

## **RESEARCH MEMORANDUM**

**To:**           **Members of the URLTA Drafting Committee**

**From:**       **Co-Reporters Sheldon Kurtz and Alice Noble-Allgire<sup>1</sup>**

**Date:**       **February 12, 2012**

**Re:**           **Landlord's Right of Access**

This memorandum responds to the URLTA Study Committee's request for a review of the law concerning a landlord's right to enter the leased premises. Part I summarizes the current version of the URLTA and compares it with statutes actually enacted by the states. Part II examines the treatment of the issue in case law.

### **I.       Statutes**

Under the traditional view of leases as conveyances of real property, a lease gave the tenant an estate in land and, with it, the exclusive right to possession during the term. Thus, the landlord had virtually no right of access to the leased premises absent the tenant's default in the payment of rent. As a matter of contract, however, the parties frequently have modified this common law rule through lease provisions that give the landlord the right to enter for certain specified reasons.

The current provisions of the URLTA generally follow the traditional view but codify a number of common contractual exceptions to the rule. Thus, Section 3.103 of the URLTA provides:

(a) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

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

(c) A landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the

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<sup>1</sup> This memorandum was prepared in large part by Mallori Allen, a research assistant to Professor Noble-Allgire.

landlord shall give the tenant at least [2] days' notice of his intent to enter and may enter only at reasonable times.

- (d) A landlord has no other right of access except
  - (1) pursuant to court order;
  - (2) as permitted by Sections 4.202 and 4.203(b); or
  - (3) unless the tenant has abandoned or surrendered the premises.<sup>2</sup>

Section 4.202 permits a landlord to enter when the tenant has failed to comply with the tenant's obligations under Section 3.101 regarding maintenance of the dwelling and the noncompliance materially affects health and safety.<sup>3</sup> Section 4.203(b) permits a landlord to enter during any absence of the tenant in excess of seven days, if reasonably necessary to do so.<sup>4</sup>

Twenty-five states have adopted URLTA-based statutes regarding a landlord's right to enter the leased premises,<sup>5</sup> but two of those states omitted paragraphs (b) and (d) from the URLTA and one omitted all but paragraph (a).<sup>6</sup> Nine other states have enacted statutes that are not URLTA-based.<sup>7</sup> The following discussion highlights five main areas in which the state statutes otherwise diverge from the URLTA.

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2 UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 3.103.

3 *Id.* § 4.202.

4 *Id.* § 4.203.

5 ALA. CODE § 35-9A-303 (West 2012); ALASKA STAT. ANN. § 34.03.140 (West 2012); ARIZ. REV. STAT. ANN. § 33-1343 (West 2012); ARK. CODE ANN. § 18-17-602 (West 2012); CONN. GEN. STAT. ANN. § 47a-16 (West 2012); DEL. CODE ANN. TIT. 25, § 5509 (West 2012); FLA. STAT. ANN. § 83.53 (West 2012); HAW. REV. STAT. ANN. § 521-53 (West 2012); IND. CODE ANN. § 32-31-5-6 (West 2012); IOWA CODE ANN. § 562A.19 (West 2012); KAN. STAT. ANN. § 58-2557 (West 2012); KY. REV. STAT. ANN. § 383.615 (West 2012); ME. REV. STAT. TIT. 14, § 6025 (West 2011); MONT. CODE ANN. § 70-24-312 (West 2011); NEB. REV. STAT. ANN. § 76-1423 (West 2012); NEV. REV. STAT. ANN. § 118A.330 (West 2011); N.M. STAT. ANN. § 47-8-24 (West 2012); OHIO REV. CODE ANN. § 5321.04 (West 2012); OHIO REV. CODE ANN. § 5321.05 (West 2012); OKLA. STAT. ANN. TIT. 41, § 128 (West 2012); OR. REV. STAT. ANN. § 90.322 (West 2012); R.I. GEN. LAWS ANN. § 34-18-26 (West 2012); S.C. CODE ANN. § 27-40-530 (West 2011); TENN. CODE ANN. § 66-28-403 (West 2012); VA. CODE ANN. § 55-248.18 (West 2012); WASH. REV. CODE ANN. § 59.18.150 (West 2012).

6 ARK. CODE ANN. § 18-17-602 (West 2012)(adopted only subsection (a) of the URLTA); ME. REV. STAT. TIT. 14, § 6025 (West 2011)(adopted only subsection (a) and part of subsection (c) of the URLTA); OHIO REV. CODE ANN. §§5321.04-.05 (West 2012)(adopted only subsection (a) and (c) of the URLTA).

7 CAL. CIV. CODE ANN. § 1954 (West 2012); MASS. GEN. LAWS ANN. CH. 186, § 15B (West 2012); MINN. STAT. ANN. § 504B.211 (West 2012); N.H. REV. STAT. ANN. § 540-A:3 (West 2012); N.D. CENT. CODE ANN. § 47-16-07.3 (West 2011); UTAH CODE ANN. § 57-22-4 (West 2012); VT. STAT. ANN. TIT. 9, § 4460 (West 2012); WIS. STAT. ANN. § 704.05 (West 2011); WYO. STAT. ANN. § 1-21-1205 (West 2012).

## 1. Notice and Consent

States require notice of varying lengths prior to the landlord's entry into the premises. Eight states, seven of which are URLTA-based, follow the URLTA in its general rule requiring two days' notice prior to entry.<sup>8</sup> Fourteen states require the landlord to provide the tenant with no less than twenty-four hours (one day's) notice.<sup>9</sup> The Florida statute requires landlords to furnish the tenants with at least twelve hours' notice.<sup>10</sup> Seven states do not use a specific time, but instead require the landlord to provide "reasonable" notice or "advance" notice.<sup>11</sup> Three statutes do not require the landlord to give notice to the tenant before entering.<sup>12</sup> Three others expressly permit the landlord to enter without notice if the tenant consents.<sup>13</sup>

Closely related to the notice issue is the requirement of obtaining the tenant's consent to enter. The URLTA impliedly recognizes that a landlord must have a tenant's consent to enter and provides, in Section 3-103(a), that a tenant shall not unreasonably withhold consent when the landlord is entering for the purposes specified in the statute.<sup>14</sup> Three states, however, expressly

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8 ALA. CODE § 35-9A-303 (West 2012); ARIZ. REV. STAT. ANN. § 33-1343 (West 2012); DEL. CODE ANN. TIT. 25, § 5509 (West 2012); HAW. REV. STAT. ANN. § 521-53 (West 2012); KY. REV. STAT. ANN. § 383.615 (West 2012); R.I. GEN. LAWS ANN. § 34-18-26 (West 2012); VT. STAT. ANN. TIT. 9, § 4460 (West 2012) (not-URLTA based); WASH. REV. CODE ANN. § 59.18.150 (West 2012).

9 ALASKA STAT. ANN. § 34.03.140 (West 2012); CAL. CIV. CODE ANN. § 1954 (West 2012); IOWA CODE ANN. § 562A.19 (West 2012); ME. REV. STAT. TIT. 14, § 6025 (West 2011); MONT. CODE ANN. § 70-24-312 (West 2011); NEB. REV. STAT. ANN. § 76-1423 (West 2012); NEV. REV. STAT. ANN. § 118A.330 (West 2011); N.M. STAT. ANN. § 47-8-24 (West 2012); OHIO REV. CODE ANN. § 5321.04 (West 2012); OKLA. STAT. ANN. TIT. 41, § 128 (West 2012); OR. REV. STAT. ANN. § 90.322 (West 2012); S.C. CODE ANN. § 27-35-75 (West 2011); S.C. CODE ANN. § 27-40-530 (West 2011); UTAH CODE ANN. § 57-22-4 (West 2012); VA. CODE ANN. § 55-248.18 (West 2012)(for routine maintenance).

10 FLA. STAT. ANN. § 83.53 (West 2012)..

11 MINN. STAT. ANN. § 504B.211 (West 2012)("after making a good faith effort to give the residential tenant reasonable notice under the circumstances of the intent to enter"); N.H. REV. STAT. ANN. § 540-A:3 (West 2012)("at a reasonable time after notice which is adequate under the circumstances"); N.D. CENT. CODE ANN. § 47-16-07.3 (West 2011)("Notice may be given by personal service, by posting the notice in a conspicuous place in or about the dwelling unit for a reasonable period of time, or by any other method which results in actual notice to the tenant."); KAN. STAT. ANN. § 58-2557 (West 2012)("reasonable notice"); IND. CODE ANN. § 32-31-5-6 (West 2012)(reasonable written or oral notice); CONN. GEN. STAT. ANN. § 47a-16 (West 2012)("The landlord shall give the tenant reasonable written or oral notice of his intent to enter and may enter only at reasonable times, except in case of emergency."); WIS. STAT. ANN. § 704.05 (West 2011)(no time requirement for notice stated, but must be given in advance).

12 ARK. CODE ANN. § 18-17-602 (West 2012); MASS. GEN. LAWS ANN. CH. 186, § 15B (West 2012); WYO. STAT. ANN. § 1-21-1205 (West 2012); *see also* TENN. CODE ANN. § 66-28-403 (West 2012)(This statute does, however, require notice for showing the premises to potential renters).

13 ALA. CODE § 35-9A-303 (West 2012); CAL. CIV. CODE ANN. § 1954 (West 2012); NEV. REV. STAT. ANN. § 118A.330 (West 2011).

14 UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 3-103(a).

state that the landlord must obtain consent and provide notice before entering.<sup>15</sup> Oregon's statute goes further in providing specific procedures the tenant must follow in withholding consent.<sup>16</sup> Conversely, North Dakota presumes consent if the tenant does not object to the notice.<sup>17</sup>

Consistent with the URLTA, most statutes permit the landlord to enter without notice and consent in emergencies.<sup>18</sup> Two states, however, provide for notice to the tenant *after* entry in cases of emergency. If emergency entry occurs while the tenant is absent, Oregon provides for twenty-four hour notice after entry.<sup>19</sup> Minnesota requires the landlord to leave notice if entered during the absence of tenant.<sup>20</sup>

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15 ALASKA STAT. ANN. § 34.03.140 (West 2012)(landlord must provide notice and may enter “only at reasonable times and with the tenant’s consent”); N.D. CENT. CODE ANN. § 47-16-07.3 (West 2011)(“Unless it is impractical to do so the landlord shall first notify and receive the consent of the tenant which shall not be unreasonably withheld, which consent shall identify a time certain.”); OR. REV. STAT. ANN. § 90.322 (West 2012).

16 OR. REV. STAT. ANN. § 90.322 (West 2012)(“The landlord or landlord's agent may not enter if the tenant, after receiving the landlord's notice, denies consent to enter. The tenant must assert this denial of consent by giving actual notice of the denial to the landlord or the landlord's agent or by attaching a written notice of the denial in a secure manner to the main entrance to that portion of the premises or dwelling unit of which the tenant has exclusive control, prior to or at the time of the attempt by the landlord or landlord's agent to enter.”)

17 N.D. CENT. CODE ANN. § 47-16-07.3 (West 2011)(“For the purposes of this section, consent shall be presumed from failure to object to access after notice of intent to enter at a time certain has been given.”)

18 ARIZ. REV. STAT. ANN. § 33-1343 (West 2012); CAL. CIV. CODE ANN. § 1954 (West 2012); CAL. CIV. CODE ANN. § 1942.6 (West 2012); CONN. GEN. STAT. ANN. § 47a-16 (West 2012); DEL. CODE ANN. TIT. 25, § 5509 (West 2012); FLA. STAT. ANN. § 83.53 (West 2012); IOWA CODE ANN. § 562A.19 (West 2012); KY. REV. STAT. ANN. § 383.615 (West 2012); MONT. CODE ANN. § 70-24-312 (West 2011); NEB. REV. STAT. ANN. § 76-1423 (West 2012); NEV. REV. STAT. ANN. § 118A.330 (West 2011); N.H. REV. STAT. ANN. § 540-A:3 (West 2012)(provides for “adequate” notice under the circumstances, which may imply that notice will be waived in an emergency); N.D. CENT. CODE ANN. § 47-16-07.3 (West 2011)(“At any time in case of emergency”); OKLA. STAT. ANN. TIT. 41, § 128 (West 2012); OR. REV. STAT. ANN. § 90.322 (West 2012); R.I. GEN. LAWS ANN. § 34-18-26 (West 2012); S.C. CODE ANN. § 27-40-530 (West 2011); VT. STAT. ANN. TIT. 9, § 4460 (West 2012)(“A landlord may only enter the dwelling unit without consent or notice when the landlord has a reasonable belief that there is imminent danger to any person or to property.”); VA. CODE ANN. § 55-248.18 (West 2012); WASH. REV. CODE ANN. § 59.18.150 (West 2012); WIS. STAT. ANN. § 704.05 (West 2011).

Four statutes state that the landlord need not provide notice to the tenant to enter the premises in emergencies, but do not mention consent: HAW. REV. STAT. ANN. § 521-53 (West 2012)(Deleted subsection (b) of URLTA); IND. CODE ANN. § 32-31-5-6 (West 2012); ME. REV. STAT. TIT. 14, § 6025 (West 2011); MINN. STAT. ANN. § 504B.211 (West 2012) (does not seem to mention consent at all). Conversely, three other statutes expressly allow the landlord to enter without consent in case of emergencies, but do not mention notice: ALA. CODE § 35-9A-303 (West 2012); KAN. STAT. ANN. § 58-2557 (West 2012)(“extreme hazard involving the potential loss of life or severe property damage.”); N.M. STAT. ANN. § 47-8-24 (West 2012).

19 OR. REV. STAT. ANN. § 90.322 (West 2012).

A number of statutes have gone beyond the URLTA in permitting entry without notice when the landlord is making repairs requested by the tenant.<sup>21</sup> Alabama's statute considers the tenant's request for the repair as consent to the landlord's entry.<sup>22</sup> Alabama, California, and South Carolina allow the landlord to enter at reasonable times without notice if the parties have agreed to a general schedule for specified periodic maintenance or services, such as pest control.<sup>23</sup>

Six statutes contain specific notice and procedural provisions for the landlord's entry to show the property to prospective tenants and other third parties.<sup>24</sup> Some require a shorter notice period. Washington and California, for example, require only one day's notice for the purpose of showing the apartment to prospective tenants rather than the two days' notice for general access.<sup>25</sup> Tennessee's statute requires twenty-four hour notice when the landlord intends to show the apartment to potential renters in the last thirty days of the lease.<sup>26</sup>

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20 MINN. STAT. ANN. § 504B.211 (West 2012).

21 ARIZ. REV. STAT. ANN. § 33-1343 (West 2012); DEL. CODE ANN. TIT. 25, § 5509 (West 2012); OR. REV. STAT. ANN. § 90.322 (West 2012); N.M. STAT. ANN. § 47-8-24 (West 2012); S.C. CODE ANN. § 27-40-530 (West 2011) ("Between the hours of 8:00 a.m. and 8:00 p.m. for the purpose of providing services requested by the tenant and that prior to entering, the landlord announces his intent to enter to perform services."); VA. CODE ANN. § 55-248.18 (West 2012).

22 ALA. CODE § 35-9A-303(e) (West 2012) ("If a tenant requests repairs or maintenance or improvements to a dwelling unit, the tenant shall be deemed to have granted consent to the landlord to enter into the dwelling unit and make the repairs, maintenance, or improvements as requested by the tenant.")

23 ALA. CODE § 35-9A-303(d) (West 2012) ("If a landlord provides separate from the lease in a general notice or an advance schedule in excess of two days for repairs, maintenance, pest control, or for service relating to health or safety, whether such notice is for a specific time or within a designated time period, then no additional day's notice is required to access the premises."); CAL. CIV. CODE ANN. § 1954 (West 2012) ("The tenant and the landlord may agree orally to an entry to make agreed repairs or supply agreed services. The agreement shall include the date and approximate time of the entry, which shall be within one week of the agreement. In this case, the landlord is not required to provide the tenant a written notice"); S.C. CODE ANN. § 27-40-530 (West 2011) ("Between the hours of 9:00 a.m. and 6:00 p.m. for the purpose of providing regularly scheduled periodic services such as changing furnace and air-conditioning filters, providing termite, insect, or pest treatment, and the like, provided that the right to enter to provide regularly scheduled periodic services is conspicuously set forth in writing in the rental agreement and that prior to entering, the landlord announces his intent to enter to perform services."); *see also* MINN. STAT. ANN. § 504B.211 (West 2012) (permitting entry for prearranged housekeeping services in senior citizen housing).

24 ALA. CODE § 35-9A-303 (West 2012); CAL. CIV. CODE ANN. § 1954 (West 2012); DEL. CODE ANN. TIT. 25, § 5509 (West 2012); OR. REV. STAT. ANN. § 90.322 (West 2012); TENN. CODE ANN. § 66-28-403 (West 2012); WASH. REV. CODE ANN. § 59.18.150 (West 2012).

25 WASH. REV. CODE ANN. § 59.18.150 (West 2012); CAL. CIV. CODE ANN. § 1954 (West 2012).

26 TENN. CODE ANN. § 66-28-403 (West 2012).

Other states have modified the type of notice required or permitted the parties to waive the notice requirement. In California, for example, a landlord may give oral notice by telephone of the intent to exhibit the property to prospective purchasers, provided the landlord has notified the tenant in writing within 120 days of the oral notice that the property is for sale.<sup>27</sup> Delaware and Oregon allow tenants to agree, in a separate writing, that the landlord may enter *without* notice to show the property to third parties. Oregon limits this provision to landlords actively engaged in selling the property. Delaware's statute applies to both prospective buyers and tenants.<sup>28</sup>

## **2. Form of the notice**

Although Section 1.304 of the URLTA provides general guidance about how a party to a lease would provide notice to the other, the Act does not specify what the notice must contain. By contrast, seven states have proscribed specific content or procedural requirements.

Connecticut and Indiana provide the option of oral or written notice,<sup>29</sup> but four states require the landlord to give notice in writing.<sup>30</sup> As far as delivering the notice, three states allow the notice be posted on the residence.<sup>31</sup> California also offers the landlord the option of mailing the notice.<sup>32</sup> Personal delivery to someone at the premises is permitted in California and North Dakota as well.<sup>33</sup> Alabama, California, and New Mexico's statutes require the landlord to include the estimated or expected time of the entry on the notice as well as the purpose for the entry.<sup>34</sup> Washington requires the landlord to provide the expected time of entry onto the premises, along with a phone number the tenant can use to object to the oncoming entry.<sup>35</sup>

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27 CAL. CIV. CODE ANN. § 1954 (West 2012).

28 DEL. CODE ANN. TIT. 25, § 5509 (West 2012); OR. REV. STAT. ANN. § 90.322 (West 2012). Alabama allows the landlord to enter without consent – but *with* prior notice – to show the premises to a prospective tenant or purchaser if the tenant has signed a separate written agreement. ALA. CODE § 35-9A-303 (West 2012).

29 CONN. GEN. STAT. ANN. § 47a-16 (West 2012); IND. CODE ANN. § 32-31-5-6 (West 2012).

30 CAL. CIV. CODE ANN. § 1954 (West 2012); ALA. CODE § 35-9A-303 (West 2012)(note on the primary door of entry to the residence).; WASH. REV. CODE ANN. § 59.18.150 (West 2012); N.M. STAT. ANN. § 47-8-24 (West 2012).

31 ALA. CODE § 35-9A-303 (West 2012); CAL. CIV. CODE ANN. § 1954 (West 2012); N.D. CENT. CODE ANN. § 47-16-07.3 (West 2012).

32 CAL. CIV. CODE ANN. § 1954 (West 2012) (“Mailing of the notice at least six days prior to an intended entry is presumed reasonable notice in the absence of evidence to the contrary.”)

33 CAL. CIV. CODE ANN. § 1954 (West 2012); N.D. CENT. CODE ANN. § 47-16-07.3 (West 2011).

34 ALA. CODE § 35-9A-303 (West 2012); CAL. CIV. CODE ANN. § 1954 (West 2012); N.M. STAT. ANN. § 47-8-24 (West 2012).

### 3. Permissible Times for Landlord's Entry

The URLTA states that landlord must enter the premises at a reasonable time,<sup>36</sup> and twenty-two states have adopted this provision.<sup>37</sup> A handful of states, however, limit the landlord to entering the premises during specific times of the day. California and Nevada direct the landlord to enter only during normal business hours.<sup>38</sup> Three states limit the landlord's entry to even more precise times including: between 7:30 a.m. and 8:00 p.m. in Florida,<sup>39</sup> between 8:00 a.m. and 9:00 p.m. in Delaware,<sup>40</sup> and between 9:00 a.m. and 9:00 p.m. in Vermont.<sup>41</sup>

### 4. Miscellaneous Provisions

Several states have unique provisions that are not in the URLTA. These include:

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35 WASH. REV. CODE ANN. § 59.18.150 (West 2012)(“notice must state the exact time and date or dates of entry or specify a period of time during that date or dates in which the entry will occur, in which case the notice must specify the earliest and latest possible times of entry; it must also specify the telephone number to which the tenant may communicate any objection or request to reschedule the entry”)

36 UNIF. RESIDENTIAL LANDLORD AND TENANT ACT § 3.103 (“Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least [2] days’ notice of his intent to enter and may enter only at reasonable times.”)

37 ALASKA STAT. ANN. § 34.03.140 (West 2012); ARIZ. REV. STAT. ANN. § 33-1343 (West 2012); CONN. GEN. STAT. ANN. § 47a-16 (West 2012); HAW. REV. STAT. ANN. § 521-53 (West 2012)(reasonable hours); IND. CODE ANN. § 32-31-5-6 (West 2012); IOWA CODE ANN. § 562A.19 (West 2012); KAN. STAT. ANN. § 58-2557 (West 2012)(reasonable hours); KY. REV. STAT. ANN. § 383.615 (West 2012); ME. REV. STAT. TIT. 14, § 6025 (West 2011); MONT. CODE ANN. § 70-24-312 (West 2011); NEB. REV. STAT. ANN. § 76-1423 (West 2012); NEV. REV. STAT. ANN. § 118A.330 (West 2011); N.H. REV. STAT. ANN. § 540-A:3 (West 2012); N.D. CENT. CODE ANN. § 47-16-07.3 (West 2011)(during reasonable hours); OHIO REV. CODE ANN. § 5321.04 (West 2012); OKLA. STAT. ANN. TIT. 41, § 128 (West 2012); OR. REV. STAT. ANN. § 90.322 (West 2012); R.I. GEN. LAWS ANN. § 34-18-26 (West 2012); S.C. CODE ANN. § 27-40-530 (West 2011); VA. CODE ANN. § 55-248.18 (West 2012); WASH. REV. CODE ANN. § 59.18.150 (West 2012); WIS. STAT. ANN. § 704.05 (West 2011).

38 CAL. CIV. CODE ANN. § 1954 (West 2012); NEV. REV. STAT. ANN. § 118A.330 (West 2011)(“unless the tenant expressly consents to shorter notice or to entry during nonbusiness hours with respect to the particular entry”)

39 FLA. STAT. ANN. § 83.53 (West 2012).

40 DEL. CODE ANN. TIT. 25, § 5509 (West 2012).

41 VT. STAT. ANN. TIT. 9, § 4460 (West 2012).

- Provisions in Oregon and Delaware allowing landlords to enter at reasonable times to read meters.<sup>42</sup>
- Extensive procedures in Washington to permit fire officials to enter the property when the landlord or the tenant has denied the fire official the right to search a dwelling.<sup>43</sup>
- A provision in Tennessee permitting landlords to enter if the tenant is deceased, incapacitated, or incarcerated.<sup>44</sup>
- A provision in Minnesota permitting the landlord to access the property when the tenant is causing a disturbance within the unit, for prearranged housekeeping work in senior housing where 80 percent or more of the residential tenants are age 55 or older, or the landlord has a reasonable belief that the unit is being occupied by an individual without a legal right to occupy it.<sup>45</sup>
- A provision in Massachusetts permitting landlords to enter to inspect “within the last thirty days of the tenancy or after either party has given notice to the other of intention to terminate the tenancy, the premises for the purpose of determining the amount of damage, if any, to the premises which would be cause for deduction from any security deposit held by the lessor pursuant to this section.”<sup>46</sup>

## 5. Remedy

Section 4.302 of the URLTA provides the following remedy for abuse of access:

- (a) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case the landlord may recover actual damages and reasonable attorney's fees.
- (b) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages [not less than an amount equal to [1] month's rent] and reasonable attorney's fees.<sup>47</sup>

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42 OR. REV. STAT. ANN. § 90.539 (West 2012)(without notice or consent to read meters); DEL. CODE ANN. TIT. 25, § 5509 (West 2012)

43 WASH. REV. CODE ANN. § 59.18.150 (West 2012).

44 TENN. CODE ANN. § 66-28-403 (West 2012).

45 MINN. STAT. ANN. § 504B.211 (West 2012).

46 MASS. GEN. LAWS ANN. ch. 186, § 15B (West 2012).

47 UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.302.



Twenty states have based their remedy provisions on the URLTA<sup>48</sup> and eight others have non-URLTA-based remedy statutes.<sup>49</sup> As with other provisions of the URLTA, adoption of the Act has not been uniform. The most common modification has been to omit the ability to collect attorney's fees, with eight of the twenty URLTA-based statutes deleting this provision entirely.<sup>50</sup> Alaska allows reasonable attorney's fees only to the tenant rather than making that an option for both parties.<sup>51</sup> Rhode Island expressly allows only the prevailing party to recover actual damages, costs, and reasonable attorney's fees.<sup>52</sup>

Among other deviations from the URLTA, Arkansas' statute focuses only upon the tenant's duties to provide reasonable access to the landlord and, therefore, the remedy provision offers relief only for the landlord.<sup>53</sup> Oklahoma's statute removed the landlord's right to actual damages.<sup>54</sup>

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48 ALA. CODE § 35-9A-442 (West 2012); ALASKA STAT. ANN. § 34.03.300 (West 2012); ARIZ. REV. STAT. ANN. § 33-1376 (West 2012); ARK. CODE ANN. § 18-17-705 (West 2012); CONN. GEN. STAT. ANN. § 47a-18 (West 2012); CONN. GEN. STAT. ANN. § 47a-18a (West 2012); IOWA CODE ANN. § 562A.35 (West 2012); KAN. STAT. ANN. § 58-2571 (West 2012); KY. REV. STAT. ANN. § 383.700 (West 2012); ME. REV. STAT. TIT. 14, § 6025 (West 2011)(does not include the landlord's URLTA remedy provision); MONT. CODE ANN. § 70-24-410 (West 2011); MONT. CODE ANN. § 70-24-424 (West 2011); NEB. REV. STAT. ANN. § 76-1438 (West 2012); NEV. REV. STAT. ANN. § 118A.500 (West 2011); N.M. STAT. ANN. § 47-8-24 (West 2012); OHIO REV. CODE ANN. § 5321.05 (West 2012); OHIO REV. CODE ANN. § 5321.04 (West 2012); OKLA. STAT. ANN. TIT. 41, § 128 (West 2012); OKLA. STAT. ANN. TIT. 41, § 124 (West 2012); OR. REV. STAT. ANN. § 90.322 (West 2012); R.I. GEN. LAWS ANN. § 34-18-45 (West 2012); S.C. CODE ANN. § 27-40-780 (West 2011); TENN. CODE ANN. § 66-28-513 (West 2012); VA. CODE ANN. § 55-248.10:1 (West 2012).

49 CAL. CIV. CODE ANN. § 1940.2 (West 2012); DEL. CODE ANN. tit. 25, § 5510 (West 2012); FLA. STAT. ANN. § 83.53 (West 2012); FLA. STAT. ANN. § 83.48 (West 2012); FLA. STAT. ANN. § 83.55 (West 2012); HAW. REV. STAT. ANN. § 521-73 (West 2012); MINN. STAT. ANN. § 504B.211 (West 2012); N.H. REV. STAT. ANN. § 540-A:4 (West 2012); UTAH CODE ANN. § 57-22-4 (West 2012); WASH. REV. CODE ANN. § 59.18.150 (West 2012).

50 ALA. CODE § 35-9A-442 (West 2012); ARIZ. REV. STAT. ANN. § 33-1376 (West 2012); KAN. STAT. ANN. § 58-2571 (West 2012); MONT. CODE ANN. § 70-24-410 (West 2011); MONT. CODE ANN. § 70-24-424 (West 2011); NEV. REV. STAT. ANN. § 118A.500 (West 2011); N.M. STAT. ANN. § 47-8-24 (West 2012); OKLA. STAT. ANN. TIT. 41, § 128 (West 2012); OKLA. STAT. ANN. TIT. 41, § 124 (West 2012); OR. REV. STAT. ANN. § 90.322 (West 2012).

51 ALASKA STAT. ANN. § 34.03.300 (West 2012).

52 R.I. GEN. LAWS ANN. § 34-18-45 (West 2012).

53 ARK. CODE ANN. § 18-17-705 (West 2012).

54 OKLA. STAT. ANN. TIT. 41, § 128 (West 2012).

Some of the non-URLTA-based statutes offer slightly different remedies for the parties. Instead of actual damages, Minnesota, California, and Washington assess monetary penalties to be paid to the aggrieved party.<sup>55</sup> Other variations include:

- In Delaware and Hawaii, the landlord can be held liable for any theft or damage proximately caused by the entry of a landlord or person with the permission of the landlord.<sup>56</sup>
- In Hawaii, the tenant's options upon landlord's repeated demands for unreasonable entry or upon any unreasonable entry include not only the option of terminating the agreement or obtaining injunctive relief but the ability to collect a fine from the landlord of not more than \$100.<sup>57</sup>
- In Florida, if the tenant unreasonably refuses to consent to the landlord to enter, the statute permits the landlord to enter the property as a remedy when necessary for any of the stated purposes in the statute.<sup>58</sup>
- New Hampshire penalizes frivolous court filings<sup>59</sup> by providing that if any action is "found to be frivolous or brought solely for harassment, the plaintiff shall pay to the defendant the costs of said action including reasonable attorney's fees."<sup>60</sup>
- Utah expressly provides that the landlord's violation of the right to access does not give rise to any cause of action against the landlord.<sup>61</sup>

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55 MINN. STAT. ANN. § 504B.211 (West 2012)(If substantial violation of notice provisions or entering for improper purpose, tenant entitled to up to \$100 civil penalty for each violation, in addition to rent reduction up to full rescission of the lease and recovery of any damage deposit still owed; if landlord enters without consent while tenant absent, \$100 for each violation); CAL. CIV. CODE ANN. § 1940.2 (West 2012)(If the tenant prevails in a civil action on a claim that the landlord significantly and intentionally violated Section 1954, the tenant may collect up to \$2,000 from the landlord for each violation); WASH. REV. CODE ANN. § 59.18.150 (West 2012)("A landlord or tenant who continues to violate the rights of the tenant or landlord with respect to the duties imposed on the other as set forth in this section after being served with one written notification alleging in good faith violations of this section listing the date and time of the violation shall be liable for up to one hundred dollars for each violation after receipt of the notice. The prevailing landlord or tenant may recover costs of the suit or arbitration under this section, and may also recover reasonable attorneys' fees.")

56 DEL. CODE ANN. TIT. 25, § 5510 (West 2012); HAW. REV. STAT. ANN. § 521-73 (West 2012).

57 *Id.*

58 FLA. STAT. ANN. § 83.53 (West 2012)("The landlord may enter the dwelling unit when necessary for the further purposes set forth in subsection (1) under any of the following circumstances...when the tenant unreasonably withholds consent.")

59 N.H. REV. STAT. ANN. § 540-A:4 (West 2012); N.H. REV. STAT. ANN. § 358-A: 10 (West 2012)..

*Id.*

61 UTAH CODE ANN. § 57-22-4 (West 2012).

## II. Case Law

The case law generally supports the URLTA in limiting the landlord's access. Much of the case law recognizes that the landlord has right to enter only if the lease permits, if the law provides such right, or if the tenant consents.<sup>62</sup> Many courts have also recognized that if the landlord has a duty, either under the lease or by law, to make repairs, the landlord has a right to enter for that purpose<sup>63</sup> or to collect rent.<sup>64</sup> In Louisiana, the landlord can enter to make extensive repairs, even if it does cause the tenant to leave for a period,<sup>65</sup> but the landlord cannot retain possession so as to prevent the tenant's re-occupancy.<sup>66</sup> Furthermore, some state courts have ruled that if re-entry is required by public authorities, the landlord is not liable to the tenant.<sup>67</sup>

As a general principle, a few state courts have held lease provisions regarding the landlord's right of entry during the tenant's possession must be reasonably construed so as to not impair the tenant's right to quiet enjoyment.<sup>68</sup> A California court further ruled that a right of entry for one purpose will not justify the performance of acts for another purpose.<sup>69</sup> For example, a lease provision granting the landlord a reasonable right to enter to respect and to spray for infestations did not cover the landlord's actions in granting a police officer access to perform a search.<sup>70</sup>

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62 *Waits v. Orange Creek Turpentine Corp.*, 166 So. 449, 451 (Fla. 1936); *Strycharski v. Spillane*, 69 N.E.2d 589, 591 (Mass. 1946); *Layton v. A.I. Namm & Sons*, 275 A.D. 246, 249 (N.Y.1949), *aff'd*, 98 N.E.2d 590 (1951); *Johnson v. Kurn*, 95 F.2d 629, 632 (8th Cir. 1938); *Strand Enters. v. Turner*, 78 So. 2d 769, 773 (1955); *S. Bell Tel. & Tel. Co. v. Yates*, 232 S.W.2d 796, 798-99 (Tenn. Ct. App. 1950); ; *Lavigne v. Rossetti*, 114 A.2d 407, 410 (Vt.1955).

63 *Barron v. Liedloff*, 104 N.W. 289, 290 (Minn. 1905); *Dwyer v. Carroll*, 24 P. 1015, 1017 (Cal. 1890); *Scibek v. O'Connell*, 41 A.2d 251, 252 (Conn. 1945); *Eisenhauer v. Ceppi*, , 131 N.E. 184, 185 (Mass. 1921); *Grimmeissen v. Walgreen Drug Stores*, 229 S.W.2d 593, 599 (Mo. Ct. App. 1950); *Flanders v. New Hampshire Sav. Bank*, 7 A.2d 233, 236 (N.H. 1939); *Wannmacher v. Baldauf Corp.*, 55 N.W.2d 895, 898 (Wis. 1952).; *Dean v. Hershowitz*, 177 A. 262, 269 (Conn. 1935); *City of Pasco v. Shaw*, 110 P.3d 1200, 1204 ( Wash. Ct. App. 2005) *aff'd*, 166 P.3d 1157 (2007).

64 *Sproul v. Gilbert*, 359 P.2d 543, 549 (Or. 1961)(cited by *Oldham v. Fanno* 7 P.3d 672, 674 (2000)); *Layton v. A.I. Namm & Sons*, 275 A.D. 246, 249(N.Y.1949), *aff'd*, 98 N.E.2d 590 (1951).

65 *Bonnecaze v. Beer*, 37 La. Ann. 531, 532 (La. 1885).

66 *Saputa v. Catanese*, 182 So. 2d 826, 829 (La. Ct. App. 1966).

67 *Sunderman v. Warnken*, 29 N.W.2d 496, 499 (Wis.1947); *Zwerin v. Geiss*, 38 Misc. 2d 306, 310(N. Y. Civ. Ct. 1963).

68 *Owsley v. Hamner*, 227 P.2d 263, 269-70 (Cal. 1951); *Succession of Marx v. Schornstein*, 169 So. 93, 94 (La. Ct. App. 1936); *Nabru Assocs. v. Zimmerman*, 247 A.D. 645, 647-48, 288 N.Y.S. 315, 318 (1936).

69 *Dwyer v. Carroll*, 24 P. 1015, 1017 (Cal. 1890).

70 *Blanco v. State*, 438 So. 2d 404, 405 (Fla. Dist. Ct. App. 1983).

In regards to which times of the day the landlord may enter to make repairs, an Ohio court ruled that it must be “exercised at reasonable times of the business day except in case of emergency” when the right is reserved in the lease.<sup>71</sup> Illinois case law holds that in a month-to-month tenancy, the landlord has the right to “reasonably exhibit premises during the one-month period” prior to the termination date.<sup>72</sup>

## CONCLUSION AND RECOMMENDATIONS

Most states have generally followed the URLTA’s provisions regarding a landlord’s right to access a tenant’s residence. The drafting committee should consider, however, whether modifications of the Act are desirable to address some or all of the following issues:

- **Length of notice.** Whether to shorter or otherwise modify the Act’s bracketed requirement of two days’ notice before the landlord’s entry.
- **Tenant’s consent.** Whether to expressly state that the landlord may not enter without the landlord’s consent (a right implied under the current Act).
- **Emergency situations.** Whether to require that the landlord provide notice *after* entry when the landlord’s entry was triggered by an emergency.
- **Entry without notice for requested repairs.** Whether to include a second exception (in addition to emergencies) allowing the landlord to enter without notice (1) to make repairs requested by the tenant; or (2) if the parties agree to entry without notice for periodic scheduled maintenance or services (such as pest spraying).
- **Entry to show premises to prospective tenants, etc.** Whether to include a shorter notice period (or other modifications) when the entry is to show the premises to prospective tenants.
- **Waiver by agreement.** Whether the parties may agree, in a separate writing or otherwise, that no notice shall be required for specific purposes enumerated in the writing.
- **Contents of the notice.** Whether the Act should specify the information that a landlord should provide in the notice.
- **Notification procedures.** Whether the Act should specify how notice shall be delivered and procedures for the tenant to follow to object to the entry.
- **Times of entry.** Whether the Act should limit entry to specific times of the day (“business hours” or “8 a.m. to 8 p.m.”) in place of the Act’s current limitation of entering “at reasonable times.”

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71 Helvich v. George A. Rutherford Co., 114 N.E.2d 514, 522 (1953).

72 Gronek v. Neuman, 201 N.E.2d 617, 618 (Ill. App. Ct. 1964).

- **Other reasons for entry.** Whether the Act should address other reasons the landlord may need entry, such as: to read meters; to permit fire officials to search the premises; when the tenant is diseased or incapacitated; when the tenant is causing a disturbance or the landlord believes the unit is being occupied by an individual without a legal right to do so; or within the last thirty days of the tenancy for purposes of inspecting the premises for damage.