

DRAFT  
FOR DISCUSSION ONLY

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

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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For February 15-17, 2013 Drafting Committee Meeting

*Without Prefatory Note and With Comments*

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January 28, 2013

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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” or “abandons” means that a tenant has relinquished the right to  
8 possession of a dwelling unit with the intent to terminate a lease prior to the end of the lease  
9 term.

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

12                  (3) “Action” includes an action for possession, ejectment, quiet title, recoupment,  
13 counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

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

16                  (5) “Assignee” means, except for purposes of paragraph (20), the person to which an  
17 assignor has assigned the lease.

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

19                  (7) “Attesting third party” means a law enforcement official, a licensed health care  
20 professional, a victim’s advocate, or a victim services provider who has had contact with the  
21 tenant or an immediate family member who has been the victim of domestic violence, sexual  
22 assault, or stalking.

23                  (8) “Building, housing, and health codes” include any law, ordinance, or governmental  
24 regulation concerning fitness for habitation or the construction, maintenance, operation,

occupancy, use, or appearance of the premises.

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

(10) “Diminution in value of the dwelling unit” means

**Alternative A**

the amount of rent provided in the lease multiplied by the percentage by which the tenant’s use and occupation of the dwelling unit has been decreased because of its noncompliant condition as determined by a court without the use of expert testimony.

**Alternative B**

a reduction from the rent provided in the lease in an amount that reflects the extent to which the noncompliant condition of the premises impairs the tenant’s use and enjoyment of the dwelling unit as determined by the court without the use of expert testimony.

**End of Alternatives**

(11) “Domestic violence” means

**Alternative A**

domestic violence as defined by [insert reference to definition in other state law] committed by an individual who is:

**Alternative B**

the use or attempted use of physical force or the threatened use of physical force by an individual who is:

**Alternative C**

the use or attempted use of physical force or a pattern of abusive behavior, whether physical, sexual, emotional, economic, or psychological, committed by an individual who is:

(A) cohabiting or has cohabited with the tenant or an immediate family member as a spouse, domestic partner, child, parent, or guardian or an individual similarly situated to a

1 spouse, domestic partner, parent, or guardian,

2 (B) an individual with whom the tenant or an immediate family member shares a  
3 child in common; or

4 (C) a co-tenant.

5 **End of Alternatives**

6 (12) "Dwelling unit" means a building or the part of a building that is used as a home,  
7 residence, or sleeping place by an individual or by two or more individuals who maintain a  
8 common household regardless of their relationship to each other.

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

11 (14) "Essential services" means heat, hot and cold running water, plumbing, electricity,  
12 and gas. The term also includes air conditioning or other services if required to be supplied to the  
13 tenant by the lease or by law which, if not provided to the tenant, would create a serious threat to  
14 the health, safety, or property of the tenant or an immediate family member.

15 (15) "Fair rental value," in the case of a tenant who abandons the dwelling unit and in the  
16 absence of contrary evidence, means the amount of rent fixed in the lease between the landlord  
17 and the tenant and in all other cases

18 **Alternative A**

19 means the estimated rent that a willing tenant would pay and a willing landlord would accept if  
20 both parties were knowledgeable about the dwelling unit and the then-prevailing market  
21 conditions.

22 **Alternative B**

23 means rent comparable to the amount paid for other dwelling units of similar size and condition  
24 in the same or a comparable location.

1 **End of Alternatives**

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

4 (17) “Immediate family member” means any of the following individuals who habitually  
5 resides in the dwelling unit with the tenant:

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

8 (B) a cohabitant having an [intimate][romantic, dating, or sexual] relationship  
9 with the tenant; and

10 (C) a foster child, stepchild, or ward of the tenant or of another individual named  
11 in subparagraphs (A) or (B).

12 For purposes of Sections 508, 509, and 510, the term does not include a perpetrator.

13 (18) “Landlord” means the owner or lessor of a dwelling unit or the building of which it  
14 is a part, the landlord’s successor-in-interest, and the manager of the premises who fails to  
15 disclose as required by Section 301. Except for the duties imposed upon a landlord under  
16 Section 303, the term includes a sublessor.

17 (19) “Lease” means a contract between a landlord and a tenant under which the landlord  
18 rents to the tenant a dwelling unit for a tenancy for a fixed term or for a periodic tenancy.

19 (20) “Lien creditor” means:

20 (A) a creditor that has acquired a lien on the property involved by attachment,  
21 levy, or the like;

22 (B) an assignee for the benefit of creditors from the time of assignment;

23 (C) a trustee in bankruptcy from the date of the filing of the petition; or

24 (D) a receiver in equity from the time of appointment.

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

6           (22) “Owner” means one or more persons who jointly or severally are vested with:

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

8                   (B) all or part of the beneficial ownership and a right to present use and  
9 enjoyment of the premises, including a mortgagee in possession.

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

14          (24) “Periodic tenancy” means a tenancy created under a lease or arising by operation of  
15 law for a period of either month-to-month or week-to-week and continues until either the  
16 landlord or the tenant gives the other the written notice described in Section 701.

17          (25) “Perpetrator” means an individual who:

18                   (A) is inflicting or has inflicted domestic violence upon a tenant or an immediate  
19 family member;

20                   (B) has sexually assaulted a tenant or an immediate family member, or

21                   (D) is stalking or has stalked a tenant or an immediate family member.

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

1           (27) “Premises” means a dwelling unit and the building of which it is a part, including the  
2 facilities and appurtenances thereto and the grounds, areas, and facilities held out for the use of  
3 tenants generally or the use of which is promised to the tenant.

4           (28) “Prepaid rent” means rent paid by the tenant in advance of the date it is due under  
5 the lease.

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

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

10          (31) “Security deposit” means money or any other form of property given by a tenant to a  
11 landlord to secure the tenant’s obligations under the lease or pursuant to this [act] and includes  
12 damage deposits, key deposits, and pet deposits. [The term does not include prepaid rent or non-  
13 refundable fees.]

14          (32) “Security interest” means an interest in personal property which secures payment or  
15 performance by a tenant of an obligation under a lease or pursuant to this [act].

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

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

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

20               (B) to attach to or logically associate with the record an electronic symbol, sound,  
21 or process; or

22               (C) to send an electronic mail bearing the sender’s name or electronic mail  
23 address.

24          (35) “Stalking” means

1 **Alternative A**

2 stalking as defined in [insert reference to definition in other state law] directed at a tenant or an  
3 immediate family member.

4 **Alternative B**

5 a course of conduct directed at a tenant or an immediate family member which involves visual or  
6 physical proximity, nonconsensual communication, or oral, written, or implied threats, or a  
7 combination thereof, repeated on more than two occasions which would cause a reasonable  
8 individual fear of death or serious bodily harm.

9 **End of Alternatives**

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

13 (37) “Sublease” or “sublet” means a transfer of less than the balance of the term of a  
14 lease to a sublessee by a sublessor, or the creation of a co-tenancy between the sublessor and  
15 sublessee for any period of time during which both parties are entitled to be in possession of the  
16 dwelling unit.

17 (38) “Sublessee” means a person to whom a sublessor has subleased the dwelling unit.

18 (39) “Sublessor” means a person who subleases a dwelling unit to a sublessee.

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

21 (41) “Tenant” means a person entitled to possession of a dwelling unit under a lease. The  
22 term includes an assignee, sublessee, and, if the tenant is not an individual, an individual the  
23 tenant has authorized to occupy the dwelling unit.

24 (42) “Tenant representative” means the personal representative of a deceased tenant’s

1 estate or, prior to the appointment of a personal representative, the contact person, or, in the  
2 absence of a contact person, any individual known to the landlord who would be the tenant's heir  
3 under the intestate succession laws of this state.

4 (43) "Victim advocate" means an individual, whether paid or serving as a volunteer, who  
5 provides services to victims of domestic violence, sexual assault, stalking, or dating violence  
6 under the auspices or supervision of a victim services provider.

7 (44) "Victim services provider" means a person that assists victims of domestic violence,  
8 dating violence, sexual assault, or stalking, including a rape crisis center, domestic violence  
9 shelter, faith-based organization, or other organization with a documented history of effective  
10 work concerning domestic violence, dating violence, sexual assault, or stalking.

11 (45) "Written notice" means a notice given by the landlord to the tenant or the tenant to  
12 the landlord by a record signed by the landlord or the tenant and sent to the other at an address  
13 specified in Section 110(d).

#### 14 **Comment**

15 Certain remedies become available to a tenant under Sections 501, 504, and 507 if the  
16 landlord fails to provide the tenant with essential services. Essential services, however, are not  
17 coextensive with the services and other obligations a landlord must provide to discharge the  
18 landlord's duties under Section 303.

19  
20 The definition of "abandonment" is broadly written to include any situation in which the  
21 tenant relinquishes the right to possession with intent to terminate the lease before the end of the  
22 term. Section 604(a)(2) identifies specific circumstances in which the court may presume that  
23 the tenant has abandoned the lease.

24  
25 The definitions of rent, prepaid rent, and security deposit have been included or updated  
26 from the 1972 act to reflect important distinctions in how these payments are handled under  
27 Article 9.

28  
29 The definition of "diminution in value of the dwelling unit" includes a provision that  
30 allows the court to make the determination without the use of expert testimony. In so doing the  
31 court may consider such factors as the nature and duration of the defect, the proportion of the  
32 dwelling unit that is affected, the value of services to which the tenant was deprived, the degree  
33 of discomfort imposed by the defect, and the effectiveness of the landlord's remediation efforts.

1  
2 The definition of “sublease” includes both the traditional definition of that term as well as  
3 a transfer of the entire balance of the lease term where the sublessor is also entitled to possession  
4 of the dwelling unit. For example, if landlord leases an apartment to a college student who in  
5 turn relets to another college student for the duration of the original term and both students are  
6 entitled to live in the dwelling unit, the re-letting is characterized as a sublease, not an  
7 assignment, even though it is for the duration of the original term.  
8

9 The definition of “tenant” is drafted to take into account that some leases are entered into by  
10 business entities for their employees or by a trust on behalf of a beneficiary. For example, an  
11 LLC might rent an apartment for a member or a manager. Both the LLC and the member or  
12 manager are tenants, the latter because the member or manager has been authorized to occupy  
13 the dwelling unit by the LLC, the former because it is legally entitled to possession under the  
14 lease.  
15

### 16 **SECTION 103. SCOPE.**

17 (a) This [act] applies to, regulates, and determines rights, obligations, and remedies under  
18 a lease for a dwelling unit in this state.

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

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

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

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

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

28 (5) transient occupancy in a hotel or motel [or lodgings [subject to cite state  
29 transient lodgings or room occupancy excise tax act]];

30 (6) occupancy by an employee of a landlord when the employee’s right to  
31 occupancy is conditional upon employment in and about the premises;

- (7) occupancy by a holder of a proprietary lease in a cooperative; and
- (8) occupancy under a lease covering premises used by the occupant for agricultural purposes.

#### **Comment**

Subsection (b)(2) has been modified from the 1972 act, which excluded all University-owned housing. Under this act, only traditional university dormitory housing is excluded from the scope of this act. Rentals of university-owned apartments are now subject to the act. A dormitory is a building with private or semi-private rooms with bathroom facilities in the rooms or in common areas but excluding kitchen facilities in the rented rooms.

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

**SECTION 104. COMMON LAW AND PRINCIPLES OF EQUITY.** Unless displaced by this [act], the principles of law and equity supplement this [act].

#### **Comment**

In light of this section, contract principles apply to the construction and interpretation of leases, including provisions relating to mutuality or dependency of lease covenants. By construing leases as contracts, for example, performance of promises the landlord and tenant make to each other are dependent upon the other. Thus, the tenant's promise to pay rent is conditioned upon (dependent upon) the landlord's provision of essential services and compliance with Section 303.

**SECTION 105. CONSTRUCTION AGAINST IMPLICIT REPEAL.** Because this [act] is a general act intended as a unified coverage of its subject matter, no part of it may be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

**SECTION 106. ADMINISTRATION OF REMEDIES; ENFORCEMENT; DUTY TO MITIGATE.**

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

(b) Any right or obligation declared by this [act] is enforceable by action unless the provision creating it provides to the contrary.

(c) An aggrieved party has a duty to mitigate damages.

#### **Comment**

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

#### **[SECTION 107. SETTLEMENT OF DISPUTED CLAIM OR RIGHT.**

**[QUESTION FOR COMMITTEE: Is this section necessary?]** A claim or right arising under this [act] or a lease, if disputed in good faith, may be settled by agreement.]

**SECTION 108. OBLIGATION OF GOOD FAITH.** Every duty under this [act] and every act which must be performed as a condition precedent to the exercise of a right or remedy under this [act] imposes an obligation of good faith in its performance or enforcement.

#### **SECTION 109 UNCONSCIONABILITY.**

(a) If a court, as a matter of law, finds:

(1) a lease or any provision thereof was unconscionable when made, the court may refuse to enforce the lease, enforce the remainder of the lease without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

(2) a settlement 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 settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(b) If a party or the court upon its own motion puts unconscionability into issue, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose,

and effect of the lease or the settlement to aid the court in making the determination.

## **SECTION 110. KNOWLEDGE AND NOTICE.**

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

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

(1) knows of it;

(2) has received a notification of it; or

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

(c) Except as otherwise provided in this [act], a person notifies or sends notice to another person by taking steps reasonably calculated to inform the other person in ordinary course, whether or not the other person learns of it.

(d) A person receives notification when the notification:

(1) comes to the person's attention;

(2) in the case of a landlord, is sent in a record by the tenant to the landlord [or another person designated by the landlord] either by hand delivery or addressed to the post office address or electronic mail address the landlord designates or, in the absence of such designation, is delivered to the landlord by any other method reasonably calculated to provide notice to the landlord; and

(3) in the case of a tenant, is sent in a record by the landlord to the tenant either by hand delivery or addressed to the post office address or electronic mail address the tenant designates, or, in the absence of such designation is delivered to the tenant by any other method reasonably calculated to provide notice to the tenant.

**[SECTION 111. JURISDICTION AND VENUE.** The [ ] court of this state may exercise jurisdiction over any landlord [or tenant] with respect to any conduct in this state

governed by this [act] or with respect to any claim arising from a transaction subject to this [act].  
Such actions shall be brought in the [ ] court in the [county] in which the dwelling unit  
subject to the action is located].]

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

## ARTICLE 2

### GENERAL PROVISIONS APPLICABLE TO LEASES

#### SECTION 201. TERMS AND CONDITIONS OF LEASES.

(a) A landlord and a tenant may include in a lease terms and conditions not prohibited by this [act] or other law.

(b) Unless the lease otherwise provides:

(1) the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit; and

(2) rent is:

(A) payable without demand or notice at the address or place the landlord designates in Section 301(b)(3) or at the landlord's place of business when the lease was made if no designation has been made and on the first of each month or at the beginning of the term if the term is less than one month; and

(B) uniformly apportioned from day-to-day.

(c) Except as otherwise provided in Section 202, unless the lease creates a tenancy for a fixed term, the tenancy is a periodic tenancy for week-to-week in the case of a tenant who pays rent weekly and in all other cases, a periodic tenancy for month-to-month.

#### Comment

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

1 less common week-to-week.

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

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

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

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

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

20 **SECTION 203. PROHIBITED PROVISIONS IN A LEASE.**

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

22 (1) agrees to waive or forego rights or remedies under this [act];

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

24 (3) will perform any of the duties imposed upon the landlord by Section 303;

25 (4) agrees to pay the landlord's attorney's fees; or

1 (5) agrees to the exculpation or limitation of any liability of the landlord arising  
2 under law or to indemnify the landlord for that liability or the costs connected therewith.

3 (b) A provision in a lease that is prohibited by subsection (a) or by law other than this  
4 [act] is unenforceable. If a landlord deliberately [willfully] uses a lease containing a provision  
5 known by the landlord to be prohibited, the tenant may recover, in addition to any actual  
6 damages, an amount up to [three] month's periodic rent[, costs, and reasonable attorney's fees].

7 **Comment**

8 The duty to mitigate is one of the rights and remedies that may not be waived under  
9 subsection (a).  
10

11 **SECTION 204. SEPARATION OF RENTS FROM THE OBLIGATION TO**  
12 **MAINTAIN PREMISES.** A lease, assignment, conveyance, trust deed, or security instrument  
13 may not permit the receipt of rent free of the obligation to comply with the landlord's obligations  
14 to maintain the premises as provided in Section 303 or other law.

15 **Comment**

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

19 **ARTICLE 3**

20 **LANDLORD OBLIGATIONS**

21 **SECTION 301. REQUIRED DISCLOSURES.**

22 (a) Prior to accepting any security deposit or entering into a lease, the prospective  
23 landlord shall disclose to the prospective tenant in a record the following information:

24 (1) all rules, regulations, and conditions of the landlord which would govern the  
25 tenancy;

26 (2) any conditions of the premises which would cause a landlord to be in breach  
27 of a duty owed to a tenant under Section 303 and of which the landlord knows or, based upon a

1 reasonable inspection, should have known; and

2 (3) whether the premises are in foreclosure or the landlord is in default on any  
3 mortgage or other debt that could result in foreclosure.

4 (b) At or before the commencement of a tenancy, the landlord or any person authorized to  
5 enter into a lease on the landlord's behalf must disclose to the tenant in a record:

6 (1) the name and post office and electronic mail address of:

7 (A) the landlord;

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

9 (C) an owner of the premises or a person authorized to act for and on  
10 behalf of the owner for the purpose of service of process and receiving notices and demands;

11 (2) if different from the foregoing addresses, the post office address or electronic  
12 mail address to which notices and demands upon the landlord must be sent; and

13 (3) the address or place to which rent must be delivered by the tenant.

14 (c) The information required to be given to the tenant by this section must be kept  
15 current. The duties imposed by this section extend to and are enforceable against any successor  
16 landlord, owner, or manager.

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

19 (1) service of process and receiving and receipting for notices and demands; and

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

## 21 **Comment**

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

25  
26 Subsection (a) imposes upon the landlord a duty to inform the tenant of any conditions

1 that would make the premises uninhabitable or present an unreasonable risk of harm. These  
2 conditions would include the standards for uninhabitability enumerated in Section 303 as well as  
3 additional hazards.

4  
5 **SECTION 302. DELIVERY OF POSSESSION OF DWELLING UNIT TO**  
6 **TENANT.**

7 (a) At the commencement of the term:

8 (1) the landlord must deliver actual possession of the premises to the tenant; and

9 (2) the landlord must comply with all duties imposed upon the landlord by the  
10 lease or Section 303.

11 (b) The landlord may bring an action for possession against any person wrongfully in  
12 possession and may recover the damages provided in Section 702.

13 **SECTION 303. LANDLORD'S DUTY TO MAINTAIN.**

14 (a) A landlord has the duty to make all repairs and to do or to refrain from doing  
15 whatever is necessary to assure that the premises are maintained in a habitable condition. For  
16 purposes of this subsection, the duty to maintain is breached if the landlord fails to assure the  
17 premises:

18 (1) comply with applicable building, housing, and health codes to the extent the  
19 failures substantially affect the health and safety of the tenant or an immediate family member;

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

22 (3) have plumbing facilities that conform to applicable law that are maintained in  
23 good working order;

24 (4) have access to a water supply approved under applicable law that is capable of  
25 producing hot and cold running water and is connected to a sewage disposal system approved  
26 under applicable law;

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

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

5 (7) are free of rodents, bedbugs, other vermin, mold, radon, asbestos, or other  
6 hazardous substances;

7 (8) to the extent they include common areas and other areas under the landlord's  
8 control, have such areas safe for normal and reasonably foreseeable uses and have such areas  
9 clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, and the defects  
10 listed in paragraph (7);

11 (9) have an adequate number of appropriate receptacles for garbage and rubbish in  
12 clean condition;

13 (10) have floors, walls, ceilings, stairways, and railings in good repair;

14 (11) have ventilation, and if supplied or required to be supplied by the landlord,  
15 air conditioning and other facilities and appliances, including elevators, that are in good repair;

16 (12) have locks on all exterior doors of both the dwelling unit and the premises  
17 and locks or security devices on exterior windows of the dwelling unit and the premises which  
18 are in good repair; and

19 (13) have safety equipment required by applicable law.

20 (b) The landlord and the tenant may enter into a separate contract in which the tenant  
21 agrees to perform one or more of the duties imposed upon the landlord by Section 303(a),  
22 provided that:

23 (1) Consideration for the contract must be based upon the value of the services  
24 provided by the tenant and not based upon any reduction in the amount or percentage of

1 the rent payable under their lease.

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

3 (A) discharge the landlord from the performance of those duties,

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

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

7 (c) Nothing in this section shall be construed as abrogating, limiting, or otherwise  
8 affecting the obligation of a tenant to pay for any utility service in accordance with the lease.

9 **Comment**

10 Consistent with the practice of nearly every state, this section recognizes that modern  
11 urban conditions require the proper maintenance and operation of rental housing. This section  
12 imposes certain minimum duties of repair and maintenance upon landlords consistent with  
13 prevailing public standards. Section 401 imposes corresponding duties of cleanliness and proper  
14 use within the dwelling unit upon the tenant. These obligations may not be waived (see Section  
15 203(a)), but subsection (b) permits the landlord and tenant to agree, by separate contract, that the  
16 tenant may perform repairs or maintenance provided that the consideration for the contract is not  
17 tied to the tenant's rent and the tenant's failure to perform under the contract does not discharge  
18 the landlord's duties under Section 303.

19  
20 **SECTION 304. LIMITATIONS ON LANDLORD'S LIABILITY.**

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

26 (b) Unless the landlord and the tenant otherwise agree or as otherwise provided in Section  
27 905, the landlord remains liable to the tenant for all security deposits and prepaid rent  
28 recoverable by the tenant under Section 904.

29 (c) Unless the landlord and the tenant otherwise agree, a manager of the premises is

1 relieved of liability under the lease and this [act] as to all events occurring after the later of the  
2 notice to the tenant of the termination of the manager's management authority or the termination  
3 of the manager's management authority.

#### 4 **Comment**

5 The effect of Section 304(a), which appeared in the 1972 act, is to sever both privity of  
6 contract and privity of estate between the assigning landlord and the tenant. The provisions of  
7 Section 1102 of this act provide somewhat parallel effects for the tenant who assigns and in  
8 certain cases subleases the lease.

### 10 **ARTICLE 4**

#### 11 **TENANT OBLIGATIONS**

##### 12 **SECTION 401. TENANT'S DUTY TO MAINTAIN.** A tenant shall:

13 (1) comply with all obligations imposed upon tenants by applicable provisions of  
14 building, housing, and health codes substantially affecting health and safety;

15 (2) except as otherwise provided in this [act], by other law, or the lease, keep the  
16 dwelling unit as safe and sanitary as the conditions of the dwelling unit permit;

17 (3) dispose from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean  
18 and safe manner;

19 (4) keep all plumbing fixtures in the dwelling unit or used by the tenant [as] clean [as  
20 their condition permits];

21 (5) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-  
22 conditioning, and other facilities and appliances, including elevators in the premises;

23 (6) in the absence of the landlord's consent, refrain from an act that would destroy,  
24 deface, damage, impair, or remove any part of the premises or permit any other person on the  
25 premises with the tenant's permission to do the same;

26 (7) act and require other persons on the premises with the tenant's consent to act in a

1 manner that will not disturb the neighbors' use and enjoyment of the premises;

2 (8) notify the landlord within a reasonable time of any conditions on the premises that  
3 require repair or remediation by the landlord under Section 303; and

4 (9) return the dwelling unit to the landlord at the termination of the lease in the same  
5 condition as it was at the commencement of the tenancy, normal wear and tear and acts of God  
6 excepted.

#### 7 **Comment**

8 Subsections (2) and (4) recognize that in some cases, noncompliant conditions are  
9 beyond the tenant's control.

#### 10 **[SECTION 402. LANDLORD'S RULES AND REGULATIONS.]**

#### 11 **[QUESTION FOR COMMITTEE: Is this section still necessary?]**

12 (a) A landlord from time to time may adopt a rule or regulation, however described,  
13 concerning the tenant's use and occupancy of the premises, but the rule or regulation is  
14 enforceable against the tenant only if:

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

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

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

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

22 (5) it is not for the purpose of evading the landlord's obligations under the lease  
23 or this [act]; and

24 (6) the tenant receives notice of it at the time the tenant enters into the lease or  
25

1 after it is adopted.

2 (b) If a rule or regulation is adopted after the tenant enters into the lease that works a  
3 substantial modification of the tenant's bargain, it is not enforceable against the tenant unless the  
4 tenant consents to it in a record signed by the tenant.]

5 **SECTION 403. LANDLORD'S ACCESS TO DWELLING UNIT.**

6 (a) A tenant may not unreasonably withhold consent to the landlord to enter into the  
7 dwelling unit to inspect it, make necessary or agreed upon repairs, alterations, or improvements,  
8 supply necessary or agreed upon services, or exhibit the dwelling unit to prospective or actual  
9 purchasers, mortgagees, tenants, workmen, or contractors.

10 (b) A landlord may enter the dwelling unit without the tenant's consent in case of  
11 emergency.

12 (c) A landlord may not abuse the right to access the tenant's dwelling unit or use that  
13 right to harass the tenant. The landlord may enter the dwelling unit only at reasonable times and  
14 shall provide advance notice to the tenant of the landlord's intent to enter as follows:

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

19 (2) In the case of an emergency, when maintenance or repairs are being made at  
20 the tenant's request, or it is otherwise impracticable to give [one] day's [record] notice, the  
21 landlord shall give notice that is reasonable under the circumstances. If the landlord has entered  
22 when the tenant is not present and prior [record] notice has not been given, the landlord shall  
23 [place a record of the entry in a conspicuous place in the dwelling unit] [give the tenant notice  
24 within [24 hours] after the entry] indicating the fact of the entry, the date and time of the entry,

1 the nature of the emergency, if applicable, and the names of the persons who entered.

2 (d) A landlord has no other right of access unless:

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

4 (2) pursuant to a court order;

5 (3) permitted by Section 601; or

6 (4) the tenant has abandoned the dwelling unit.

7 **SECTION 404. TENANT TO USE AND OCCUPY.**

8 **[QUESTION FOR COMMITTEE: Is the second sentence of this section still**  
9 **necessary?]** Unless the landlord and the tenant otherwise agree, a tenant shall occupy the  
10 dwelling unit only as a dwelling unit. [The lease may require that the tenant notify the landlord  
11 of any anticipated extended absence from the dwelling unit [in excess of [seven] days] not later  
12 than the first day of the extended absence.]

13 **Comment**

14 This provision leaves to judicial determination whether the incidental use of a dwelling  
15 unit for business, professional, or other purposes would constitute a use for other than a dwelling  
16 unit. See 1 A.L.R. 6<sup>th</sup> 135 (2005)(collecting and analyzing cases).

17  
18 **ARTICLE 5**

19 **TENANT REMEDIES**

20 **SECTION 501. NONCOMPLIANCE BY LANDLORD—IN GENERAL.**

21 (a) Except as otherwise provided in this [act], if there is a noncompliance by the landlord  
22 with the lease or Section 303, the tenant shall give the landlord notice and an opportunity to  
23 correct the noncompliance. Notice may take any form permitted by Section 110(c) or (d), except  
24 that the landlord must receive written notice before the tenant may terminate a lease pursuant to  
25 subsection (c)(1).

26 (b) Except as otherwise provided in subparagraphs (1) and (2), the landlord has [14] days

1 from the date the notice is sent to remedy the noncompliance, provided that:

2 (1) if the noncompliance poses an imminent threat to the health or safety of the  
3 tenant or other occupants, the tenant may take action to remedy the noncompliance as promptly  
4 as the conditions require; and

5 (2) if the noncompliance involves a deprivation of essential services by the  
6 landlord that does not pose an imminent threat to the health or safety of the tenant or other  
7 occupants of the dwelling unit, the landlord must remedy the noncompliance within [5] days  
8 from the date of the notice.

9 (c) If the landlord's noncompliance with the lease or with Section 303(a) substantially  
10 interferes with the tenant's use and enjoyment of the premises and is not remedied during the  
11 time period in subsection (a), the tenant may elect to:

12 (1) terminate the lease;

13 (2) abate the rent for the period of the noncompliance subject to the terms of  
14 Section 505;

15 (3) recover damages based upon the diminution in value of the dwelling unit or  
16 other actual damages;

17 (4) seek injunctive relief or specific performance;

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

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

21 (d) If the landlord's noncompliance with the lease or with Section 303(a) does not  
22 substantially interfere with the tenant's use and enjoyment of the premises, the tenant's remedies  
23 are limited to those provided in subsection (c)(3), (4), and (5).

24 [(e) In addition to the remedies provided in subsection (c) or (d), if the landlord's

1 noncompliance is willful, the tenant may recover costs and reasonable attorney's fees.]

2 (f) A tenant may not seek remedies under this section to the extent:

3 (1) the noncompliance was caused by the act or omission of the tenant or an  
4 immediate family member or a person on the premises with the tenant's consent; or

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

7 (g) If the lease is terminated, the landlord shall return all security deposits and prepaid  
8 rent recoverable by the tenant under Section 904.

### 9 **Comment**

10 This section has been modified from the 1972 act to clarify the remedies available to a  
11 tenant for a landlord's noncompliance with the warranty provisions in Section 303 or under the  
12 lease. Of particular importance is the measurement of damages a tenant may recover if the tenant  
13 has occupied the dwelling unit in a noncompliant condition or, relatedly, the amount of rent that  
14 may be abated under Section 505. There has been considerable variation in how states have  
15 approached the issue, but most have adopted, by statute or common law, one of three models of  
16 calculation:

17  
18 • The difference between the fair rental value of the property if it had been as warranted  
19 versus the fair rental value in its actual, defective condition ("as is").

20  
21 • The difference between the contract rent and the fair rental value in its actual, defective  
22 condition ("as is").

23  
24 • A reduction in the contract rent by a percentage corresponding to the relative reduction  
25 in the use/habitability of the leased premises in its actual, defective condition.

26  
27 The difficulty presented by the first two models is determining the fair rental value of the  
28 property. To the extent that the approaches would require expert testimony of market rental  
29 values, litigation of the issue would be both cost-prohibitive for most tenants and unduly time-  
30 consuming for courts. Accordingly, this act eliminates any reference to "fair rental value" in  
31 describing the tenant's remedy. Instead, it defines "diminution in value" in Section 101(10) as  
32 [INSERT DEFINITION HERE] and expressly states that the value may be determined without  
33 expert testimony.

34  
35 Claims arising under this section, if disputed in good faith may be settled by agreement  
36 (see Section 107). However, a prior settlement will not prevent a termination under Section 501.

37  
38 The availability of injunctive relief is determined by usual principles of equity. See

1 Section 104.

2  
3 Remedies available to the tenant pursuant to Section 501 are not exclusive (see Section  
4 104). [Thus, to the extent permitted by state law, tort remedies also may be available.] A duty to  
5 mitigate damages exists under Section 106.

6  
7 If there is a substantial noncompliance by the landlord with the lease or Section 303(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 substantial noncompliance in providing essential services. Not all services or  
11 obligations of the landlord described in Section 303(a) are "essential services." See Section  
12 101(14).

13  
14 **SECTION 502. LANDLORD'S FAILURE TO DELIVER POSSESSION TO**  
15 **TENANT.**

16 (a) Except as otherwise provided in subsection (c), if the landlord fails to deliver actual  
17 possession of the dwelling unit to the tenant as provided in Section 302, rent abates until  
18 possession is delivered and the tenant may:

19 (1) terminate the lease with at least [five] days' written notice to the landlord and  
20 upon termination the landlord shall return all security deposits and prepaid rent; or

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

24 (b) If the landlord's failure to deliver possession is willful and not in good faith, the  
25 tenant may recover from the landlord an amount not more than [three] months' periodic rent or  
26 [triple] the actual damages, whichever is greater[, and costs and reasonable attorney's fees].

27 (c) If the tenant elects under subsection (a)(2) to obtain possession from a person who is  
28 wrongfully in possession, the tenant remains liable to the landlord for rent and may recover from  
29 the person wrongfully in possession the damages provided in Section 702.

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1 preceding year the tenant never used this remedy. If over that period the tenant has previously  
2 used the remedy to the extent of \$400, the tenant would only be able to recoup \$100 of the cost  
3 of the current \$300 repair.]

4  
5 **SECTION 504. LANDLORD’S WRONGFUL FAILURE TO PROVIDE**  
6 **ESSENTIAL SERVICES.**

7 (a) If contrary to the terms of the lease or Section 303, the landlord willfully or  
8 negligently fails to supply essential services, the tenant may give notice to the landlord pursuant  
9 to Section 501(a) specifying the failure and, if the landlord fails to comply within the time period  
10 specified in Section 501(a)(2), may:

11 (1) take reasonable and appropriate measures to secure reasonable amounts of  
12 essential services during the period of the landlord’s noncompliance and deduct their actual and  
13 reasonable cost from the rent; or

14 (2) procure comparable substitute housing during the period of the landlord’s  
15 noncompliance, in which case the tenant is excused from paying rent for the period of the  
16 landlord’s noncompliance and may recover the difference between the rent provided in the lease  
17 and the actual and reasonable cost of the substitute housing[ and costs and reasonable attorney’s  
18 fees].

19 (b) Rights of the tenant under this section do not arise if the condition was caused by the  
20 act or omission of the tenant, an immediate family member, or other person on the premises with  
21 the tenant’s consent.

22 **SECTION 505. LANDLORD’S NONCOMPLIANCE AS DEFENSE TO ACTION**  
23 **FOR NONPAYMENT OF RENT.**

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

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

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

10 (d) If the tenant fails to place the rent in escrow as ordered by the court, the court shall  
11 enter a judgment of possession in favor of the landlord.

12 (e) If rent has been paid into escrow under subsection (b),

13 (1) if the court determines that the landlord's noncompliance with Section 303 or  
14 the lease substantially interferes with the tenant's use and enjoyment of the premises, the court  
15 may order that:

16 (A) all or some portion of rents held in escrow be released for the purpose  
17 of bringing the premises into compliance with the lease or Section 303;

18 (B) all or some portion of the rents held in escrow be refunded to the  
19 tenant for:

20 (i) any repairs made by the tenant in compliance with Section 503;  
21 (ii) damages based upon the diminution in value of the dwelling  
22 unit; or

23 (iii) other actual damages;

24 (C) the tenant continue to pay rent into escrow as rent becomes due or

1 abate future rent until the landlord brings the premises into compliance with the lease or Section  
2 303; or

3 (D) any rents held in escrow not otherwise payable to the tenant and any  
4 other amounts the court determines the tenant owes the landlord be paid to the landlord; or

5 (2) if the court determines that the landlord fully complied with the lease and  
6 Section 303, the court shall order the immediate release of any rent held in escrow to the landlord  
7 and direct the tenant to pay the landlord any remaining rent owed.

8 [(f) If the court determines the defense or [counterclaim] by the tenant was without merit  
9 and was not raised in good faith, the landlord may recover costs and reasonable attorney's fees in  
10 addition to any other relief to which the landlord is entitled. For this purpose, if the tenant's  
11 defense or [counterclaim] was raised upon advice of the tenant's counsel, the defense or  
12 [counterclaim] is presumed to have been raised in good faith.]

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

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

17 (1) the tenant may immediately vacate the dwelling unit and give the landlord  
18 written notice within [14] days thereafter of the tenant's intention to terminate the lease, in which  
19 case the lease terminates as of the date the tenant vacates;

20 (2) the landlord may give the tenant [30] days' written notice of the landlord's  
21 intention to terminate the lease, in which case the lease terminates as of the expiration of the  
22 notice period; or

23 (3) if continued occupancy is lawful, the tenant may vacate any part of the  
24 dwelling unit rendered unusable by the fire or other casualty, in which case the tenant's liability

1 for rent is reduced by the diminution in value of the dwelling unit.

2 (b) If the lease is terminated, the landlord shall return the tenant's security deposit and  
3 prepaid rent recoverable under Section 904. Accounting for rent in the event of termination or  
4 apportionment shall be made as of the date of the fire or other casualty.

5 **SECTION 507. TENANT'S REMEDIES FOR LANDLORD'S UNLAWFUL**  
6 **OUSTER, EXCLUSION, OR DIMINUTION OF ESSENTIAL SERVICES.** If a landlord  
7 unlawfully removes or excludes the tenant from the premises or attempts to constructively evict  
8 the tenant by willfully interrupting or causing the interruption of essential services to the tenant,  
9 the tenant may recover possession or terminate the lease and, in either case, recover an amount  
10 not more than [three] months' periodic rent or [triple] the actual damages, whichever is greater[,  
11 costs, and reasonable attorney's fees]. If the lease terminates, the landlord shall return the  
12 tenant's security deposit and prepaid rent recoverable under Section 904.

13 **SECTION 508. EARLY TERMINATION OF LEASE BY TENANT AS THE**  
14 **RESULT OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.**

15 (a) A tenant may be released from the lease at any time if the tenant or an immediate  
16 family member becomes the victim of domestic violence, sexual assault, or stalking, any act of  
17 which occurred within [90] days immediately preceding the notice described in paragraph (1) of  
18 this subsection which creates a reasonable fear that the tenant or an immediate family member  
19 will suffer serious bodily harm or death by continued residence in the dwelling unit, and the  
20 tenant gives the landlord:

21 (1) written notice specifying facts giving rise to the fear and of the tenant's intent  
22 to be released from the lease at least [14] days before the release date specified in the notice; and

23 (2) one of the following documents:

24 (A) a copy of a valid outstanding temporary or permanent order of a court

1 of any state that restrains a perpetrator from contact with the tenant or an immediate family  
2 member;

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

5 (C) a verification in a record signed by the tenant and an attesting third  
6 party that complies with Section 508(h).

7 (b) If the tenant is the only tenant who is a party to the lease, a release terminates the  
8 lease on the date specified in the written notice described in subsection (a)(1) and neither the  
9 tenant nor an immediate family member is liable for rent accruing thereafter.

10 (c) Except as provided in subsection (e), if there are multiple tenants who are parties to  
11 the lease, the release of one tenant under this section does not terminate the lease with respect to  
12 other tenants who are parties to the lease. The tenant who is released from the lease is not liable  
13 for rent accruing after the tenant is released from the lease. The landlord is not required to return  
14 the tenants' security deposits or prepaid rents under Section 904 until the lease terminates with  
15 respect to all tenants.

16 (d) If a tenant complies with this section, the landlord shall:

17 (1) except as otherwise provided in subsection (c), following the tenant's vacation  
18 of the dwelling unit, return the tenant's security deposit and prepaid rent recoverable by the  
19 tenant under Section 904;

20 (2) not assess any fee against a tenant solely for exercising any right granted  
21 under this section; and

22 (3) not disclose any information required to be reported to the landlord under this  
23 section unless:

1 **Alternative A**

2 (A) the tenant consents to the disclosure in a record signed by the tenant  
3 within 15 days prior to the disclosure of the information

4 **Alternative B**

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

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

9 **End of Alternatives**

10 (e) The landlord may recover from the perpetrator actual damages resulting from the  
11 tenant's exercise of a right under this section and, if the perpetrator is a party to the lease, may:

12 (1) except as otherwise provided in Section 510(b), allow the perpetrator to  
13 remain in possession of the dwelling unit and hold the perpetrator liable on the lease for all  
14 future rents payable thereunder; or

15 (2) terminate the perpetrator's interest under the lease by giving the perpetrator  
16 written notice at least [5] days before the termination date specified in the notice and bring an  
17 action for possession against the perpetrator if the perpetrator fails to vacate the dwelling unit on  
18 the specified termination date.

19 (f) If a tenant knowingly submits a false verification to the landlord in support of the right  
20 to be released from the lease, the landlord may recover an amount equal to [3] months' periodic  
21 rent or [triple] actual damages, whichever is greater[, costs, and reasonable attorney's fees].

22 (g) The perpetrator is not entitled to any damages or other relief against a landlord or the  
23 tenant that complies in good faith with this section.

24 (h) A verification provided by the tenant under subsection (a)(2)(D) must include, the

1 following:

2 (1) to the best knowledge and belief of the tenant,

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

4 (B) the time period during which the domestic violence, sexual assault, or  
5 stalking described in subsection (a) occurred with approximate dates as to when it occurred;

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

8 (D) the proposed date for the termination of the lease if the tenant is the  
9 only tenant to the lease, or if the tenant is one of multiple tenants to the lease, the proposed date  
10 the tenant will be released from the lease which date is no more than 90 days from the date of the  
11 most recent act of domestic violence, sexual assault, or stalking described in subparagraph (C);

12 and

13 (E) the tenant's acknowledgment that the statements in the verification are  
14 true and accurate to the best of the tenant's knowledge and belief, that the tenant understands that  
15 the statements could be used in court, and that the tenant could be liable for perjury as well as the  
16 damages provided in subsection (f) for making false statements in the verification.

17 (2) to the best knowledge and belief of an attesting third party,

18 (A) the name, current address, and business phone number of the attesting  
19 third party;

20 (B) the capacity in which the attesting third party received the information  
21 regarding the acts of domestic violence, sexual assault, or stalking upon the tenant or an  
22 immediate family member of the tenant;

23 (C) a statement that the attesting third party has read the tenant's  
24 statements in the verification and has been advised by the tenant that the tenant or an immediate

1 family member is the victim of domestic violence, sexual assault, or stalking;

2 (D) a statement that the attesting third party, based upon the tenant's  
3 statements in the verification, believes the tenant and understands that the verification may be  
4 used as the basis for releasing the tenant from a lease or terminating the tenant's interest under  
5 the lease; and

6 (E) the attesting third party's acknowledgment that the statements of the  
7 attesting third party in the verification are true and accurate to the best of the attesting third  
8 party's knowledge and belief, that the attesting third party understands that the statements in the  
9 verification could be used in court, and that the attesting third party could be liable for perjury  
10 for making false statements in the verification.

#### 11 **Comment**

12 The following is an example of a verification that would comply with subsection (h):

#### 13 **Verification**

14 I, \_\_\_\_\_[insert name of tenant], do hereby state that:

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

16 \_\_\_\_\_[insert address of dwelling unit];

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

23 (c) The most recent act of that violence occurred on \_\_\_\_\_ [insert  
24 date]; and

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

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

\_\_\_\_\_  
[Tenant's signature]

I, \_\_\_\_\_, [insert name of attesting third party] do hereby state that:

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

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

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

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

preceding statement.

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

---

[Attesting third party's signature]

**SECTION 509. CHANGE OF LOCKS AS A RESULT OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.**

**[QUESTION FOR COMMITTEE: Should section (e) be removed because it is confusing or bad policy?]**

(a) Subject to subsections (b) and (c), if a tenant of a dwelling unit or an immediate family member has been the victim of domestic violence, sexual assault, or stalking and the tenant has a reasonable fear that the perpetrator may attempt to gain access to the dwelling unit, the tenant may give notice to the landlord requesting the landlord to change the locks to the dwelling unit. The tenant is not required to comply with Section 508(a)(2) to cause a change of the locks to the dwelling unit.

(b) Within [three] days of the receipt of the notice in subsection (a), or sooner if commercially reasonable to do so, the landlord shall change the locks at the tenant's expense. If the landlord fails to act within the [three]-day period, the tenant may change the locks without the landlord's consent, provided that:

(1) the locks are changed in compliance with applicable lease provisions, if any, and the tenant gives a key to the new locks to the landlord and to any other tenant, other than the perpetrator, who is a party to the lease; and

(2) the landlord retains the right to change the locks a second time[, at tenant's

1 expense,] to ensure compatibility with the landlord's master key or to otherwise accommodate  
2 the landlord's reasonable commercial needs.

3 (c) If the perpetrator of the domestic violence, sexual assault, or stalking is also a tenant  
4 on the lease, the locks may not be changed unless there is a court order expressly requiring the  
5 perpetrator to vacate the dwelling unit and a copy of the order has been furnished to the landlord.

6 (d) The perpetrator is not entitled to any damages or other relief against the landlord or  
7 the tenant who in good faith complies with this section.

8 [(e) The tenant may not be required to pay any additional rent, fees, or security deposit  
9 because of the perpetrator's exclusion from the dwelling unit].

#### 10 **Comment**

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

14 Under subsection (e), the tenant remaining in the dwelling unit would remain liable to  
15 the landlord for the rent provided in the lease, but could not be charged additional rent or other  
16 fees because of the perpetrator's exclusion from the dwelling unit.

#### 17 18 **SECTION 510. EFFECT OF COURT ORDER TO VACATE.**

19 (a) If a court has ordered a perpetrator to vacate the dwelling unit, neither a landlord nor a  
20 tenant has any duty once the order is issued to:

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

23 (2) provide the perpetrator with keys to the dwelling unit.

24 (b) If the perpetrator is a tenant on the lease, then upon issuance of the court order  
25 requiring the perpetrator to vacate the dwelling unit, the perpetrator's interest in the tenancy  
26 terminates and the landlord and any remaining tenants are entitled to any actual damages as a  
27 result of that termination.

(c) The landlord shall return the security deposit and prepaid rent recoverable under Section 904 following the termination of the lease and the vacation of the dwelling unit to the landlord.

[(d) Any remaining tenant may not be required to pay any additional rent, fees, or security deposit because of the termination of the perpetrator's interest as a tenant of the dwelling unit].

#### **Comment**

In light of subsection (d), the landlord cannot increase the tenant-victim's rent because the perpetrator who might also have been a tenant on the lease has been ordered to vacate the dwelling unit. For example, suppose V and P are co-tenants on a lease providing monthly rent in the amount of \$500. V is the victim of domestic violence committed by P; P has been ordered to vacate the apartment. (See Section 510 for the authority of the court to order a perpetrator to vacate the dwelling unit.) V continues to be liable for the monthly rent of \$500, and the landlord cannot increase that rent to take account of the fact that P is no longer a tenant.

### **ARTICLE 6**

#### **LANDLORD REMEDIES**

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

**[QUESTION FOR COMMITTEE: Do we want to continue with subsection (a)(2) or eliminate?]**

(a) Except as otherwise provided in this [act], if there is a noncompliance by the tenant with Section 401 that substantially affects health and safety or substantial noncompliance with the lease, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the lease will terminate upon a specified date not less than [30] days after receipt of the notice if the breach is not remedied in [14] days, subject to the following:

(1) If the breach is remediable by repairs or the payment of rent, damages, or

otherwise and the tenant adequately remedies the breach within the [14] day remediation period, the lease does not terminate.

[ (2) If the breach is remediable by repair, replacement of a damaged item, or cleaning, and the tenant fails to adequately remedy the breach within the [14] day remediation period, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit the itemized bill for the actual and reasonable cost or the fair and reasonable value thereof to be paid on the next date periodic rent is due. The lease shall not terminate if the tenant pays the bill by its due date.]

(3) Subject to paragraph (4), if substantially the same act or omission which constituted a prior noncompliance of which written notice was given recurs within [6] months after such notice, the landlord may deliver to the tenant a written notice specifying the substantially same act or omission constituting the breach and that the lease will terminate upon a specified date not less than [14] days after receipt of the notice.

(4) If the act or omission constituting noncompliance was nonpayment of rent, the landlord may not elect to terminate the lease under paragraph (3) unless within any [4] month period the tenant has failed to pay rent in a timely manner on at least [2] occasions.

(b) Except as otherwise provided in this [act], the landlord may recover actual damages and obtain injunctive relief or specific performance for noncompliance by the tenant with the lease or Section 401. [If the tenant's noncompliance is willful, the landlord may recover costs and reasonable attorney's fees.]

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

Acceptance of rent with knowledge of a default by the tenant or acceptance of performance by the landlord that varies from the terms of the lease constitutes a waiver of the landlord's right to terminate the lease for that breach, unless the landlord and the tenant otherwise agree after the

breach has occurred.

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

[(a)] A landlord may not distraint a tenant's personal property for unpaid rent.

[(b) A lien or security interest on behalf of the landlord in the tenant's personal property is not enforceable unless it attached before the effective date of this [act].]

#### **Comment**

While re-wording from the 1972 act, this section, in common with that act, abolishes distraint for rent. Subsection (b) is necessary only in states that would be abolishing distraint for the first time by enacting paragraph (a). It would be unnecessary in states that enacted the 1972 version of this act or had otherwise previously abolished distraint.

### **SECTION 604. ABANDONMENT; REMEDY AFTER TERMINATION.**

(a) For purposes of this section:

(1) "Reasonable efforts" means steps which a landlord would have taken to rent the dwelling unit if the unit had been vacated at the end of the term, [provided those steps are in accordance with local rental practices for similar dwelling units]. The landlord is presumed to have taken reasonable steps to rent the dwelling unit if the landlord shows the dwelling unit to prospective tenants and advertises the availability of the dwelling unit by any of the following means: sending mailings to prospective tenants, hiring a real estate agent to locate prospective tenants, posting "for rent" signs on the premises, or advertising the dwelling unit for rent in newspapers or other media.

(2) A tenant is presumed to have abandoned a dwelling unit if:

(A) the tenant has turned over possession of the dwelling unit to the landlord by returning the keys or otherwise notifying the landlord that the dwelling unit has been vacated; or

(B) rent is unpaid for at least [5] days, and the tenant has:

1 (1) vacated the dwelling unit by removing substantially all of the  
2 tenant's personal property from the dwelling unit and the premises; and

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

5 (b) If a tenant abandons the dwelling unit prior to the end of the term, the landlord, in  
6 fulfilling the duty to mitigate, shall make reasonable efforts to rent the dwelling unit.

7 (c) Nothing in subsection (b) shall be construed to require a landlord to show or lease an  
8 abandoned dwelling unit in preference to other units the landlord has available for rent.

9 (d) If the landlord rents a dwelling unit abandoned by the tenant to another tenant for a  
10 term beginning before the expiration of the tenant's lease, the tenant's lease terminates as of the  
11 date of the new tenancy and the landlord may recover actual damages from the tenant.

12 (e) If a landlord fails to lease a dwelling unit after making reasonable efforts to rent the  
13 dwelling unit at its fair rental value, the landlord may recover actual damages from the tenant.

14 (f) If a landlord fails to use reasonable efforts to rent a dwelling unit at its fair rental value  
15 following the tenant's abandonment, the lease is deemed to be terminated by the landlord as of  
16 the date the landlord received notice of the abandonment and the landlord shall return the  
17 tenant's security deposit and prepaid rent recoverable under Section 904.

18 (g) A landlord may accept a tenant's abandonment of a dwelling unit by a written notice.  
19 If the landlord accepts the abandonment, the lease terminates as of the date of the abandonment,  
20 and the landlord and the tenant shall not be liable for any acts occurring thereafter. The landlord  
21 shall return the tenant's security deposit and prepaid rent recoverable under Section 904.

22 (h) If a lease is wrongfully terminated by a tenant, the landlord has a claim for  
23 possession. The landlord also has a claim for past due rent and, unless the landlord accepts an  
24 abandonment or fails to mitigate, a separate claim for actual damages for breach of the lease[.

costs, and reasonable attorney's fees as provided in Section 601(b)].

## **Comment**

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 abandonment is not accepted by the landlord, the landlord can still recover damages from the tenant for anticipatory breach except as limited by Section 604(f).

Wrongful termination results from an abandonment that the landlord does not accept. This could include abandonment by a tenant who was the subject of domestic violence, sexual assault, or stalking who vacated the dwelling unit without complying with this act.

**SECTION 605. RECOVERY OF POSSESSION LIMITED; DIMINUTION OF SERVICES.** A landlord may not recover or take possession of a dwelling unit by an action or otherwise or willfully interrupt or cause the interruption of essential services to the tenant, except in case of abandonment, or as permitted by this [act].

## **ARTICLE 7**

### **TERMINATION OF PERIODIC TENANCY, DEATH OF A TENANT, HOLDOVER TENANCY; ABUSE OF ACCESS**

**SECTION 701. TERMINATION OF PERIODIC TENANCY; DEATH OF A TENANT.** Subject to Sections 508 and 801, a tenancy may be terminated as follows:

(1) Either the landlord or the tenant may terminate a periodic tenancy for week-to-week by giving the other at least [5] days' written notice of the intent to terminate on the date specified in the notice.

(2) Either the landlord or the tenant may terminate a periodic tenancy for month-to-month by giving the other at least [one] month's written notice of the intent to terminate at the end of a monthly period.

(3) If a tenant is the only tenant who is a party to a lease dies prior to the end of a tenancy

1 for a fixed term or a periodic tenancy:

2 (A) [unless the deceased tenant's will otherwise provides] [notwithstanding any  
3 contrary provision in the deceased tenant's will], the tenant's surviving spouse may give the  
4 landlord a notice within [20] days after the tenant's death of the spouse's intent to assume the  
5 lease in accordance with all of its terms and provisions; or

6 (B) except as provided in subparagraph (A), either the landlord or a tenant  
7 representative may elect to terminate the lease by giving the other written notice of the intent to  
8 terminate the tenancy in accordance with the following:

9 (i) In the case of a tenancy for a fixed term, the written notice must be given at  
10 least [60] days prior to the date specified in the written notice for the termination of the tenancy;  
11 and

12 (ii) In the case of a periodic tenancy, the written notice must be given in  
13 accordance with subsection (a) or (b).

#### 14 **Comment**

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

24 **SECTION 702. HOLDOVER TENANCIES.** If a tenant remains in possession without  
25 the landlord's consent after the expiration of a tenancy for a fixed term or the termination of the  
26 lease, the landlord may bring an action for possession. If the tenant's holdover is willful and not  
27 in good faith, the landlord may also recover an amount not more than [three] month's periodic  
28 rent or [triple] the actual damages, whichever is greater[, costs, and reasonable attorney's fees].

1 If the landlord consents to the tenant's continued occupancy, a periodic tenancy for month-to-  
2 month arises under the same terms and conditions as the lease unless the landlord and the tenant  
3 otherwise agree.

4 **SECTION 703. LANDLORD AND TENANT REMEDIES FOR ABUSE OF**  
5 **ACCESS.**

6 (a) If a tenant refuses to allow the landlord lawful access to the dwelling unit, the  
7 landlord may obtain injunctive relief to compel access or terminate the lease. In either case, the  
8 landlord may recover actual damages[, costs, and reasonable attorney's fees].

9 (b) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner  
10 or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably  
11 harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the  
12 conduct or terminate the lease. In either case the tenant may recover actual damages [not less  
13 than an amount equal to [one] month's rent][, costs, and reasonable attorney's fees].

14 **ARTICLE 8**

15 **RETALIATORY CONDUCT**

16 **SECTION 801. RETALIATORY CONDUCT PROHIBITED.**

17 (a) For purposes of this article, "retaliatory action" means one of the following actions  
18 taken by the landlord when [the landlord knows the tenant has engaged in any activity described  
19 in subsection (b) and] the landlord's primary purpose in taking the action is to retaliate against  
20 the tenant:

21 (1) increasing the rent;

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

24 (3) bringing or threatening to bring an action for possession;

(4) terminating or refusing to renew the lease; or  
(5) engaging in or threatening to engage in conduct prohibited under [the criminal code].

(b) Except as otherwise provided in this section, a landlord may not take retaliatory action against a tenant after the tenant:

(1) has complained [in good faith] to a governmental agency charged with responsibility for:

(A) enforcement of a building or housing code violation applicable to the premises materially affecting health and safety;

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

[(C) enforcement of governmental housing, wage, price, or rent controls];

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

(3) has organized or become a member of a tenant's union or similar organization;  
[(4) has exercised a legal right or remedy under the lease or under this [act]]; or  
[(5) has pursued a legal action against the landlord or testifies against the landlord in court].

#### **Comment**

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

#### **SECTION 802. TENANT REMEDIES FOR RETALIATORY CONDUCT.**

(a) Except as otherwise provided in subsection (b), if the landlord takes retaliatory action against the tenant, the tenant is entitled to the remedies provided in Section 507 and has a

1 defense in any action for possession.

2 (b) Notwithstanding Section 801(b), a landlord may bring an action for possession if:

3 (1) the violation of which the tenant has complained was caused primarily by lack  
4 of reasonable care by the tenant, an immediate family member, or other person on the premises  
5 with the tenant's consent;

6 (2) the tenant is in default in the payment of rent;

7 (3) the tenant has engaged in conduct that presents a threat to the health or safety  
8 of other tenants in the premises or the dwelling unit is being used for an illegal purpose in  
9 violation of the lease;

10 (4) the landlord is seeking to recover possession on the basis of a notice to  
11 terminate the lease and the notice was given to the tenant before the tenant engaged in an activity  
12 described in Section 801(b);

13 (5) compliance with the applicable building or housing code requires alteration,  
14 remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit;  
15 or

16 (6) the landlord seeks in good faith to recover possession of the dwelling unit for  
17 immediate use as the landlord's primary residence.

18 (c) The maintenance of an action under subsection (a) does not release the landlord from  
19 liability under Section 501.

20 **SECTION 803. PRESUMPTION OF RETALIATORY CONDUCT.**

21 (a) Except as otherwise provided in subsection (b), evidence that the tenant has engaged  
22 in any activity described in Section 801(b) within [[1] year] [six months] before the landlord's  
23 alleged retaliatory action creates a rebuttable presumption that the landlord knew the tenant  
24 engaged in an activity described in Section 801(b) and the primary purpose of the landlord's

1 conduct was retaliation.

2 (b) The presumption in subsection (a) does not arise if the tenant engaged in the activity  
3 described in Section 801(b) after notice of a proposed rent increase or diminution of services.

## 4 **ARTICLE 9**

### 5 **SECURITY DEPOSITS**

6 **[NOTE: This section is still a work in progress by the chair, the reporters, and the**  
7 **subject of discussion with Bill Henning, Neil Cohen and Ed Smith. It is not ready for**  
8 **review by the Style Committee.]**

#### 9 **SECTION 901. NATURE AND AMOUNT OF SECURITY DEPOSIT.**

10 (a) Except as otherwise provided in subsection (b), a landlord may not collect a security  
11 deposit in an amount [or value] which, together with any non-refundable fees payable at the  
12 commencement of the lease, exceeds [1.5] month[s] of periodic rent.

13 (b) If the lease is for a furnished dwelling unit or permits the tenant to keep or maintain  
14 pets or make alterations to the dwelling unit, the landlord may collect an additional security  
15 deposit in an amount commensurate with the additional risk of damage.

16 (c) A landlord has a security interest in a tenant's security deposit and prepaid rent. The  
17 security interest attaches and is perfected when the landlord receives the security deposit or  
18 prepaid rent, regardless of the form in which it is received. Perfection continues in the  
19 identifiable proceeds of the security deposit or prepaid rent when deposited in an account  
20 pursuant to Section 903.

21 (d) A landlord's security interest in a security deposit or prepaid rent takes priority over  
22 lien creditors.

23 (e) A security deposit and prepaid rent shall be exempt from attachment and execution by  
24 the landlord's creditors and shall be exempt from garnishment by the tenant's creditors.

## Comment

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

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

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

Whether a payment constitutes prepaid rent depends upon the terms of the lease. For example, if a one-year lease provides for payment of \$500 in rent every month on the first of the month, a \$3,000 payment at the beginning of the lease would be prepaid rent for six months of the lease. Conversely, if the lease provides that the full amount of the rent is due and payable at the commencement of the lease, payment of that amount would not be prepaid rent. The funds in this latter situation would belong entirely to the landlord upon payment and would not be subject to the safekeeping requirements of Section 903.

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

not the property subject to that security interest).

## **SECTION 902. TENANT PROHIBITED FROM USING SECURITY DEPOSIT**

**AS RENT.** Unless the landlord and tenant otherwise agree in a signed record, the tenant may not withhold any portion of any month's rent on the grounds that the security deposit is security for unpaid rent. If a tenant willfully violates this section, the landlord may recover the unpaid rent to which the landlord is entitled and an additional amount equal to [two times] the periodic rent [plus costs and reasonable attorney's fees].

### **Comment**

Section 902 is a new provision to address the common misconception of tenants that the security deposit may be used in lieu of paying rent, particularly the last month's rent. The primary purpose of a security deposit is to provide the landlord with funds to reimburse the landlord for the costs incurred in remedying any damages to the dwelling unit by the tenant. If the tenant could withhold rent only to have it charged against the security deposit, the landlord would have no funds to pay for any damages. A tenant who wrongfully withholds last month's rent is subject to the penalty imposed by this section.

## **SECTION 903. SAFEKEEPING AND USE OF SECURITY DEPOSITS.**

(a) Security deposits and prepaid rent:

(1) shall be held by the landlord in a federally insured financial institution [in this state];

(2) may be commingled by the landlord with the security deposits and prepaid rents of other tenants but may not be commingled with the landlord's personal funds;

(3) may, upon termination of the lease, be applied by the landlord only to the payment of unpaid rent and any damages the landlord has suffered by reason of the tenant's noncompliance with the lease or with this [act]; and

(4) [unless the lease provides otherwise, need not be deposited into an interest-bearing account or have interest thereon paid to the tenant.]

(b) If the landlord willfully fails to comply with subsection (a), the tenant may recover

1 actual damages or one month's periodic rent, whichever is greater[, together with costs and  
2 reasonable attorney's fees].

3 (c) This section does not preclude the landlord or tenant from recovering other damages  
4 to which he may be entitled under this [act].

### 5 **Comment**

6 Section 903 introduces a new requirement that landlords segregate both security deposits  
7 and prepaid rent from the landlord's other funds. Imposing the safekeeping requirements on both  
8 types of payments ensures that the funds are available for return as required under various  
9 provisions in the act.

10 Typically, security deposits are applied by a landlord to unpaid rent, unpaid utility  
11 charges, late fees, repair work, or cleaning contracted for by the tenant but not paid, costs of  
12 repossession, costs for storage or disposal of unclaimed property, and costs of restoring the  
13 dwelling unit to its condition at the commencement of the lease, normal wear and tear excepted.  
14 The provision allowing a landlord to apply a security deposit against unpaid rent is not intended  
15 to implicitly approve the withholding of rent by a tenant in anticipation of the landlord's  
16 application of the security deposit to unpaid rent. In fact, Section 902 expressly penalizes a  
17 tenant for that behavior, when willful. Rather, Section 903(a)(3) simply recognizes that,  
18 notwithstanding the Section 902 penalty, some tenants may willfully withhold rent and, thus,  
19 landlords should be allowed to apply the security deposit towards the unpaid rent.

### 20 **SECTION 904. RETURN OF SECURITY DEPOSITS OR PREPAID RENT;** 21 22 **DISPUTES.**

23 (a) Within [30] days after the termination of the lease and subject to subsection (b), the  
24 landlord shall:

25 (1) return to the tenant the amount of the security deposit and prepaid rent the  
26 landlord in good faith reasonably believes is due the tenant; and

27 (2) if less than the entire amount of the tenant's security deposit or prepaid rent is  
28 returned to the tenant, provide the tenant with a record signed by the landlord specifying the  
29 items to which the security deposit or prepaid rent is being applied and the amount of the  
30 security deposit or prepaid rent being applied for each item.

31 (b) The landlord shall send the amount returned to the tenant and record to an address

provided by the tenant to the landlord upon termination of the lease, or, in the absence of that address, to the tenant at the address specified in Section 110(d)(3). A landlord who complies with this subsection is not liable if the amount returned to the tenant or record is misdelivered or is undeliverable and any security deposit or prepaid rent unclaimed by the tenant as well as any check outstanding shall be [forfeited by the tenant after a period of [180] days][treated as unclaimed property under other law of this state].

(c) The penalties for noncompliance with this section are as follows:

(1) If the landlord fails to remit the security deposit and prepaid rent to which the tenant is entitled or provide the record as required by subsection (a)(2), the tenant may recover the amount of the security deposit and prepaid rent to which the tenant is entitled and an additional amount equal to [two] times the amount thereof [or [\$250]], whichever is greater[, together with costs and reasonable attorney's fees].

(2) If the landlord complied with subsection (b) but acted in bad faith in retaining amounts in excess of what the landlord was entitled, the tenant may recover the amount of the security deposit and prepaid rent to which the tenant is entitled and an additional amount equal to [two] times the amount thereof or [\$250], whichever is greater[, together with costs and reasonable attorney's fees].

### **Comment**

Section 904 provides new procedural requirements for withholding or returning security deposits and prepaid rent. These rules are triggered automatically by the termination of the lease, rather than requiring the tenant to make a demand for the payment as was required under the 1972 act.

### **SECTION 905. RIGHTS AND OBLIGATIONS OF LANDLORD'S SUCCESSOR.**

(a) Within [30] days of the termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the personal

1 representative of the landlord's estate shall do one of the following acts, either of which shall  
2 relieve the landlord or the landlord's estate from further liability with respect to the security  
3 deposits and prepaid rents held by the landlord:

4 (1) transfer the portion of the security deposit and prepaid rents being held by the  
5 landlord to the person succeeding to the landlord's interest in the premises and notify the tenant  
6 of the amount transferred to the successor, of any claims made against the security deposits or  
7 prepaid rent prior to the transfer, and of the successor's name and address; or

8 (2) return the security deposits and prepaid rent to the tenant pursuant to the terms  
9 of Section 904.

10 (b) Upon receipt of any portion of the security deposits and prepaid rent under subsection  
11 (a), the landlord's successor shall have all of the rights and obligations of a landlord under this  
12 article for those funds.

### 13 **Comment**

14 Section 905 is a new section that provides for disposition of security deposits and prepaid  
15 rent after a transfer of the landlord's interest in the premises.

## 16 **ARTICLE 10**

### 17 **DISPOSITION OF PERSONAL PROPERTY**

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

19 (a) For purposes of this article, possession of the dwelling unit is relinquished to the  
20 landlord:

21 (1) when the tenant vacates the dwelling unit at the termination of the lease;

22 (2) when a final order that entitles the landlord to possession has been executed by  
23 changing the locks to the dwelling unit;

24 (3) when the tenant abandons the dwelling unit.

1 (b) A tenant shall remove all personal property from the premises when possession of the  
2 dwelling unit has been relinquished to the landlord.

3 (c) If any personal property remains on the premises after possession has been  
4 relinquished to the landlord under subsection (b), the landlord shall give the tenant written notice  
5 of the tenant's rights to retrieve the personal property. The written notice required under this  
6 section must:

7 (1) be sent to the tenant in compliance with Section 110(d)(3) and shall be posted  
8 at the dwelling unit;

9 (2) inform the tenant that items of personal property remain in the dwelling unit  
10 or on the premises;

11 (3) state that the tenant must contact the landlord and retrieve the personal  
12 property within [10] days or the landlord may dispose of the personal property pursuant to  
13 Section 1002 without further notice; and

14 (4) provide a telephone number, email address, or mailing address at which the  
15 landlord may be contacted.

16 (d) The tenant shall have [10] days from on the date the landlord sent the written notice  
17 pursuant to subsection (b) to retrieve the personal property.

18 (e) Prior to the tenant's retrieval of the personal property from the premises, the landlord  
19 shall store the personal property in the dwelling unit or other place of safekeeping and shall  
20 exercise reasonable care in moving or storing the personal property.

21 (f) If the landlord violates this section, the tenant may recover actual damages[, costs, and  
22 reasonable attorney's fees].

23 (g) Unless the landlord and the tenant otherwise agree, if the tenant fails to retrieve  
24 personal property as provided in subsection (d), the landlord may dispose of it [in any manner

the landlord deems appropriate][in any commercially reasonable manner].

## **Comment**

When a tenant who is the sole occupant of the dwelling unit dies, the tenant's representative may elect to terminate the lease pursuant to Section 701. 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).

## **SECTION 1002. DISPOSITION OF PERSONAL PROPERTY UPON TENANT'S DEATH.**

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

(b) If the landlord has been unable to identify or contact the tenant's representative within [10] days after the landlord learns of the tenant's death, the landlord shall:

(1) inventory the personal property in the dwelling unit and file an affidavit with the court having jurisdiction of the tenant's estate setting forth the inventory, attaching a copy of the lease, and stating:

(A) the name and last known address of the deceased tenant; and

(B) the date of the deceased tenant's death; and

(2) mail a copy of the affidavit with the inventory and attached lease to the deceased tenant at the deceased tenant's last known address.

(c) A landlord may not remove the personal property from the dwelling unit until [15] days after the affidavit is filed with the court. After that time, the landlord may remove the personal property from the dwelling unit and store it in another place for safekeeping. The landlord shall exercise reasonable care in moving or storing the personal property.

1 (d) If a tenant representative is identified within [30] days of the filing of the affidavit  
2 with the court, the tenant representative may retrieve the tenant's personal property from the  
3 landlord within [60] days from the date the affidavit is filed with the court. Before retrieving the  
4 personal property, the tenant representative must pay the landlord's reasonable costs of moving  
5 or storage of the personal property.

6 (e) If a tenant representative is not identified within [30] days of the filing of the affidavit  
7 with the court, the landlord may dispose of the personal property in compliance with Section  
8 1001(g).

9 (f) If the landlord acts in compliance with this section, the landlord is not required to  
10 bring an action for possession of the dwelling unit before removing the personal property from  
11 the dwelling unit.

### 12 **SECTION 1003. CONTACT PERSON.**

13 (a) At a landlord's request, the tenant shall designate a contact person to act for the tenant  
14 upon the tenant's death. The name, address, and telephone number of the contact person shall be  
15 disclosed in a record signed by the tenant and delivered to the landlord..

16 (b) A tenant, without a request from the landlord, may provide a signed record to the  
17 landlord that complies with subsection (a).

18 (c) When a tenant who designated a contact person is the sole [tenant under a lease]  
19 [occupant of the dwelling unit] has died and the landlord, upon reasonable inquiry, has no  
20 knowledge that a personal representative has been appointed for the deceased tenant's estate, the  
21 landlord:

22 (1) upon learning of the tenant's death, shall notify the contact person of the  
23 tenant's death;

24 (2) shall give the contact person access to the premises at a reasonable time [and

1 in the presence of the landlord] to remove any personal property from the premises belonging to  
2 the deceased tenant or on the premises with the deceased tenant's permission;

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

5 (4) shall return the deceased tenant's security deposit, less lawful deductions, to  
6 the contact person or to any other person lawfully entitled thereto.

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

9 (e) The contact person's authority to act under this [act] terminates upon the appointment  
10 of a personal representative for the deceased tenant's estate.

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

13 (g) A landlord that knowingly violates subsection (c) shall be liable to the estate of the  
14 deceased tenant for actual damages.

### 15 **Comment**

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

## 20 **[ARTICLE 11**

### 21 **ASSIGNMENTS AND SUBLEASES**

#### 22 **SECTION 1101. TENANT'S RIGHT TO SUBLEASE OR ASSIGN.**

23 (a) Except as otherwise provided in a lease, a tenant may not assign or sublease a lease  
24 without the landlord's consent in a record signed by the landlord. If the tenant violates this  
25 subsection, the landlord, after giving [10] days' [record] notice to the tenant, may terminate the  
26

1 lease and file an action for possession.

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

4 (1) is delivered to the tenant within [10] business days of the tenant's application  
5 in a record to assign or sublease the dwelling unit; and

6 (2) provides commercially reasonable objections to the assignment or sublease.

7 (c) For the purpose of subsection (b), commercially reasonable objections include the  
8 following:

9 (1) the insufficient credit standing or financial responsibility of the proposed  
10 assignee or sublessee;

11 (2) the need for alteration to the premises for the assignee or sublessee's use;

12 (3) the number of persons to reside in the dwelling after the assignment or  
13 sublease;

14 (4) past abuses of other residential premises by the proposed assignee or  
15 sublessee, as stated in a record signed by a prior landlord of the proposed assignee or sublessee;  
16 and

17 (5) unwillingness of the assignee or sublessee to act in accordance with the lease  
18 and the landlord's rules and regulations.

19 (d) A landlord's refusal to consent to an assignment or sublease by the tenant is  
20 unreasonable if based solely on the following grounds:

21 (1) personal taste;

22 (2) convenience;

1 (3) reasons inconsistent with anti-discrimination principles under federal or state  
2 law; or

3 (4) the landlord's desire to charge a higher rent.

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

7 **SECTION 1102. RIGHTS FOLLOWING ASSIGNMENT OR SUBLEASE.**

8 (a) A landlord's consent to an assignment or sublease releases the landlord and the  
9 assignor or sublessor from all liability to each other arising under the lease or this [act] for all  
10 acts occurring:

11 (1) in the case of an assignment, after the assignment; and,

12 (2) in the case of a sublease in which the sublessor is not entitled to occupy the  
13 dwelling unit, during the period of the sublease.

14 (b) A landlord and an assignee or sublessee are entitled to all rights of and subject to all  
15 duties imposed upon the landlord and the tenant under the terms of the lease, other than any  
16 provisions of the lease that are expressly or impliedly personal to the landlord or the tenant.]

17 **ARTICLE 12**

18 **MISCELLANEOUS PROVISIONS**

19 **SECTION 1101. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
20 applying and construing this uniform act, consideration must be given to the need to promote  
21 uniformity of the law with respect to its subject matter among states that enact it.

22 **SECTION 1102. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**  
23 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal

1    Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,  
2    but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
3    authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
4    U.S.C. Section 7003(b).

5            **SECTION 1103. REPEALS.** The following are repealed:....

6            **SECTION 1104. EFFECTIVE DATE.** This [act] takes effect....