.

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

4 (38) “Tenant” means a person entitled to possession of a dwelling unit under a lease. The
5 term includes an assignee, sublessee, and, if the tenant is not an individual, an individual the
6 tenant has authorized to occupy the unit. If the tenant is an individual, the term does not include
7 a person that is not a party to the lease or does not pay rent but occupies the unit with the tenant’s
8 permission.

9 (39) “Tenant representative” means:

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

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

14 (40) “Undisclosed owner” means the owner of a dwelling unit or the building of which it
15 is a part whose identity has not been disclosed to the tenant by the person entering into the lease
16 on the owner’s behalf.

17 (41) “Unearned rent” means rent, including prepaid rent, that a tenant paid to a landlord
18 for the right to occupy the dwelling unit for any period after the date the lease terminates in
19 accordance with its terms or this [act]. The term does not include any amount, including rent,
20 owed to the landlord for a period before or after the date the lease terminates during which the
21 tenant is in actual possession of the premises.

22 (42) “Victim advocate” means an individual, whether paid or serving as a volunteer, who
23 provides services to victims of domestic violence under the auspices or supervision of a victim-

1 service provider, a court, or law enforcement or prosecution agency.

2 (43) “Victim-services provider” means a person that assists victims of domestic violence.

3 The term includes a rape crisis center, domestic violence shelter, faith-based organization, or
4 other organization with a documented history of work concerning domestic violence.

5 (44) “Willfully” or “willful” means the intentional performance of an act prohibited
6 under this [act] or by a lease, an intentional failure to perform an act required under this [act] or
7 by a lease, or an indifference to whether the performance or failure to perform violates this [act]
8 or a lease.

9 **Legislative Note:** *If an enacting jurisdiction does not legislate with respect to dating violence, it*
10 *may either retain the concept of dating violence in this act and draft its own definition of dating*
11 *violence or, alternatively, delete dating violence as one of the types of domestic violence under*
12 *this act. A jurisdiction that does not use the phrase “domestic violence,” “dating violence,”*
13 *“stalking,” or “sexual assault,” should substitute the phrase used in this act with the phrase*
14 *used in the jurisdiction which captures the concept of the phrase.*

15 16 **Comment**

17
18 The definition of “abandonment” is broadly written to include any situation in which the
19 tenant relinquishes the right to possession with intent to terminate the lease before the end of the
20 term. Section 604(b) identifies specific circumstances in which the court may presume that the
21 tenant has abandoned the lease.

22
23 The definition of “fees” includes nonrefundable payments made by the tenant to the
24 landlord. Common examples include application fees, cleaning fees, short-term lease fees, late-
25 payment fees, dishonored check fees, credit card or other payment processing fees, abandonment
26 fees, special amenities fees, pet fees, or fees assessed for violating pet policies or other rules
27 governing the tenancy.

28
29 The definitions of “rent” and “security deposit” have been included or updated from the
30 1972 act to reflect important distinctions in how these payments are handled under Article 12.

31
32 The definition of “landlord” includes not only the owner of the dwelling unit, but also
33 any person -- such as a management company -- that enters into a lease on behalf of an
34 undisclosed owner. Thus, when a dwelling unit is leased by a management company on behalf
35 of an undisclosed owner, both would be landlords under this act. Conversely, if a management
36 company has disclosed the owner, only the owner is the “landlord” and the management
37 company is merely the landlord’s agent for purposes of this act.
38

1 The definition of “owner” includes a mortgagee in possession. It would not include a
2 mortgagee in a title theory state unless the mortgagee became entitled to possession.
3

4 The definition of “tenant” recognizes that some leases are entered into by business
5 entities for their employees or by a trust on behalf of a beneficiary. For example, an LLC might
6 rent an apartment for a member or a manager. Both the LLC and the member or manager are
7 tenants, the latter because the member or manager has been authorized to occupy the dwelling
8 unit by the LLC, the former because it is legally entitled to possession under the lease.
9

10 The definition of “unearned rent” contemplates two circumstances where a refund will be
11 due a tenant because the lease terminated. The first circumstance is where “rent” (defined in
12 Section 102(30)) was paid to the landlord on its due date but for any period of time beyond the
13 date the lease terminates. For example, assume a one-year lease with rent payable on the first of
14 each month. The tenant pays rent to the landlord on April 1 for the month of April. However on
15 April 10 the tenant properly terminates the lease. In this case “unearned rent” includes the
16 amount of rent attributable to the period April 11 to April 30. Because rent is apportioned on a
17 daily basis (see Section 201(b)(2)(B)), this means that 2/3 of the April 1st payment would be
18 “unearned rent.” The second circumstance is where “prepaid rent” (defined in Section 102(28))
19 was paid to the landlord for a rental period beyond the date the lease terminates. For example,
20 suppose before the commencement of the lease a tenant pays the landlord an amount for the last
21 month’s rent. Three months into the lease tenant properly terminates the lease. In this case,
22 “unearned rent” includes the prepaid rent for the last month. In both examples, Section 1204
23 requires amounts treated as unearned rent to be returned by the landlord after taking account of
24 any proper charges against the unearned rent as set forth in Section 1204.
25

26 The phrase “unearned rent” does not include rent for any period beyond the lease
27 termination during which the tenant is in actual possession of the premises. For example,
28 suppose tenant signs a fixed term lease to end on December 31. The tenant pays the landlord the
29 last month’s rent (December rent) at the beginning of the lease term. Because of the tenant’s
30 failure to pay rent, the landlord properly terminates the lease on October 1 but the tenant remains
31 in possession until November 5. Unearned rent includes the prepaid rent for December but does
32 not include any rent that might be due the landlord for the first five days of November. Under
33 Section 1204, the landlord is obligated to return the unearned rent (along with any security
34 deposit) to the tenant. However under Section 1204(c), the landlord may reduce the amount
35 returned by amounts of “unfilled obligations” to which the unearned rent was applied and this
36 could include the rent due for the five days in November.
37

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

1 Because unearned rent excludes rent attributable to a period prior to the date the lease
2 terminates and because, under Section 201(b)(2)(B) rent is apportioned on a daily basis, the
3 tenant is not entitled to any refund for rents apportioned to days when the tenant was entitled to
4 possession. For example, suppose tenant pays rent on the first of the month and properly
5 terminates the lease on the 20th day of the month. If the tenant is entitled to a return of unearned
6 rent, the amount does not include rent paid on the first of the month attributable to the first 20
7 days of the month.

8 9 **SECTION 103. SCOPE.**

10 (a) In this section:

11 (1) “transient lodging” means a room or a suite of rooms; and

12 (2) “transient occupancy” means occupancy in a transient lodging that has all of
13 the following characteristics:

14 (A) occupancy is charged on a daily basis;

15 (B) the transient lodging operator provides housekeeping and linen service
16 as part of the regularly charged cost of the occupancy; and

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

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

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

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

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

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

27 (4) occupancy by a member of a fraternal or social organization in a part of a

1 structure operated for the benefit of the organization;
2 (5) transient occupancy;
3 (6) occupancy by an employee of a landlord when the employee's right to
4 occupancy is conditioned on employment in or about the premises;
5 (7) occupancy by a holder of a proprietary lease in a cooperative; and
6 (8) occupancy under a lease covering premises used by the occupant for
7 agricultural purposes.

8 **Comment**

9
10 This act applies to the lease of a mobile home but does not apply to a mere ground lease
11 of land upon which a mobile home is placed. Thus, if O owns a mobile home park and leases
12 space to T, that ground lease is not subject to this act. However, if T brings a mobile home onto
13 O's land and later leases the home to X, the T-X lease is subject to this act.
14

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

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

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

23 (b) A party seeking relief under this [act] has a duty to mitigate damages.
24

25 **Comment**

26
27 Under the common law a landlord had no duty to mitigate damages. The no-mitigation
28 rule was abrogated by the 1972 version of this act, and this act is consistent with that policy
29 choice and the conceptualization of the lease as a contract. Unlike the 1972 act, however, this act
30 provides a safe harbor in Section 604 for a landlord who makes reasonable efforts to relet the
31 dwelling unit following a tenant's abandonment.
32

33 **SECTION 105. OBLIGATION OF GOOD FAITH.** Every duty under a lease or this
34 [act] and every act that must be performed as a condition precedent to the exercise of a right or

remedy under the lease or this [act] impose an obligation of good faith in its performance or enforcement.

SECTION 106. UNCONSCIONABILITY.

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

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

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

SECTION 107. KNOWLEDGE AND NOTICE.

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

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

(1) knows of the fact;

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

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

(c) Subject to Section 1001(c), when this [act] specifically requires notice in a record, the

notice must be:

(1) signed by the person giving it; and

(2) delivered personally to the landlord or tenant, or

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

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

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

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

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

(A) personally delivered under subsection (c)(2); or

(B) sent in accordance with subsection (c)(3).

Comment

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

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

SECTION 108. REQUIRED DISCLOSURES BY LANDLORD.

(a) Before accepting any funds to be applied towards a security deposit, prepaid rent, or fees, or before entering into a lease, a prospective landlord shall disclose to the prospective

1 tenant in a record the following information:

2 (1) any condition of the premises which would breach a duty owed to a tenant
3 under Section 302 and of which the prospective landlord knows or should have known on a
4 reasonable inspection of the premises;

5 (2) whether the premises are in foreclosure; and

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

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

10 (1) the name of:

11 (A) the landlord;

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

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

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

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

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

20 (d) If a landlord fails to comply with subsection (b) or (c), any person that enters into a
21 lease on behalf of the landlord, other than an undisclosed owner, becomes the landlord for
22 purposes of:

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

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

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

5 **Comment**

6
7 Subsection (a) imposes upon the landlord a duty to inform a prospective tenant of any
8 conditions that would make the premises uninhabitable or present an unreasonable risk of harm.
9 These conditions would include the standards for uninhabitability enumerated in Section 302 as
10 well as additional hazards.

11
12 The purpose of subsection (b) is to enable the tenant to proceed with the appropriate legal
13 proceeding, to know to whom complaints must be addressed and, failing satisfaction, against
14 whom the appropriate legal proceedings may be instituted.

15
16 If the landlord failed to make the “foreclosure” disclosure required by subsection (a)(2),
17 subsection (e) would not apply unless the tenant’s use and enjoyment of the premises had been
18 interfered with as a result of the foreclosure. For example, such damages might occur if the
19 premises were sold and the tenant was required to vacate the premises.

20
21 No specific remedies are provided for the failure to provide the information required by
22 subsections (b) and (c). If a tenant fails to provide an address to the landlord, however, the tenant
23 might not receive a refund of a security deposit, and, if a landlord fails to provide an address to
24 the tenant, the landlord might not receive the rent in a timely manner.

25
26 Under subsection (d), if an agent of a landlord, other than an undisclosed owner, fails to
27 provide the information required by subsections (b) or (c), the agent is a person upon whom
28 service of process and notices may be made and also is obligated to perform the landlord’s duties
29 under this [act]. Thus this subsection incentivizes an agent for a disclosed landlord to make the
30 disclosures under subsections (b) and (c) to avoid the consequences in subsection (d). By virtue
31 of the definition of landlord, an agent for an undisclosed owner is the landlord and this
32 subsection does not apply.

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

34
35 (a) At or before the commencement of the term of the lease, a tenant shall give a landlord
36 a notice in a record specifying the tenant’s mail address and any address used by the tenant for
37 the receipt of electronic communications.

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

1 on the tenant's death by giving to the landlord a notice in a record specifying the name, address,
2 and telephone number of the contact person. Absent a request by the landlord, a tenant may
3 voluntarily designate a contact person in the same manner.

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

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

9 **Comment**

10
11 In light of this section, contract principles generally apply to the construction and
12 interpretation of leases, including provisions relating to mutuality or dependency of lease
13 covenants. By construing leases as contracts, for example, performance of promises the landlord
14 and tenant make to each other are dependent upon one another. Thus, the tenant's promise to pay
15 rent is conditioned upon (dependent upon) the landlord's provision of essential services and
16 compliance with Section 302. However, the landlord's obligation to maintain the dwelling unit
17 as provided in Section 302 is not conditioned upon the tenant's payment of rent.

18
19 **ARTICLE 2**

20 **GENERAL PROVISIONS APPLICABLE TO LEASE**

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

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

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

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

28 (2) rent is:

1 (A) payable without demand or notice:

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

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

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

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

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

14 **Comment**

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

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

22
23 **SECTION 202. EFFECT OF UNSIGNED, UNDELIVERED LEASE; IMPLIED**
24 **LEASE.**

25 (a) Subject to subsection (b):

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

by the landlord; and

(2) if a 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;

(3) perform a duty imposed on the landlord by Section 302 [except as permitted by Section 303];

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

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

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

Comment

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

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

SECTION 204. SEPARATION OF RENT FROM DUTY TO MAINTAIN

PREMISES. Except as otherwise provided by law of this state other than this [act], a lease, assignment, sublease, conveyance, trust deed, or security instrument may not permit a person to receive the payment of rent without assuming the landlord's duties as provided in the lease or Section 302.

Comment

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

SECTION 205. ATTORNEY'S FEES.

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

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

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

1 (b) Except as otherwise provided in subsection (c), in an action between a landlord and a
2 tenant to enforce a right or remedy arising under the lease or this [act], the court may award the
3 prevailing party costs and reasonable attorney's fees if the court determines that the other party
4 did not act in good faith, willfully performed an act prohibited by the lease or this [act] or
5 willfully refrained from performing an act required by the lease or this [act]

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

8 (d) If there is no prevailing party in an action, then no party is entitled to recover
9 attorney's fees and costs.

10 **ARTICLE 3**

11 **LANDLORD'S DUTIES**

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

15 **Comment**

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

22 **SECTION 302. LANDLORD'S DUTY TO MAINTAIN PREMISES.**

23 (a) A landlord has a duty to maintain the premises in a habitable condition, including
24 making all necessary repairs. At a minimum, the duty to maintain requires the landlord to ensure
25 that the premises:
26

27 (1) comply with all obligations imposed on the landlord by any applicable

1 building, housing, or health code, or other law;

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

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

6 (4) have access to a water supply approved under applicable law which is capable
7 of producing hot and cold running water;

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

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

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

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

20 (9) have an adequate number of appropriate receptacles in clean condition for
21 garbage, rubbish, and, if recycling services are provided, recyclable material;

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

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

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

(13) have safety equipment required by applicable law.

(b) If a sublessor is a landlord for purposes of this [act], the sublessor shall have the duty to comply with subsection (a) except for duties that would require the sublessor to access portions of a dwelling unit or the premises beyond the sublessor's control.

Comment

Consistent with the practice of nearly every state, Section 302 recognizes that modern conditions require the proper maintenance and operation of rental housing. This section imposes certain minimum duties of repair and maintenance upon landlords consistent with prevailing public standards. Section 401 imposes corresponding duties of cleanliness and proper use within the dwelling unit upon the tenant. This section sets forth only minimum standards. Because many jurisdictions do not have building, housing, or health codes applicable to rental housing, it is appropriate that this statute incorporate minimum standards of maintenance. A lease could impose other maintenance obligations on the landlord. It could also impose other maintenance obligations on the tenant so long as those obligations do not absolve the landlord of the landlord's obligations under this section. *See* Section 203(a)(3).

If a tenant subleases a dwelling unit with the landlord's consent then the sublessor is not a landlord under this act. *See* Section 103(19). If the tenant subleases the dwelling unit without the landlord's consent, the sublessor is a landlord under this act. As a landlord, the sublessor is obligated to comply with provisions of this act, including this section. However, in light of subsection (b), the sublessor is not required to perform duties imposed on a landlord by this section if performance of the duties would require the sublessor to access parts of the dwelling unit or premises which are beyond the sublessor's control. For example, if a subtenant's furnace ceased working but repairs would require access to a furnace outside of the dwelling unit, the sublessor would not be required to repair the furnace.

SECTION 303. DUTIES OF LANDLORD PERFORMED BY TENANT.

(a) A landlord and tenant may agree, in a record signed by the landlord and tenant that is separate from the lease, that the tenant will perform one or more of the duties imposed on the

landlord by Section 302.

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

(1) discharge the landlord from the performance of the duties imposed on the landlord by Section 302;

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

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

(c) This section does not abrogate, limit, or otherwise affect the obligation of a tenant to pay for a utility service in accordance with the lease.

Comment

This section permits the landlord and tenant to agree, by separate contract, that the tenant may perform repairs or maintenance provided that the consideration for the contract is not tied to the tenant's rent and the tenant's failure to perform under the contract does not discharge the landlord's duties under Section 302.

SECTION 304. LIMITATIONS ON LANDLORD'S LIABILITY.

(a) Except to the extent a landlord and tenant otherwise agree in a record signed by the landlord and tenant, if the landlord conveys in a good-faith sale to a bona fide purchaser premises that include a dwelling unit subject to the lease, the following rules apply:

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

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

(b) A person that enters into a lease on behalf of an undisclosed owner is relieved of

1 liability under the lease and this [act] as to events occurring after giving to the tenant a notice in
2 a record specifying:

3 (1) the name and mail address and any address used for the receipt of electronic
4 communications by the owner or any person designated by the owner to which a notice or
5 demand must be sent;

6 (2) if different from the current address to which rent is sent, the address or place
7 to which the tenant must send rent; and

8 (3) the date of termination of the person's authority to act on behalf of the owner.

9 **Comment**

10
11 The effect of subsection (a), which first appeared in the 1972 act, is to sever both privity
12 of contract and privity of estate between the assigning landlord and the tenant.

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

22 Under subsection (a)(2), the landlord remains liable for the tenant's security deposit and
23 unearned rent unless the landlord complies with Section 1205 to transfer the funds to the
24 successor landlord or return them to the tenant.

25
26 Subsection (b) applies to a manager that enters into a lease on behalf of an undisclosed
27 owner. In that situation, the manager qualifies as a "landlord" under Section 102(19) and has all
28 of the rights and responsibilities of a landlord under the act. Subsection (b) provides the
29 procedures for a person in that situation to be relieved of liability under the act. Conversely,
30 when the owner of the leased premises has been disclosed to the tenant, a manager's only
31 liability is as the agent of the owner. In that case, general principles of agency law under law of
32 this state other than this act will apply.

33 34 **SECTION 305. RULES OF LANDLORD.**

35 (a) A landlord may adopt a rule concerning the tenant's use and occupancy of the
36 premises.

1 (b) A rule adopted under subsection (a) is not enforceable against the tenant unless:

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

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

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

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

9 (5) its purpose is not to evade an obligation of the landlord under the lease or this
10 [act]; and

11 (6) the tenant receives notice of it before the tenant enters into the lease or, subject
12 to subsection (c), promptly after it is adopted.

13 (c) After the commencement of a lease, a landlord may adopt or modify a rule concerning
14 a tenant's use and occupancy of the premises, but if the rule or modification substantially
15 modifies the tenant's bargain, it is not enforceable against the tenant unless the tenant consents to
16 it in a record signed by the tenant.

17 **ARTICLE 4**

18 **TENANT'S DUTIES**

19 **SECTION 401. TENANT'S DUTIES.** A tenant:

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

22 (2) shall comply with all obligations imposed on a tenant by any applicable building,
23 housing, or health code;

1 (3) except with respect to duties imposed on the landlord by the lease or this [act], or by
2 law of this state other than this [act], shall keep the dwelling unit as safe and sanitary as the
3 conditions of the unit permit;

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

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

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

10 (7) in the absence of the landlord's consent, may not intentionally or negligently:

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

12 (B) destroy, deface, damage, impair, remove, or render inoperative any safety
13 equipment on the premises, such as smoke alarms, carbon monoxide detectors, and fire
14 extinguishers; or

15 (C) permit an immediate family member, invitee, or other person [acting under
16 the tenant's control] to do the same;

17 (8) may not disturb or allow a person on the premises with the tenant's consent, other
18 than the landlord or the landlord's agent, to disturb the use and enjoyment of the premises by
19 another tenant;

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

21 (10) shall notify the landlord within a reasonable time of any condition of the premises
22 that requires repair or remediation by the landlord under the lease or Section 302;

23 (11) shall return the dwelling unit to the landlord at the termination of the lease in the

1 same condition as it was at the commencement of the term of the lease, with the premises free of
2 any damage caused by the tenant, an immediate family member, or other person invited on the
3 premises by the tenant, other than the landlord or the landlord's agent, except for:

4 (A) normal wear and tear;

5 (B) damage resulting from a cause beyond the control of the tenant; and

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

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

10 **Comment**

11
12 Under paragraph (3) the tenant is obligated to keep the dwelling unit in a safe or sanitary
13 condition unless the duty to do so is imposed on another, such as the landlord. For example,
14 because Section 302 imposes a duty on the landlord to conform plumbing fixtures to applicable
15 law, that duty is not shifted to the tenant by this section.

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

24 **ARTICLE 5**

25 **TENANT REMEDIES**

26 **SECTION 501. NONCOMPLIANCE BY LANDLORD; IN GENERAL.**

27
28 (a) Subject to Section 506, if there is noncompliance by a landlord with the lease or
29 Section 302, the tenant has the remedies under subsection (b) if the tenant gives the landlord:

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

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

1 (A) Subject to paragraph (B), the landlord shall remedy the
2 noncompliance not later than [14] days after the date of the receipt of the notice; and

3 (B) If the noncompliance by the landlord involves failure to provide an
4 essential service or poses a serious and imminent threat to the health or safety of the tenant or
5 immediate family member, the landlord shall remedy the noncompliance promptly, but not later
6 than [five] days after the landlord received the date of the receipt of the notice.

7 (b) Subject to subsection (d), if a landlord's noncompliance with the lease or Section 302
8 materially interferes with the use and enjoyment of the premises by the tenant and is not
9 remedied during the applicable period in subsection (a), the tenant may:

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

12 (A) the tenant may recover actual damages for the period beginning the
13 date the tenant gave the landlord the notice under subsection (a) and ending on the date of
14 termination specified in the notice, including damages based on the diminution in value of the
15 dwelling unit as determined by the court based on evidence that need not include expert
16 testimony; and

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

19 (2) continue the lease and, without any additional notice, elect one of the
20 following remedies:

21 (A) subject to Section 505, withhold the rent for the period of
22 noncompliance beginning on the date the tenant gave the landlord the notice under subsection
23 (a);

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

5 (C) seek injunctive relief or specific performance;

6 (D) subject to Section 503, make repairs and deduct the cost from the rent;
7 or

8 (E) subject to Section 504, secure essential service or comparable
9 substitute housing during the period of noncompliance.

10 (c) If a landlord's noncompliance with the lease or Section 302 does not materially
11 interfere with the tenant's use and enjoyment of the premises, the tenant may obtain the remedies
12 provided in subsection (b)(2)(B), (C), and (D).

13 (d) If a landlord's noncompliance with the lease or Section 302 was caused by
14 circumstances beyond the landlord's control, including the unavailability of materials, labor, or
15 utilities, a natural disaster, [or] force majeure[, or the death of the landlord]:

16 (1) the tenant may terminate the lease; and

17 (2) after the tenant vacates the premises, the landlord must return to the tenant the
18 amount of any security deposit and unearned rent to which the tenant is entitled under Section
19 1204.

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

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

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

4 **Comment**

5 This section has been modified from the 1972 act to clarify the remedies available to a
6 tenant for a landlord's noncompliance with the warranty provisions in Section 302 or under the
7 lease. If there is a material noncompliance by the landlord with the lease or Section 302(a),
8 Section 501 allows the tenant to elect from among six remedies. However, the tenant's ability to
9 secure essential services or substitute housing under Section 504 is only available for the
10 landlord's material noncompliance in providing essential services. Not all services or obligations
11 of the landlord described in Section 302(a) are "essential services." See Section 102(14).
12

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

26 Remedies available to the tenant pursuant to Section 501 are not exclusive (see Section
27 110). Thus, to the extent permitted by state law, tort remedies also may be available.
28

29 A duty to mitigate damages exists under Section 104.
30

31 If the dwelling unit or premises are substantially damaged or destroyed as the result of a
32 fire or other casualty to which Section 506 would apply, then the remedies in Section 506 rather
33 than this section apply.
34

35 **SECTION 502. LANDLORD'S FAILURE TO DELIVER POSSESSION TO** 36 **TENANT.**

37 (a) Except as otherwise provided in subsection (d), if a landlord does not deliver actual
38 possession of the dwelling unit to the tenant as provided in Section 301, the tenant is not required

1 to pay rent until possession is delivered, and may:

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

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

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

10 (c) In addition to the rights provided to a tenant in subsections (a) and (b), if a landlord's
11 failure to deliver possession to the tenant pursuant to Section 301 is willful, the court shall award
12 the tenant an amount equal to [three] months' periodic rent or [triple] the actual damages.

13 (d) If a tenant elects under subsection (a)(2) to obtain possession from a person that is
14 wrongfully in possession, the tenant is liable to the landlord for rent and may recover from the
15 person wrongfully in possession the damages provided in Section 803.

16 **Comment**

17 Under subsection (a)(2), a tenant may elect to file an action for possession directly
18 against a holdover tenant or other person in wrongful possession of the dwelling unit. This right
19 parallels, and would take priority over, the landlord's right to file an action for possession against
20 the holdover tenant under Section 803.

21
22 If the tenant elects to sue the holdover tenant for possession, the tenant effectively elects
23 to continue the lease with the landlord and thus, under subsection (d), is liable to the landlord for
24 rent for the period beginning with the commencement of the term of the lease.

25 26 **SECTION 503. SELF-HELP.**

27 (a) Except as otherwise provided in this [act], if a landlord fails to comply with the lease
28 or Section 302, the tenant may give notice to the landlord pursuant to Section 501(a) specifying

1 the failure, and, if the landlord fails to comply within the period specified in Section 501(a) and
2 the reasonable cost of compliance is less than one month's rent, the tenant may repair the
3 condition at the landlord's expense.

4 (b) Subject to subsection (d), a tenant, after submitting to the landlord an itemized
5 statement, including receipts for purchased items and services, may deduct from the rent the
6 actual and reasonable cost incurred or the fair and reasonable value of the work performed to
7 repair the condition, not exceeding one month's rent, unless the tenant otherwise has been
8 reimbursed by the landlord.

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

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

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

16 (2) the landlord was unable to remedy the condition within the period in Section
17 501(a) because the tenant denied the landlord access to the dwelling unit.

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

20 **Comment**

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

25
26 Under subsection (d), the tenant may not repair at a landlord's expense to the extent the

1 damage that was repaired was caused by the tenant, an immediate family member, or another
2 person, other than the landlord, on the premises with the tenant's consent. For example, if the
3 tenant breaks the door lock, the tenant cannot deduct the cost of the repair from the rent, even if
4 the repair was undertaken by the tenant. Subsection (d) would not preclude the tenant from
5 making the repair, but would preclude the deduction of the costs from the rent.

6
7 Subsection (e) is intended to assure the landlord that over any given 12-month period the
8 landlord's costs arising as the result of the tenant's election of this self-help remedy do not
9 exceed one month's rent. The 12-month look back period begins to run 12 months immediately
10 before the completion of the immediate repair for which the tenant has exercised the tenant's
11 rights under this section. For example, suppose the tenant paying monthly rent of \$500 properly
12 contracts for a plumber to make a repair that costs \$300. The repair is completed on November
13 10. The tenant is entitled to be reimbursed the entire \$300 if over the last 12 months, beginning
14 with November 10 of the preceding year, the tenant never used this remedy. If over that period
15 the tenant has previously used the remedy to the extent of \$400, the tenant would be able to
16 recoup only \$100 of the cost of the current \$300 repair.

17 **SECTION 504. LANDLORD'S WRONGFUL FAILURE TO PROVIDE** 18 **ESSENTIAL SERVICE.**

19 (a) If, contrary to the terms of a lease or Section 302, the landlord willfully or negligently
20 fails to supply an essential service, the tenant may give notice to the landlord pursuant to Section
21 501(a) specifying the failure and, if the landlord fails to comply within the period specified in
22 Section 501(a), the tenant may:

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

25 (2) procure substitute housing during the period of the landlord's noncompliance.

26 (b) In addition to the remedy provided in subsection (a)(2), the court shall award the
27 tenant actual damages.

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

1 **Comment**

2
3 Under subsection (b), a tenant's actual damages could include the difference between the
4 rent provided in the lease and the actual and reasonable cost of substitute housing as well as
5 moving expenses.
6

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

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

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

16 (c) If the court orders a tenant to deposit funds in an escrow account outside the court
17 pursuant to subsection (b), the bank or entity authorized by the court to hold the funds in escrow
18 shall provide the landlord and tenant with a monthly statement for the funds.

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

21 (e) If rent has been paid into escrow under subsection (b) and:

22 (1) the court determines that the landlord fully complied with the lease and
23 Section 302, the court shall order the immediate release to the landlord of rent held in escrow
24 and direct the tenant to pay the landlord any remaining rent owed; or

25 (2) the court determines that the landlord's noncompliance with the lease or
26 Section 302 materially interferes with the tenant's use and enjoyment of the premises, the court

1 may order one or more of the following remedies:

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

4 (B) refund to the tenant all or part of the rent held in escrow in
5 compensation for:

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

7 (ii) damages based on the diminution in value of the dwelling unit
8 as determined by the court based on evidence that need not include expert testimony; or

9 (iii) other actual damages;

10 (C) that the tenant continue to pay rent into escrow as rent becomes due or
11 abate future rent until the landlord brings the premises into compliance with the lease or Section
12 302; or

13 (D) payment to the landlord of any rent held in escrow not otherwise
14 payable to the tenant and any other amount the court determines the tenant owes the landlord.

15 **Comment**

16
17 Under subsection (b), if either party seeks a court order for the escrow of rent, the court,
18 in its discretion, will determine whether to order an escrow of rent. If the court orders rent to be
19 escrowed, it shall also specify the amount to be escrowed. This amount could be all of the rent or
20 merely some portion thereof.

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

22
23 (a) If a dwelling unit or premises are substantially damaged or destroyed by fire or other
24 casualty to the extent that the unit or premises require repairs that can be made only if the tenant
25 vacates all or a part of the unit:

26 (1) the tenant may vacate the unit immediately and not later than [14] days after
27 vacating the unit give the landlord notice in a record of the tenant's intention to terminate the

1 lease, in which case the lease terminates as of the date the tenant vacates the unit;

2 (2) if continued occupancy of the unit is lawful, the tenant may vacate any part of
3 the unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is
4 reduced as of the date of the fire or casualty by the diminution in value of the unit, as determined
5 by the court based on evidence that need not include expert testimony; or

6 (3) the landlord may give the tenant [30] days notice in a record of the landlord's
7 intent to terminate the lease, in which case the lease terminates as of the expiration of the [30]
8 days.

9 (b) If a lease is terminated pursuant to subsection (a)(1) or (3), the landlord shall return to
10 the tenant the amount of any security deposit and unearned rent to which the tenant is entitled
11 under Section 1204. In calculating the unearned rent, termination of the lease is deemed to occur
12 on the date of the fire or other casualty.

13 (c) This section does not preclude a landlord from seeking actual damages from the
14 tenant under law of this state other than this [act] for damages to the premises caused by the
15 tenant or other person on the premises with the tenant's consent, other than the landlord or the
16 landlord's agent.

17 **SECTION 507. UNLAWFUL REMOVAL, EXCLUSION, OR DIMINUTION OF**
18 **ESSENTIAL SERVICE.** If a landlord unlawfully removes or excludes the tenant from the
19 premises or willfully interrupts or causes the interruption of an essential service to the tenant, the
20 tenant may recover possession or terminate the lease and, in either case, the court shall award the
21 tenant [three] months periodic rent or [triple] the actual damages. If the lease terminates, the
22 landlord shall return to the tenant the amount of any security deposit and unearned rent to which
23 the tenant is entitled under Section 1204.

1 **ARTICLE 6**

2 **LANDLORD REMEDIES**

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

4 **NONCOMPLIANCE WITH LEASE.**

5 [Note to Committee of the Whole: In subsection (c)(1), the Drafting Committee seeks
6 your guidance in how to limit the criminal acts that could warrant a landlord's immediate
7 termination of a lease.]
8

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

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

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

23 (1) if the tenant commits a criminal act on the premises, by giving the tenant
24 notice in a record that the lease will terminate immediately on receipt of the notice or on another
25 date set forth in the notice; or

(2) by giving the tenant notice in a record that the lease will terminate on a specified date not less than [14] days after receipt of the notice if the noncompliance:

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

(B) poses an serious and imminent threat to the health and safety of other tenants on the premises; or

(C) is substantially the same act or omission that constituted a prior noncompliance for which notice under subsection (b) had been sent within six months preceding the latest noncompliance.

(d) Except as otherwise provided in this [act], if a tenant's noncompliance with Section 401 materially affects health or safety or is a material noncompliance with the lease, the landlord may:

(1) obtain injunctive relief or specific performance; or

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

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

Comment

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

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

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

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

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

SECTION 603. DISTRAINT FOR RENT; LIENS.

(a) Distraint for rent is abolished.

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

Comment

This section prohibits the landlord from seizing the tenant's personal property to satisfy the landlord's claims against the tenant or filing a lien against the tenant's personal property to secure the tenant's obligations under the lease. It also prohibits a landlord from taking a security interest in any of the tenant's personal property to secure the tenant's performance. On the other hand, it would not preclude a landlord taking a lien or security interest to secure performance of a tenant's contractual promises unrelated to the lease. For example, suppose the landlord also owned an appliance store from which tenant purchased an appliance "on time." A landlord's lien on the appliance to secure tenant's payment of the debt incurred in purchasing the appliance is not prohibited by this act.

SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION.

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

(b) A tenant abandons a dwelling unit if:

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

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

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

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

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

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

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

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

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

17 (2) treat the abandonment as wrongful.

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

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

23 (2) If a landlord leases the abandoning tenant's unit to another tenant for a term

beginning before the expiration of the abandoning tenant's lease, the abandoning tenant's lease terminates as of the date of the new tenancy and the landlord may recover actual damages from the abandoning tenant.

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

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

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

(e) If a tenant wrongfully terminates the lease, the landlord has a claim for possession. The landlord also has a claim for past due rent and, unless the landlord accepts abandonment or fails to mitigate, a separate claim for actual damages for breach of the lease.

Comment

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

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

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

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

SECTION 605. RECOVERY OF POSSESSION LIMITED; INTERRUPTION OF ESSENTIAL SERVICE.

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

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

ARTICLE 7

ACCESS TO THE DWELLING UNIT

SECTION 701. LANDLORD'S ACCESS TO DWELLING UNIT.

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

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

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

(2) In an emergency, when maintenance or repairs are being made at the tenant's

1 request, or when it is otherwise impracticable to give [one day] notice, the landlord shall give
2 notice that is reasonable under the circumstances. If the landlord has entered when the tenant is
3 not present and prior notice has not been given, the landlord shall [place a notice of the entry in a
4 conspicuous place in the unit] [give the tenant notice not later than [24 hours] after entry]
5 indicating the fact of entry, the date and time of entry, and the nature of the emergency.

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

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

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

11 (2) pursuant to a court order; or

12 (3) the tenant has abandoned the unit.

13 **Comment**

14
15 If a landlord performs routine maintenance and pest control pursuant to a fixed schedule
16 of entry dates, the landlord will be in compliance with the advance notice requirement of
17 subsection (b)(1) if the landlord delivers that schedule to the tenant at the commencement of the
18 term of the lease and includes a reasonable time frame in which the maintenance or pest control
19 will be performed on the dates indicated in the schedule.

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

21
22 (a) If a tenant unreasonably refuses to allow the landlord access to a dwelling unit, the
23 court may compel the tenant to grant the landlord access or may terminate the lease. In either
24 case, the court shall award the landlord actual damages.

25 (b) If a landlord makes an unlawful entry of a tenant's dwelling unit, or a lawful entry in
26 an unreasonable manner, or makes repeated demands for entry otherwise lawful but which have
27 the effect of harassing the tenant, the court may award injunctive relief to prevent the recurrence

1 of the conduct or may terminate the lease. If the court award injunctive relief or terminates the
2 lease, the court shall award the tenant actual damages or an amount equal to [one] month's rent,
3 whichever is greater.

4 **ARTICLE 8**

5 **PERIODIC AND HOLDOVER TENANCIES; DEATH**

6 **OF TENANT**

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

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

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

12 (1) The landlord or tenant may terminate a periodic tenancy for week to week by
13 giving the other at least [five days'] notice in a record of the party's intent to terminate the lease
14 on the date specified in the notice.

15 (2) The landlord or the tenant may terminate a periodic tenancy for month to
16 month by giving the other at least [one month's] notice in a record of the party's intent to
17 terminate the lease at the end of the monthly period.

18 **Comment**

19
20 Under subsection (b), a month to month tenancy can be terminated by giving one month's
21 notice. The termination date in the notice must coincide with the normal end of the monthly
22 period. Thus, if the tenancy begins on the first of the month, the termination date in the notice
23 must be on the last day of at least the next month or it could be on the last date of any month at
24 least one month after the notice is given. If the month-to-month tenancy begins on the 15th of the
25 month, the one-month notice must have a termination date no earlier than the 14th of the next
26 month but could have a termination date on the 14th for subsequent months. Consistent with
27 common law, this [act] would not require the notice to include a reason for the termination.
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(b) Except as otherwise provided in subsection (c), if a tenant remains in possession with the landlord's consent after expiration of a tenancy for a fixed term or termination of the lease, a periodic tenancy for month to month arises under the same terms as the lease unless the landlord and tenant otherwise agree.

Comment

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

(a) If a tenant who is the only party to a lease dies before the end of a tenancy for a fixed term or a periodic tenancy, the tenant's surviving spouse [, partner in a civil union,], [or domestic partner] who resides in the dwelling unit may assume the lease by giving the landlord notice in a written instrument, not later than [20] days after the tenant's death expressing the spouse's [or partner's] intent to assume the lease.

(b) Except as otherwise provided in subsection (a) or (c) or law of this state other than this [act], the landlord or a tenant representative may terminate the lease of a deceased tenant who was the only party to the lease by giving the other notice in a record of the intent of the person signing the notice to terminate the lease on a specified date at least [30] days after receipt of the notice in the case of a tenancy for a fixed term or a specified date consistent with Section 801(b) in the case of a periodic tenancy.

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

Comment

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

If a tenant dies during the term of a lease, either the landlord or tenant representative (as defined in Section 102(39)) can elect to terminate the lease under subsection (b) unless subsection (a) or other law would prohibit the termination.

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

ARTICLE 9

RETALIATION

SECTION 901. RETALIATION PROHIBITED.

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

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

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

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

(2) complained in good faith to the landlord of a violation under the lease or Section 302;

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

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

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

(b) Conduct that is retaliatory under Section 901(a) includes taking or threatening to take any of the following actions:

(1) increasing the rent;

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

(3) bringing an action for possession except for nonpayment of rent;

(4) refusing to renew a tenancy for a fixed term for any period after the lease would otherwise terminate;

(5) terminating a periodic tenancy by giving the tenant the notice described in Section 801(b); or

1 (6) conduct prohibited under [the criminal code].

2 (c) A landlord is not liable for retaliation if:

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

6 (2) the tenant's conduct described in subsection (a) was in an unreasonable
7 manner or at an unreasonable time, or was repeated in a manner having the effect of harassing
8 the landlord;

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

11 (4) the tenant, an immediate family member, or another person on the premises
12 with the tenant's consent, other than the landlord or the landlord's agent, engaged in conduct that
13 presented a threat to the health or safety of another tenant on the premises;

14 (5) the tenant, an immediate family member, or another person on the premises
15 with the tenant's consent, other than the landlord or the landlord's agent, used the premises for
16 an illegal purpose;

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

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

1 **Comment**

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

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

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

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

10 (2) the court shall award the tenant [three] months' periodic rent or [triple] the
11 actual damages, whichever is greater.

12 (b) If the lease terminates under subsection (a), the landlord shall return to the tenant the
13 amount of any security deposit and unearned rent to which the tenant is entitled under Section
14 1204

15 (c) A tenant's exercise of a right under this section does not release the landlord from
16 liability under Section 501.

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

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

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

25 (c) If a presumption arises under subsection (a), the landlord may rebut the presumption

1 by a preponderance of evidence showing a nonretaliatory purpose arising at or a short time
2 before the landlord's conduct described in Section 901(b).

3 **Comment**

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

6
7 **ARTICLE 10**

8 **DISPOSITION OF PERSONAL PROPERTY**

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

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

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

13 (2) the landlord regains actual possession pursuant to a court order; or

14 (3) the tenant abandons the unit pursuant to Section 604.

15 (b) If personal property remains on the premises after possession of a dwelling unit has
16 been relinquished to the landlord, the landlord shall:

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

19 (2) store or leave the property in the unit or other place of safekeeping and
20 exercise reasonable care in moving or storing the property.

21 (c) The notice required under subsection (b) must:

22 (1) be posted at the dwelling unit and sent to either any forwarding address the
23 tenant provided to the landlord or the address provided by the tenant to the landlord pursuant to
24 Section 109(c);

25 (2) inform the tenant of the right to contact the landlord to claim the property

1 within the period specified in subsection (d), subject to the payment of the landlord's moving
2 and storage costs; and

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

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

9 (e) The landlord may require the tenant to pay the reasonable moving or storage costs
10 before retrieving the personal property.

11 (f) This section does not prohibit the landlord from immediately disposing of perishable
12 food, hazardous materials, and garbage, or turning over animals to an animal control officer,
13 humane society, or other individual or organization willing to care for the animals.

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

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

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

1 **Comment**

2
3 This section applies, for example, if a lease terminates early as the result of an act of
4 domestic violence. However, if there are co-tenants to the lease such that the lease does not
5 terminate then this section does not apply. In the latter case, control of the dwelling unit remains
6 with the other tenants; it does not belong to the landlord. Thus, if the tenant whose interest in the
7 lease is released leaves personal property at the dwelling unit, that tenant would need to contact
8 the remaining tenants to retrieve that property.
9

10 **SECTION 1002. DISPOSITION OF PERSONAL PROPERTY ON TENANT'S**
11 **DEATH.**

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

15 (b) If a landlord has terminated the lease pursuant to Section 802(c) because the landlord
16 has been unable to contact a tenant representative, the landlord:

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

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

20 (B) the [approximate] date of the deceased tenant's death;

21 (C) that the premises contained personal property that is subject to
22 disposal by the landlord if unclaimed by a personal representative, contact person, or heir of the
23 deceased tenant not later than [60] days after the notice was sent; and

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

26 (2) with the exercise of reasonable care, may inventory the personal property,
27 remove it from the dwelling unit, and store it in another place for safekeeping.

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

landlord not later than [60] days after the landlord sent the notice in subsection (b). Before retrieving the property, the tenant representative must pay the landlord's reasonable costs of inventorying, moving, and storing the property.

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

Comment

Subsection (a) permits a tenant's representative to exercise a deceased tenant's rights and responsibilities regarding removal of the deceased tenant's personal property from the premises. When a tenant who is the sole occupant of the dwelling unit dies, the tenant's representative or the landlord may elect to terminate the lease pursuant to Section 802. If that election is made and the dwelling unit is vacated, possession of the dwelling unit is relinquished to the landlord pursuant to Section 1001(a), triggering the provisions of that section governing the disposition of the deceased tenant's personal property. The tenant representative typically will be the personal representative of the deceased tenant's estate, but if no personal representative has been appointed, the tenant representative will be the contact person under Section 109 or, in the absence of a contact person, an heir of the deceased tenant under the state's intestate succession laws. See Section 102(39). In the latter case, the landlord has no obligation to identify all of the deceased tenant's heirs and may give possession to *any* individual the landlord knows to be an heir of the deceased tenant.

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

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

SECTION 1003. EXERCISE OF RIGHTS BY CONTACT PERSON.

(a) When a landlord learns of the death of a tenant who has designated a contact person under Section 109(b) and is the sole tenant under a lease at the time of death, and the landlord, on reasonable inquiry, has no knowledge that a personal representative has been appointed for

1 the deceased tenant's estate, the landlord:

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

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

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

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

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

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

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

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

20 **Comment**

21
22 The purpose of this section is to authorize a contact person to remove the tenant's
23 personal property and receive the return of the security deposit and unearned rent. Whether the
24 contact person is entitled to keep any of the tenant's personal property or security deposit will
25 depend on law other than this act.

1 **ARTICLE 11**

2 **EFFECT OF DOMESTIC VIOLENCE**

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

5 (a) Subject to subsection (e), if a victim of an act of domestic violence is a tenant or
6 immediate family member and has a reasonable fear of a further act of domestic violence by
7 continued residence in the dwelling unit, the tenant shall be released from the lease, without the
8 necessity of the landlord's consent, by giving the landlord a notice that complies with subsection
9 (b) and one of the following:

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

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

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

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

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

21 (2) states facts giving rise to the fear of an act of further domestic violence by
22 continued residence in the dwelling unit; and

23 (3) is given to the landlord

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

5 (i) the tenant learns that the perpetrator is no longer confined; or

6 (ii) the expiration of the court order.

7 (c) If a tenant is the only tenant who is a party to the lease:

8 (1) a release under subsection (a) terminates the lease on the date specified in the
9 notice described in subsection (b) and the tenant is not liable for rent accruing after the lease
10 terminates or other actual damages resulting from the termination of the lease; and

11 (2) the tenant remains liable to the landlord for rents and other amounts owed to
12 the landlord prior to the termination of the lease.

13 (d) If multiple tenants are parties to the lease:

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

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

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

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

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

Comment

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

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

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

SECTION 1102. LANDLORD'S OBLIGATIONS IN EVENT OF EARLY RELEASE OR TERMINATION. If a tenant is released from a lease under Section 1101, the landlord:

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

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

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

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

(2) the information is required to be disclosed by a court order or law of

1 this state other than this [act].

2 **SECTION 1103. VERIFICATION.**

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

5 (1) from the tenant:

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

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

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

10 (D) a statement that because of an act of domestic violence, the tenant or
11 an immediate family member has a reasonable fear that the tenant or the immediate family
12 member will suffer a further act of domestic violence by continued residence in the dwelling
13 unit;

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

16 (F) a statement that the tenant understands that the statements could be
17 used in court and that the tenant could be liable for perjury as well as the damages provided in
18 subsection (b) for making a verification that contains a representation of a material fact known
19 by the tenant to be false; and

20 (2) from an attesting third party:

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

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

1 regarding the act of domestic violence;

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

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

10 (b) If a tenant submits to the landlord a verification that contains a representation of a
11 material fact known by the tenant to be false, the court may award the landlord an amount up to
12 [three] months' periodic rent or [triple] actual damages, whichever is greater.

13 **Comment**

14
15 The following is an example of a verification that would comply with this section.

16 **Verification**

17
18 I, _____[insert name of tenant], state that:

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

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

27 (c) The most recent act of domestic violence occurred on _____
28 [insert date]; and

29 (d) The date in the notice accompanying this verification that I have specified as the date
30 on which I am released from the lease is less than 90 days after the date of the most recent act of
31 domestic violence.

32 I declare that the above statement is true and accurate to the best of my knowledge and
33 belief and that I understand it could be used as evidence in court“ I further understand that if I

1 submit to the landlord a verification that contains a representation of material fact known by me
2 to be false, I could be subject to a penalty for perjury and the landlord may recover from me the
3 greater of three months' rent or three times the landlord's actual damages."

4 _____
5 [Tenant's signature]

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

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

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

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

16 (d) I have read and reasonably believe the preceding statement recounting an act of
17 domestic violence and understand that the tenant who made the statement may use this document
18 as a ground for terminating the tenant's lease for the dwelling unit described in the preceding
19 statement.

20 _____
21 [Attesting third party's signature]
22

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

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

28 (b) A perpetrator is not entitled to damages resulting from a good faith exercise of a right
29 by a tenant under Section 1101 or by a landlord under this section.

30 **SECTION 1105. CHANGE OF LOCKS AS RESULT OF AN ACT OF**
31 **DOMESTIC VIOLENCE.**

32 (a) Subject to subsections (b) and (c), if a tenant or immediate family member has been
33 the victim of an act of domestic violence and the tenant has a reasonable fear that the perpetrator
34 or other person acting on the perpetrator's behalf may attempt to gain access to the dwelling unit,

1 the tenant may, without the landlord's consent, cause the locks or other security devices for the
2 dwelling unit to be changed or rekeyed by a [licensed][qualified] person in a professional manner
3 and shall give a key or other means of access to the new locks or security devices to the landlord
4 and any other tenant, other than the perpetrator, that is a party to the lease.

5 (b) If the locks or other security devices are changed or rekeyed under subsection (a)(1),
6 the landlord may change or rekey them a second time [, at the tenant's expense,] to ensure
7 compatibility with the landlord's master key or other means of access or otherwise accommodate
8 the landlord's reasonable commercial needs.

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

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

15 **Comment**

16
17 The tenant is not required to comply with Section 1101 to cause a change of the locks to
18 the dwelling unit.

19
20 When a perpetrator is a tenant under the lease, subsection (c) would permit a change of
21 locks only if a court has expressly ordered the perpetrator to vacate the residence.

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

29 30 **SECTION 1106. EFFECT OF COURT ORDER TO VACATE.**

31 (a) On issuance of a court order requiring a perpetrator to vacate a dwelling unit, other

1 than an ex parte order, neither the landlord nor tenant has a duty to:

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

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

5 (b) If a perpetrator is a party to the lease, then upon issuance of a court order requiring
6 the perpetrator to vacate the dwelling unit, other than an ex parte order, the perpetrator's interest
7 under the lease terminates and the landlord and any remaining tenants are entitled to any actual
8 damages from the perpetrator as a result of the termination.

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

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

15 **Comment**

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

25 26 **SECTION 1107. TERMINATION OF PERPETRATOR'S INTEREST UNDER** 27 **LEASE WITHOUT COURT ORDER.**

28 (a) A landlord may terminate the interest of a perpetrator who is a tenant under a lease by

1 giving the perpetrator notice in a record of the landlord's intent to terminate the perpetrator's
2 interest immediately or on a later date specified in the notice and specifying the act of domestic
3 violence for which the landlord is terminating the perpetrator's interest under the lease.

4 (b) If a perpetrator's interest under a lease is terminated by the landlord under this
5 section, any other tenant under the lease may recover actual damages from the perpetrator
6 resulting from the termination.

7 (c) Termination of a perpetrator's interest under a lease under this section does not
8 terminate the interest of another tenant under the lease or alter the obligations of another tenant
9 under the lease.

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

13 (e) In an action between a landlord and a perpetrator involving the right of the landlord to
14 terminate the perpetrator's interest under this section, the burden is on the landlord to prove by a
15 preponderance of the evidence that the perpetrator committed an act of domestic violence.

16 **Comment**

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

26
27 Under this section the landlord could terminate the perpetrator's interest as a tenant even
28 though there is no judicial determination that the perpetrator committed an act of domestic
29 violence. This is entirely consistent with the right of a landlord to terminate the interest of any
30 tenant who engages in other types of criminal activity on the premises in violation of Section 401

1 and Section 601, even though the tenant has not been found guilty of a crime. In either case, of
2 course, if the tenant refuses to surrender possession of the premises to the landlord upon
3 termination of the lease and the landlord sues for possession, the defendant (tenant) could claim a
4 wrongful termination claiming the tenant did not commit the acts as claimed by the landlord. In
5 this case, the landlord would have the burden to prove by a preponderance of the evidence that
6 the landlord had the right to terminate the tenancy. This means the landlord has the burden to
7 prove the defendant was a perpetrator or otherwise committed a criminal act in entitling the
8 landlord to terminate the lease.

9
10 **SECTION 1108. LIMITATIONS ON LANDLORD’S CONDUCT WITH**
11 **RESPECT TO VICTIMS OF AN ACT OF DOMESTIC VIOLENCE.**

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

14 (b) Except as provided in subsection (d), a landlord may not engage in conduct described
15 in subsection (c) when the landlord’s dominant purpose for engaging in the conduct is because:

16 (1) the tenant or an immediate family member is or has been the victim of an act
17 of domestic violence;

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

20 (3) a good faith complaint of activities relating to an act of domestic violence
21 against the tenant or an immediate family member resulted in a police or emergency response.

22 (c) The following conduct is prohibited under subsection (b):

23 (1) taking or threatening to take any of the actions in Section 901(b); or

24 (2) refusing or threatening to refuse to let a dwelling unit.

25 (d) A landlord may terminate the lease of a tenant if the landlord gave the tenant prior
26 notice in a record regarding a perpetrator’s commission of an act of domestic violence against
27 the tenant or an immediate family member, and subsequently:

28 (1) the tenant invites the perpetrator onto the premises or, without the landlord’s

1 permission, allows the perpetrator to occupy the dwelling unit; and

2 (2) the landlord can demonstrate that an actual or imminent threat could occur to
3 [other tenants on the premises or employees or agents of the landlord providing services on the
4 premises] [other individuals on the premises] if the lease is not terminated.

5 (e) If a landlord willfully violates subsection (b):

6 (1) the tenant may:

7 (A) terminate the lease; or

8 (B) defend an action for possession on the ground that the landlord
9 willfully has violated this section; or

10 (C) obtain appropriate injunctive relief; and

11 (2) the court shall award the tenant an amount equal to [three] months periodic
12 rent or [triple] damages, whichever is greater.
13
14
15

16 **ARTICLE 12**

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

18 **SECTION 1201. PAYMENTS REQUIRED AT THE COMMENCEMENT OF** 19 **LEASE.**

20 (a) Except as otherwise provided in subsections (b) and (c), a landlord may not require
21 the tenant to pay, at or before the commencement of the lease, more than [two] months of
22 periodic rent, including, in any combination, prepaid rent and a security deposit.

23 (b) Subsection (a) does not apply to the first month's rent, application fees, surety bonds,
24 insurance premiums, cleaning fees, or pet fees.

25 (c) If a lease is for a furnished dwelling unit or the tenant keeps pets in the premises or is
26 permitted by the lease to make alterations to the premises, the landlord may require the tenant to

1 pay an additional security deposit in an amount commensurate with the additional risk of damage
2 to the premises.

3 **Comment**

4
5 The intent of subsection (a) is to limit the payments that a landlord may require a tenant
6 to make at the beginning of the lease to the equivalent of the first and last month's rent plus a
7 one-month security deposit. The number of months is bracketed, however, to give legislatures
8 the option to choose a number appropriate for market conditions within their own states.
9

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

14 **SECTION 1202. LANDLORD, TENANT, AND THIRD PARTY INTERESTS IN** 15 **SECURITY DEPOSIT.**

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

17 (1) The landlord's interest in a tenant's security deposit is limited to a security
18 interest.

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

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

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

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

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

1 with the security deposits of other tenants in a bank account pursuant to Section 1203(a)(3).

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

4 (c) Unless a landlord and tenant otherwise agree [in a signed record], if a tenant fails to
5 pay rent when due and the landlord applies the whole or any portion of a security deposit toward
6 the payment of rent that is due, a court shall award the landlord an amount equal to the amount of
7 the security deposit applied and may award the landlord an additional amount up to [twice] the
8 periodic rent.

9 (d) Nothing in subsection (a)(3) abrogates generally applicable rules of law enabling a
10 person to whom funds have been paid to take the funds free of competing claims to the funds.

11 **Comment**

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

31
32 Subsection (b)(1) recognizes that a bank may impose upon a bank account the bank's
33 normal charges for maintenance of an account. The landlord would then have a duty to replenish
34 the account for those charges.

35
36 Under subsection (b)(3), the effect of commingling not permitted by this [act], as, for

1 example, when the landlord commingles the landlord's personal funds with the security deposit,
2 is governed by law other than this act.

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

11
12 Under subsection (d), whether a transferee of funds from a bank account maintained for
13 the purpose of holding security deposits takes the funds free from the tenant's interest is
14 governed by other law.

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

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

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

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

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

23 (2) shall notify in a signed record the bank that maintains the bank account that
24 the account is a special account for the purpose of holding security deposits; and

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

28 (b) If a landlord willfully fails to comply with subsection (a), the court shall award the
29 tenant actual damages or one month's periodic rent, whichever is greater.

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

1 (d) A bank holding funds pursuant to subsection (a) has no duty to ensure the proper
2 application of the funds.

3 **Comment**

4
5 Section 1203 introduces a new requirement that landlords segregate security deposits
6 from the landlord's other funds. Imposing the safekeeping requirements ensures that the funds
7 are available for return as required under various provisions in the act.
8

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

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

21 **SECTION 1204. RETURN OF SECURITY DEPOSIT AND UNEARNED RENT.**

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

25 (b) No later than [30] days after a lease terminates and the tenant vacates the premises,
26 the landlord shall make a good-faith determination of the amount to which the tenant is entitled
27 under subsection (a) and shall send that amount to the tenant or to a contact person designated
28 pursuant to Section 109, postage or cost of transmission provided for, to an address provided by
29 the tenant or, in the absence of that address, to the address specified in Section 109(b).

30 (c) If a landlord sends the tenant less than the entire amount of the security deposit and
31 unearned rent that the landlord received from the tenant, the landlord shall provide the tenant
32 with a record specifying the property damage or other unfulfilled obligations of the tenant to

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

2 (d) Regardless of whether a landlord complies with subsections (b) and (c), the tenant
3 may recover the difference between the amount to which a court determines that the tenant is
4 entitled under subsection (a) and the amount sent to the tenant or a contact person under
5 subsection (b).

6 (e) If a landlord fails to comply with subsection (b) or (c), a court may award, as a
7 penalty, an additional \$250 or [two] times the amount recoverable under subsection (d),
8 whichever is greater, provided the court may not award a penalty under this subsection if the
9 landlord's noncompliance with subsection (b) or (c) is limited to the landlord's failure to pay the
10 cost of postage or transmission or to use the proper address.

11 (f) Notwithstanding law of this state other than this [act], a security deposit or unearned
12 rent to which the tenant is entitled but is unclaimed by the tenant for more than [180] days after
13 the tenancy has ended, including the amount of any check that remains outstanding at the end of
14 the [180]-day period, is treated as unclaimed property under [cite to state unclaimed property
15 act]].

16 (g) If the amount of a security deposit and unearned rent that exceeds the amount that the
17 landlord is owed for unpaid rent under the lease is insufficient to reimburse the landlord for
18 damages from the tenant's noncompliance with the lease, the landlord may recover from the
19 tenant actual damages.

20 **Comment**

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

1 the tenant is entitled and subsection (e) would not apply.

2
3 The time frame set forth in subsection (f) may supersede the time limits for other forms
4 of unclaimed property provided in other law of the state.

5
6 **SECTION 1205. DISPOSITION OF SECURITY DEPOSIT AND UNEARNED**
7 **RENT UPON TERMINATION OF LANDLORD'S INTEREST IN PREMISES.**

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

12 (1) transfer to the person succeeding the landlord's interest in the premises any
13 security deposit and an amount equal to the unearned rent being held by the landlord and notify
14 the tenant in a record of the amount transferred to the successor and of any claims previously
15 made against the security deposits or unearned rent and of the successor's name and address; or

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

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

22 (c) Subject to subsection (d), the person succeeding to the landlord's interest in the
23 premises has all of the rights and obligations of a landlord under this [article] with respect to any
24 security deposits and unearned rent held by the predecessor landlord that has not been returned to
25 the tenant under subsection (a)(2), whether or not the security deposit and unearned rent were
26 sent to the successor.

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

Comment

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

ARTICLE 13

MISCELLANEOUS PROVISIONS

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

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

SECTION 1303. REPEALS. The following are repealed:

(a)

(b)

(c)

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