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Judiciary

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1 IN THE HOUSE

2 *SCS CS* HOUSE BILL NO. 226 *Am*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE -- FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act adopting the Uniform Residential Landlord and
7 Tenant Act; amending procedures for the recovery of
8 possession of real property; and providing for an
9 effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. PURPOSES; RULES OF CONSTRUCTION. (a) This Act shall be
12 liberally construed and applied to promote its underlying purposes and pol-
13 icies.

14 (b) Underlying purposes and policies of this Act are

15 (1) to simplify, clarify, modernize and revise the law governing
16 the rental of dwelling units and the rights and obligations of landlord and
17 tenant;

18 (2) to encourage landlord and tenant to maintain and improve the
19 quality of housing; and

20 (3) to make uniform the law among those states which enact it.

21 * Sec. 2. AS 34 is amended to add a new chapter to read:

22 CHAPTER 03. UNIFORM RESIDENTIAL

23 LANDLORD AND TENANT ACT.

24 ARTICLE 1. RENTAL AGREEMENTS.

25 Sec. 34.03.090. TERMS AND CONDITIONS OF RENTAL AGREEMENT. (a) The
26 landlord and tenant may include in a rental agreement, clauses and con-
27 ditions not prohibited by this chapter or by law, including rent, term
28 of the agreement, and other provisions governing the rights and obliga-
29 tions of the parties.

SCS CS HB 226 *Am*

1 (b) In absence of agreement, the tenant shall pay as rent the fair
2 rental value for the use and occupancy of the dwelling unit.

3 (c) Rent shall be payable without demand or notice at the time and
4 place agreed upon by the parties. Unless otherwise agreed, rent is
5 payable at the dwelling unit. Periodic rent is payable at the beginning
6 of any term of one month or less and otherwise in equal monthly install-
7 ments at the beginning of each month. Unless otherwise agreed, rent
8 shall be uniformly apportionable from day to day.

9 (d) Unless the rental agreement fixes a definite term, the tenancy
10 shall be week to week in the case of a roomer who pays weekly rent, and
11 in all other cases month to month.

12 Sec. 34.03.100. EFFECT OF UNSIGNED OR UNDELIVERED RENTAL AGREE-
13 MENT. (a) If the landlord does not sign and deliver a written rental
14 agreement signed and delivered to him by the tenant, acceptance of rent
15 without reservation by the landlord gives the rental agreement the same
16 effect as if it had been signed and delivered by the landlord.

17 (b) If the tenant does not sign and deliver a written rental
18 agreement signed and delivered to him by the landlord, acceptance of
19 possession and payment of rent without reservation gives the rental
20 agreement the same effect as if it had been signed and delivered by the
21 tenant.

22 (c) If a rental agreement given effect by the operation of this
23 section provides for a term longer than one year, it is effective only
24 for one year.

25 Sec. 34.03.110. PROHIBITED PROVISIONS IN RENTAL AGREEMENTS. (a)
26 No rental agreement may provide that the tenant

27 (1) agrees to waive or to forego rights or remedies under this
28 chapter;

29 (2) authorizes any person to confess judgment on a claim

1 arising out of the rental agreement;

2 (3) agrees to pay the landlord's attorney fees; or

3 (4) agrees to the exculpation or limitation of any liability
4 of the landlord arising under law or to indemnify the landlord for that
5 liability or the costs connected with it.

6 (b) A provision prohibited by (a) of this section included in a
7 rental agreement is unenforceable. If a landlord wilfully uses a rental
8 agreement containing provisions known by him to be prohibited, the tenant
9 may recover an amount not to exceed three times the actual damages or
10 three month's periodic rent, whichever is greater, court costs and
11 reasonable attorney fees.

12 Sec. 34.03.120. SEPARATION OF RENTS AND OBLIGATIONS TO MAINTAIN
13 PROPERTY FORBIDDEN. A rental agreement, assignment, conveyance, trust
14 deed, or security instrument may not permit the receipt of rent free of
15 the obligation to comply with sec. 160(a) of this chapter.

16 Sec. 34.03.125. SUBLEASE AND ASSIGNMENT. (a) Unless otherwise
17 agreed in writing, the tenant may sublet his premises or assign the
18 rental agreement to another without the landlord's consent.

19 (b) The tenant's right to sublease his premises or assign the
20 rental agreement to another may be conditioned on obtaining the land-
21 lord's consent, which may be withheld only upon the grounds specified in
22 (d) of this section; no further restrictions on sublease or assignment
23 are enforceable.

24 (c) When the rental agreement requires the landlord's consent for
25 sublease or assignment, the tenant may secure one or more persons who
26 are willing to occupy the premises. Each prospective occupant shall
27 make a written offer signed and delivered by him to the landlord, con-
28 taining the following information on the prospective occupant:

29 (1) name, age and present address;

1 (2) marital status;

2 (3) occupation, place of employment, and name and address of
3 employer;

4 (4) number of all other persons who would normally reside
5 with the prospective occupant;

6 (5) two credit references, or responsible persons who will
7 confirm the financial responsibility of the prospective occupant; and

8 (6) names and addresses of all landlords of the prospective
9 occupant during the prior three years.

10 (d) Within 14 days after the written offer has been delivered to
11 the landlord, the landlord may refuse consent to a sublease or assign-
12 ment by a written rejection signed and delivered by him to the tenant,
13 containing one or more of the following reasonable grounds for rejecting
14 the prospective occupant:

15 (1) insufficient credit standing or financial responsibility;

16 (2) number of persons in the household;

17 (3) number of persons under 18 years of age in the household;

18 (4) unwillingness of the prospective occupant to assume the
19 same terms as are included in the existing rental agreement;

20 (5) proposed maintenance of pets;

21 (6) proposed commercial activity; or

22 (7) written information signed by a previous landlord, which
23 shall accompany the rejection, setting forth abuses of other premises
24 occupied by the prospective occupant.

25 (e) In the event the written rejection fails to contain one or
26 more grounds permitted by (d) of this section for rejecting the pros-
27 pective occupant, the tenant may consider the landlord's consent given,
28 or at his option may terminate the rental agreement by a written notice
29 given without unnecessary delay to the landlord at least 30 days prior

1 to the termination date specified in the notice.

2 (f) In the event the landlord does not deliver a written rejection
3 signed by him to the tenant within 14 days after a written offer has
4 been delivered to him by the tenant, the landlord's consent to the sub-
5 lease or assignment shall be conclusively presumed.

6 ARTICLE 2. LANDLORD OBLIGATIONS.

7 Sec. 34.03.130. SECURITY DEPOSITS: PREPAID RENT. (a) A landlord
8 may not demand or receive prepaid rent and security, however denominated,
9 in an amount or value in excess of one month's periodic rent.

10 (b) Upon termination of the tenancy, property or money held by the
11 landlord as prepaid rent and security plus interest may be applied to the
12 payment of accrued rent and the amount of damages which the landlord has
13 suffered by reason of the tenant's noncompliance with sec. 180 of this
14 chapter. The accrued rent and damages must be itemized by the landlord
15 in a written notice delivered to the tenant together with the amount due
16 no later than 14 days after termination of the tenancy and delivery of
17 possession and demand by the tenant. "Damages" shall not include wear
18 resulting from ordinary use of the premises.

19 (c) All monies paid to the landlord by the tenant as prepaid rent
20 and security in a lease or rental agreement shall promptly be deposited
21 by the landlord in a trust account in a bank, savings and loan associa-
22 tion, or licensed escrow agent, and the landlord shall provide to the
23 tenant a written receipt clearly stating the name of the depository and
24 the terms and conditions under which the prepaid rent and security or
25 portion of it may be withheld by the landlord. Interest, if any,
26 accruing on prepaid rent and security where the principal amount exceeds
27 \$50 or is held for more than six months shall be refunded to the tenant
28 upon the same terms and conditions as the principal amount.

29 (d) If the landlord wilfully fails to comply with (b) of this

1 section, the tenant may recover an amount not to exceed three times the
2 actual amount of damages or three months' periodic rent, whichever is
3 greater, and attorney fees.

4 (e) This section does not preclude a landlord or tenant from
5 recovering other damages to which he may be entitled under this chapter.

6 (f) The holder of the landlord's interest in the premises at the
7 time of the termination of the tenancy is bound by this section.

8 Sec. 34.03.140. DISCLOSURE. (a) The landlord or any person auth-
9 orized to enter into a rental agreement on his behalf shall disclose to
10 the tenant in writing at or before the commencement of the tenancy the
11 name and address of

12 (1) the person authorized to manage the premises; and

13 (2) an owner of the premises or a person authorized to act
14 for and on behalf of the owner for the purpose of service of process and
15 for the purpose of receiving and receipting for notices and demands.

16 (b) The information required to be furnished by this section shall
17 be kept current and this section extends to and is enforceable against
18 any successor landlord, owner or manager.

19 (c) A person who fails to comply with (a) of this section becomes
20 an agent of each person who is a landlord for the purpose of

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

23 (2) performing the obligations of the landlord under this
24 chapter and under the rental agreement and expending or making available
25 for the purpose all rent collected from the premises.

26 Sec. 34.03.150. LANDLORD TO SUPPLY POSSESSION OF THE DWELLING UNIT.
27 At the commencement of the term the landlord shall deliver possession of
28 the premises to the tenant in compliance with the rental agreement and
29 sec. 160 of this chapter. The landlord may bring an action for possession

1 against any person wrongfully in possession and may recover the damages
2 provided in sec. 360 of this chapter.

3 Sec. 34.03.160. LANDLORD TO MAINTAIN FIT PREMISES. (a) The land-
4 lord shall

5 (1) comply with the requirements of applicable building and
6 housing codes materially affecting health and safety;

7 (2) make all repairs and do whatever is necessary to put and
8 keep the premises in a fit and habitable condition;

9 (3) keep all common areas of the premises in a clean and safe
10 condition;

11 (4) maintain in good and safe working order and condition all
12 electrical, plumbing, sanitary, heating, ventilating, air-conditioning,
13 kitchen and other facilities and appliances, including elevators,
14 supplied or required to be supplied by him;

15 (5) provide and maintain appropriate receptacles and con-
16 veniences for the removal of ashes, garbage, rubbish, and other waste
17 incidental to the occupancy of the dwelling unit and arrange for their
18 removal;

19 (6) supply running water and reasonable amounts of hot water
20 and heat at all times except where the building that includes the
21 dwelling unit is not required by law to be equipped for that purpose, or
22 the dwelling unit is so constructed that heat or hot water is generated
23 by an installation within the exclusive control of the tenant and sup-
24 plied by a direct public utility connection; and

25 (7) provide and maintain locks and furnish keys reasonably
26 adequate to insure safety to the tenant's person and property.

27 (b) If the duty imposed by (a)(1) of this section is greater than
28 any duty imposed by any other paragraph in (a) of this section, the
29 landlord's duty shall be determined under (a)(1) of this section.

1 (c) A landlord of a single family residence located in an un-
2 developed rural area or located where public sewer or water service has
3 never been connected is not liable for a breach of (a)(1), (4) or (6)
4 of this section if the dwelling unit at the beginning of the rental
5 agreement did not have running water, hot water, sewage or sanitary
6 facilities from a private system.

7 (d) The landlord and tenant of a single family residence may agree
8 in writing that the tenant perform the landlord's duties specified in
9 (a)(5), (6) and (7) of this section. They may also agree in writing
10 that the tenant perform specified repairs, maintenance tasks, alter-
11 ations, and remodeling. Agreements are allowed under this subsection
12 only if the transaction is entered into in good faith and not for the
13 purpose of evading the obligations of the landlord.

14 (e) The landlord and tenant of a dwelling unit other than a single
15 family residence may agree that the tenant is to perform specified
16 repairs, maintenance tasks, alterations, or remodeling only if

17 (1) the agreement of the parties is entered into in good
18 faith and not for the purpose of evading the obligations of the land-
19 lord and is set forth in a separate writing signed by the parties and
20 supported by adequate consideration;

21 (2) the work is not necessary to cure noncompliance with
22 (a)(1) of this section; and

23 (3) the agreement does not diminish or affect the obligation
24 of the landlord to other tenants in the premises.

25 (f) The landlord may not treat performance of a separate agree-
26 ment described in (e) of this section as a condition to an obligation or
27 performance of a rental agreement.

28 Sec. 34.03.170. LIMITATION OF LIABILITY. (a) Unless otherwise
29 agreed, a landlord who conveys premises that include a dwelling unit

1 subject to a rental agreement in a good faith sale to a bona fide pur-
2 chaser is relieved of liability under the rental agreement and this
3 chapter as to events occurring subsequent to written notice to the tenant
4 of the conveyance. However, the landlord remains liable to the tenant
5 for the property and money to which the tenant is entitled under sec.
6 130 of this chapter.

7 (b) Unless otherwise agreed, a manager of premises that include
8 a dwelling unit is relieved of liability under the rental agreement and
9 this chapter as to events occurring after written notice to the tenant
10 of the termination of his management.

11 ARTICLE 3. TENANT OBLIGATIONS.

12 Sec. 34.03.180. TENANT TO MAINTAIN DWELLING UNIT. The tenant shall

- 13 (1) comply with all obligations primarily imposed on tenants
14 by applicable provisions of building and housing codes materially
15 affecting health and safety;
- 16 (2) keep that part of the premises that he occupies and uses
17 as clean and safe as the condition of the premises permit;
- 18 (3) dispose from his dwelling unit all ashes, rubbish, gar-
19 bage, and other waste in a clean and safe manner;
- 20 (4) keep all plumbing fixtures in the dwelling unit or used
21 by the tenant as clean as their condition permits;
- 22 (5) use in a reasonable manner all electrical, plumbing,
23 sanitary, heating, ventilating, air-conditioning, kitchen and other
24 facilities and appliances including elevators in the premises;
- 25 (6) not deliberately or negligently destroy, deface, damage,
26 impair or remove any part of the premises or knowingly permit any person
27 to do so; and
- 28 (7) conduct himself and require other persons on the premises
29 with his consent to conduct themselves in a manner that will not

1 unreasonably disturb his neighbor's peaceful enjoyment of the premises

2 Sec. 34.03.190. RULES AND REGULATIONS. A landlord may adopt rules
3 and regulations, however described, concerning the tenant's use and
4 occupancy of the premises. A rule or regulation is enforceable against
5 the tenant only if

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

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

12 (3) it applies to all tenants in the premises in a fair
13 manner;

14 (4) it is sufficiently explicit in its prohibition, direction,
15 or limitation of the tenant's conduct to fairly inform him of what he
16 must or must not do to comply;

17 (5) it is not for the purpose of evading the obligations of
18 the landlord; and

19 (6) the tenant has notice of it at the time he enters into
20 the rental agreement.

21 (b) A rule or regulation adopted after the tenant enters into the
22 rental agreement is enforceable against the tenant if reasonable notice
23 of its adoption is given to the tenant and it does not work a substantial
24 modification of his rental agreement.

25 Sec. 34.03.200. ACCESS. (a) The tenant shall not unreasonably
26 withhold consent to the landlord to enter into the dwelling unit in
27 order to inspect the premises, make necessary or agreed repairs,
28 decorations, alterations, or improvements, supply necessary or agreed
29 services, or exhibit the dwelling unit to prospective or actual

1 purchasers, mortgagees, tenants, workmen or contractors.

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

4 (c) No landlord may abuse the right of access or use it to harass
5 the tenant. Except in case of emergency or if it is impracticable to
6 do so, the landlord shall give the tenant at least two days' notice of
7 his intent to enter and may enter only at reasonable times and with the
8 tenant's consent.

9 (d) The landlord has no other right to access except by court
10 order, and as permitted by sec. 300 and sec. 310(b) of this chapter, or
11 if the tenant has abandoned or surrendered the premises.

12 Sec. 34.03.210. TENANT TO USE AND OCCUPY. Unless otherwise
13 agreed, the tenant shall occupy his dwelling unit only as a dwelling
14 unit. The rental agreement may require that the tenant notify the land-
15 lord of any anticipated extended absence from the premises in excess of
16 14 days no later than the first day of the extended absence.

17 ARTICLE 4. TENANT REMEDIES.

18 Sec. 34.03.220. NONCOMPLIANCE BY THE LANDLORD: GENERAL. (a) Except
19 as provided in this chapter, if there is a material noncompliance by the
20 landlord with the rental agreement or a noncompliance with sec. 160 of
21 this chapter materially affecting health and safety, the tenant may
22 deliver a written notice to the landlord specifying the acts and
23 omissions constituting the breach and specifying that the rental agree-
24 ment will terminate upon a date not less than 14 days after receipt of
25 the notice if the breach is not remedied in seven days, and the rental
26 agreement shall terminate as provided in the notice subject to the pro-
27 visions of this section. If the breach is remediable by repairs or the
28 payment of damages or otherwise, and the landlord remedies the breach
29 prior to the date specified in the notice, the rental agreement will not

1 terminate. If substantially the same act or omission which constituted
2 a prior noncompliance of which notice was given recurs within six
3 months, the tenant may terminate the rental agreement upon at least
4 seven days written notice specifying the breach and the date of term-
5 ination of the rental agreement. The tenant may not terminate for a
6 condition caused by the deliberate or negligent act or omission of the
7 tenant, a member of his family, or other person on the premises with
8 his consent.

9 (b) Except as provided in this chapter, the tenant may recover
10 damages including court costs and reasonable attorney fees and obtain
11 injunctive relief for any noncompliance by the landlord with the rental
12 agreement or sec. 160 of this chapter.

13 (c) The remedy provided in (b) of this section is in addition to
14 any right of the tenant under (a) of this section.

15 (d) If the rental agreement is terminated, the landlord shall
16 return all prepaid rent and security recoverable by the tenant under
17 sec. 130 of this chapter.

18 Sec. 34.03.230. FAILURE TO DELIVER POSSESSION. (a) If the land-
19 lord fails to deliver possession of the dwelling unit to the tenant as
20 provided in sec. 150 of this chapter, rent abates until possession is
21 delivered and the tenant may

22 (1) upon at least seven days written notice to the landlord
23 terminate the rental agreement and upon termination the landlord shall
24 return all prepaid rent and security; or

25 (2) demand performance of the rental agreement by the land-
26 lord and if the tenant elects, maintain an action for possession of the
27 dwelling unit against the landlord and any person wrongfully in posses-
28 sion and recover the damages sustained by him.

29 (b) If a person's failure to deliver possession is wilful and not

1 subject to a rental agreement in a good faith sale to a bona fide pur-
2 chaser is relieved of liability under the rental agreement and this
3 chapter as to events occurring subsequent to written notice to the tenant
4 of the conveyance. However, the landlord remains liable to the tenant
5 for the property and money to which the tenant is entitled under sec.
6 130 of this chapter.

7 (b) Unless otherwise agreed, a manager of premises that include
8 a dwelling unit is relieved of liability under the rental agreement and
9 this chapter as to events occurring after written notice to the tenant
10 of the termination of his management.

11 ARTICLE 3. TENANT OBLIGATIONS.

12 Sec. 34.03.180. TENANT TO MAINTAIN DWELLING UNIT. The tenant shall

13 (1) comply with all obligations primarily imposed on tenants
14 by applicable provisions of building and housing codes materially
15 affecting health and safety;

16 (2) keep that part of the premises that he occupies and uses
17 as clean and safe as the condition of the premises permit;

18 (3) dispose from his dwelling unit all ashes, rubbish, gar-
19 bage, and other waste in a clean and safe manner;

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

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

25 (6) not deliberately or negligently destroy, deface, damage,
26 impair or remove any part of the premises or knowingly permit any person
27 to do so; and

28 (7) conduct himself and require other persons on the premises
29 with his consent to conduct themselves in a manner that will not

1 unreasonably disturb his neighbor's peaceful enjoyment of the premises.

2 Sec. 34.03.190. RULES AND REGULATIONS. A landlord may adopt rules
3 and regulations, however described, concerning the tenant's use and
4 occupancy of the premises. A rule or regulation is enforceable against
5 the tenant only if

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

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

12 (3) it applies to all tenants in the premises in a fair
13 manner;

14 (4) it is sufficiently explicit in its prohibition, direction,
15 or limitation of the tenant's conduct to fairly inform him of what he
16 must or must not do to comply;

17 (5) it is not for the purpose of evading the obligations of
18 the landlord; and

19 (6) the tenant has notice of it at the time he enters into
20 the rental agreement.

21 (b) A rule or regulation adopted after the tenant enters into the
22 rental agreement is enforceable against the tenant if reasonable notice
23 of its adoption is given to the tenant and it does not work a substantial
24 modification of his rental agreement.

25 Sec. 34.03.200. ACCESS. (a) The tenant shall not unreasonably
26 withhold consent to the landlord to enter into the dwelling unit in
27 order to inspect the premises, make necessary or agreed repairs,
28 decorations, alterations, or improvements, supply necessary or agreed
29 services, or exhibit the dwelling unit to prospective or actual

1 in good faith, an aggrieved tenant may recover from that person an
2 amount not to exceed three times the actual damages or three month's
3 periodic rent, whichever is greater, court costs and reasonable attorney
4 fees.

5 Sec. 34.03.240. SELF-HELP FOR MINOR DEFECTS. (a) If the landlord
6 fails to comply with the rental agreement of sec. 160 of this chapter,
7 and the reasonable cost of compliance is less than \$200, or an amount
8 equal to the periodic rent, whichever amount is greater, the tenant may
9 recover damages for the breach under sec. 220(b) of this chapter or may
10 notify the landlord of this intention to correct the condition at the
11 landlord's expense. If the landlord fails to comply within seven days
12 after being notified by the tenant in writing or as promptly as con-
13 ditions require in case of emergency, the tenant may cause the work to be
14 done in a workmanlike manner and, after submitting to the landlord an
15 itemized statement, deduct from his rent the actual and reasonable value
16 of the work, not to exceed the amount specified in this subsection.

17 (b) A tenant may not repair at the landlord's expense if the
18 condition was caused by the deliberate or negligent act or omission of
19 the tenant, a member of his family, or other person on the premises
20 with his consent.

21 Sec. 34.03.250. WRONGFUL FAILURE TO SUPPLY HEAT, WATER, HOT WATER
22 OR ESSENTIAL SERVICES. (a) If contrary to the rental agreement of sec.
23 160 of this chapter the landlord deliberately or negligently fails to
24 supply running water, hot water, heat, sanitary facilities or other
25 essential services, the tenant may give written notice to the landlord
26 specifying the breach and may immediately

27 (1) procure reasonable amounts of hot water, running water,
28 heat, sanitary facilities and essential services during the period of
29 the landlord's noncompliance and deduct their actual and reasonable

1 cost from the rent; or

2 (2) recover damages based on the diminution in the fair
3 rental value of the dwelling unit; or

4 (3) procure reasonable substitute housing during the period
5 of the landlord's noncompliance, in which case the tenant is excused
6 from paying rent for the period of the landlord's noncompliance and in
7 addition may recover the actual and reasonable cost or fair and reason-
8 able value of the substitute housing not in excess of an amount equal
9 to the periodic rent.

10 (b) In proceeding under (a) of this section the tenant may re-
11 cover court costs and reasonable attorney fees.

12 (c) If the tenant proceeds under this section, he may not proceed
13 under sec. 220 or sec. 240 of this chapter as to that breach.

14 (d) Rights do not arise under this section until the tenant has
15 given notice to the landlord. Rights do not arise under this section
16 if the condition was caused by the deliberate or negligent act or
17 omission of the tenant, a member of his family, or other person on the
18 premises with his consent.

19 Sec. 34.03.260. LANDLORD'S NONCOMPLIANCE AS DEFENSE TO ACTION FOR
20 POSSESSION OR RENT. (a) In an action for possession based upon non-
21 payment of the rent or in an action for rent where the tenant is in
22 possession, the tenant may counterclaim for any amount which he may
23 recover under the rental agreement or this chapter. In the event of
24 such counterclaim the court shall determine whether the defense is
25 supported by the evidence and may order that

26 (1) the periodic rent is to be reduced to reflect the
27 diminution in value of the dwelling unit during the period of non-
28 compliance;

29 (2) the action be continued for a reasonable time to enable

1 the landlord to cure the violation;

2 (3) the tenant pay into court all or part of the rent accrued
3 and thereafter accruing. If the violations have not been cured within
4 six months, the court shall enter judgment for the defendant and either
5 refund to the defendant all money deposited or use the money for the
6 purpose of making the dwelling fit for human habitation. If the viola-
7 tions have been cured, the court shall determine the amount due to each
8 party. The party to whom a net amount is owed shall be paid first from
9 the money paid into the court, and the balance by the other party. If
10 no rent remains due after application of this section, judgment shall
11 be entered for the tenant in the action for possession;

12 (4) the tenant vacate the dwelling during the making of
13 necessary repairs, when the repairs cannot be made without vacation of
14 the premises, the tenant to be reinstated upon completion of the repairs.

15 (b) In an action for rent where the tenant is not in possession,
16 the tenant may counterclaim as provided in (a) of this section but the
17 tenant is not required to pay rent into court.

18 Sec. 34.03.270. FIRE OR CASUALTY DAMAGE. (a) If the dwelling
19 unit or premises are damaged or destroyed by fire or casualty to the
20 extent that enjoyment of the dwelling unit is substantially impaired,
21 the tenant may

22 (1) immediately vacate the premises and notify the landlord
23 in writing within 14 days thereafter of his intention to terminate the
24 rental agreement, in which case the rental agreement terminates as of
25 the date of vacating; or

26 (2) if continued occupancy is lawful, vacate the part of the
27 dwelling unit rendered unusable by the fire or casualty, in which case
28 the tenant's liability for rent is reduced in proportion to the diminu-
29 tion in the fair rental value of the dwelling unit.

1 (b) If the rental agreement is terminated the landlord shall
2 return all prepaid rent and security recoverable under sec. 130 of this
3 chapter. Accounting for rent in the event of termination or apportion-
4 ment shall occur as of the date of the casualty.

5 Sec. 34.03.280. TENANT'S REMEDIES FOR LANDLORD'S UNLAWFUL OUSTER,
6 EXCLUSION, OR DIMINUTION OF SERVICE. If the landlord unlawfully removes
7 or excludes the tenant from the premises or wilfully diminishes services
8 to the tenant by interrupting or causing the interruption of electric,
9 gas, water, sanitary or other essential service to the tenant, the
10 tenant may recover possession or terminate the rental agreement and, in
11 either case recover an amount not to exceed three times the actual
12 damages or three month's periodic rent, whichever is greater, court
13 costs and reasonable attorney fees. If the rental agreement is termina-
14 ted the landlord shall return all prepaid rent and security.

15 ARTICLE 5. LANDLORD REMEDIES.

16 Sec. 34.03.290. NONCOMPLIANCE WITH RENTAL AGREEMENT: FAILURE TO
17 PAY RENT. (a) Except as provided in this chapter, if there is a
18 material noncompliance by the tenant with the rental agreement or non-
19 compliance with sec. 180 of this chapter materially affecting health and
20 safety, the landlord may deliver a written notice to the tenant speci-
21 fying the acts and omissions constituting the breach and specifying that
22 the rental agreement will terminate upon a date not less than 14 days
23 after receipt of the notice, if the breach is not remedied in seven days,
24 and the rental agreement shall terminate as provided in the notice
25 subject to the provisions of this section. If the breach is remediable
26 by repairs or the payment of damages or otherwise and the tenant ade-
27 quately remedies the breach prior to the date specified in the notice
28 the rental agreement will not terminate. If substantially the same act
29 or omission which constituted a prior noncompliance of which notice was

1 given recurs within six months, the landlord may terminate the rental
2 agreement upon at least seven days written notice specifying the breach
3 and the date of termination of the rental agreement.

4 (b) If rent is unpaid when due and the tenant fails to pay rent
5 within 14 days after written notice by the landlord of nonpayment and
6 his intention to terminate the rental agreement if the rent is not paid
7 within that period of time, the landlord may terminate the rental agree-
8 ment.

9 (c) Except as provided in this chapter, the landlord may recover
10 damages including court costs and reasonable attorney fees and obtain
11 injunctive relief for any noncompliance by the tenant with the rental
12 agreement or sec. 180 of this chapter.

13 Sec. 34.03.300. FAILURE TO MAINTAIN. If there is noncompliance
14 by the tenant with sec. 180 of this chapter materially affecting health
15 and safety that can be remedied by repair, replacement of a damaged
16 item or cleaning, and the tenant fails to comply as promptly as conditions
17 require in the case of an emergency or within seven days after written
18 notice by the landlord specifying the breach and requesting that the
19 tenant remedy it within that period of time, the landlord may enter the
20 dwelling unit and cause the work to be done in a workmanlike manner and
21 submit an itemized bill for the actual and reasonable cost or the fair
22 and reasonable value of the work not to exceed \$200 or an amount equal
23 to the periodic rent, whichever amount is greater, as rent on the next
24 date when periodic rent is due, or if the rental agreement has termi-
25 nated, for immediate payment.

26 Sec. 34.03.310. REMEDIES FOR ABSENCE, NONUSE AND ABANDONMENT.

27 (a) If the rental agreement requires the tenant to give notice to the
28 landlord of an anticipated extended absence in excess of 14 days as
29 required in sec. 210 of this chapter and the tenant wilfully fails to do

1 so, the landlord may recover an amount not to exceed three times the
2 actual damages or three times the periodic rent, whichever is greater,
3 court costs and reasonable attorney fees.

4 (b) During any absence of the tenant in excess of 14 days, the
5 landlord may enter the dwelling unit at times reasonably necessary as
6 provided in sec. 200 of this chapter.

7 (c) If the tenant abandons the dwelling unit, the landlord shall
8 make reasonable efforts to rent it at a fair rental. If the landlord
9 rents the dwelling unit for a term beginning before the expiration of
10 the rental agreement, the agreement is considered terminated on the
11 date the new tenancy begins. The rental agreement is considered term-
12 inated by the landlord on the date the landlord has notice of the
13 abandonment if the landlord fails to use reasonable efforts to rent the
14 dwelling unit at a fair rental or if the landlord accepts the abandon-
15 ment as a surrender. If the tenancy is from month to month, or week to
16 week, the term of the rental agreement for purposes of this section shall
17 be considered a month or a week, as the case may be.

18 Sec. 34.03.320. WAIVER OF LANDLORD'S RIGHT TO TERMINATE. Accept-
19 ance of rent with knowledge of a default by the tenant or acceptance of
20 performance by the tenant that varies from the terms of the rental
21 agreement or rules or regulations subsequently adopted by the landlord
22 constitutes a waiver of the right of the landlord to terminate the
23 rental agreement for that breach, unless otherwise agreed after the
24 breach has occurred.

25 Sec. 34.03.330. LANDLORD LIENS; DISTRAINT FOR RENT ABOLISHED.

26 (a) A lien or security interest on behalf of the landlord in the
27 tenant's household goods is not enforceable unless perfected before the
28 effective date of this chapter.

29 (b) Distraint for rent is abolished.

1 Sec. 34.03.340. REMEDY AFTER TERMINATION. If the rental agreement
2 is terminated, the landlord may have a claim for possession and for rent
3 and a separate claim for actual damages for breach of the rental agree-
4 ment, court costs and reasonable attorney fees.

5 Sec. 34.03.350. RECOVERY OF POSSESSION LIMITED. A landlord may
6 not recover or take possession of the dwelling unit by action or other-
7 wise, including wilful diminution of services to the tenant by inter-
8 rupting or causing the interruption of electricity, gas, water, sanitary
9 or other essential services to the tenant, except in case of abandon-
10 ment, surrender, or as permitted in this chapter.

11 ARTICLE 6. PERIODIC TENANCY: HOLDOVER: ABUSE OF ACCESS.

12 Sec. 34.03.360. PERIODIC TENANCY: HOLDOVER REMEDIES. (a) The
13 landlord or the tenant may terminate a week to week tenancy by a written
14 notice given to the other at least 14 days prior to the termination date
15 specified in the notice.

16 (b) The landlord or the tenant may terminate a month to month
17 tenancy by a written notice given to the other at least 60 days prior
18 to the rental date specified in the notice.

19 (c) If the tenant remains in possession without the landlord's
20 consent after expiration of the term of the rental agreement or after
21 its termination, the landlord may bring an action for possession and if
22 the tenant's holdover is wilful and not in good faith the landlord, in
23 addition, may recover an amount not to exceed three month's periodic
24 rent or three times the actual damages, whichever is greater, court
25 costs and reasonable attorney fees. If the landlord consents to the
26 tenant's continued occupancy, sec. 90(d) of this chapter applies.

27 Sec. 34.03.370. LANDLORD AND TENANT REMEDIES FOR ABUSE OF ACCESS.

28 (a) If the tenant refuses to allow lawful access, the landlord may
29 obtain injunctive relief to compel access, or terminate the rental

1 agreement. In either case, the landlord may recover an amount not to
2 exceed the actual damages or one month's periodic rent, whichever is
3 greater, court costs and reasonable attorney fees. In the event the
4 landlord terminates, he shall give written notice to the tenant at least
5 seven days prior to the date specified in the notice.

6 (b) If the landlord makes an unlawful entry or a lawful entry in
7 an unreasonable manner or makes repeated demands for entry otherwise
8 lawful but which have the effect of unreasonably harassing the tenant,
9 the tenant may obtain injunctive relief to prevent the recurrence of
10 the conduct, or terminate the rental agreement. In either case, the
11 tenant may recover an amount not to exceed the actual damages or one
12 month's periodic rent, whichever is greater, court costs and reasonable
13 attorney fees. In the event the tenant terminates, he shall give
14 written notice to the landlord at least seven days prior to the date
15 specified in the notice.

16 ARTICLE 7. RETALIATORY ACTION.

17 Sec. 34.03.380. RETALIATORY CONDUCT PROHIBITED. (a) Except as
18 provided in (c) of this section, a landlord may not retaliate by in-
19 creasing rent or decreasing services or by bringing or threatening to
20 bring an action for possession after

21 (1) the tenant has complained to a governmental agency
22 charged with responsibility for enforcement of a building or housing
23 code of a violation applicable to the premises and materially affecting
24 health and safety; or

25 (2) the tenant has complained to the landlord of a violation
26 of sec. 130 of this chapter; or

27 (3) the tenant has organized or become a member of a tenant's
28 union or similar organization; or

29 (4) the tenant has complained to a governmental agency

1 responsible for enforcement of governmental housing, wage, price or
2 rent controls.

3 (b) If the landlord acts in violation of (a) of this section the
4 tenant is entitled to the remedies provided in sec. 280 of this chapter
5 and has a defense in an action against him for possession. In an action
6 by or against the tenant, evidence of a complaint or membership within
7 one year prior to the alleged act of retaliation creates a presumption
8 that the landlord's conduct was in retaliation. The presumption does
9 not arise if the tenant made a complaint after notice of a proposed
10 rent increase or after diminution of services. "Presumption" means that
11 the trier of fact must find the fact presumed unless evidence is intro-
12 duced which supports a finding of the nonexistence of the fact.

13 (c) Notwithstanding (a) and (b) of this section, a landlord may
14 bring an action for possession if

15 (1) the violation of the applicable building or housing code
16 was caused primarily by lack of reasonable care by the tenant or other
17 person in his household or upon the premises with his consent; or

18 (2) the tenant is in default in rent; or

19 (3) compliance with the applicable building or housing code
20 requires alteration, remodeling, or demolition which would effectively
21 deprive the tenant of use of the dwelling unit.

22 (d) Maintenance of the action under (c) of this section does not
23 release the landlord from liability under sec. 220(b) of this chapter.

24 ARTICLE 8. GENERAL PROVISIONS.

25 Sec. 34.03.390. OBLIGATION OF GOOD FAITH. Every duty under this
26 chapter and every act which must be performed as a condition precedent
27 to the exercise of a right or remedy under this chapter imposes an
28 obligation of good faith in its performance or enforcement. The
29 aggrieved party has a duty to mitigate damages.

1 Sec. 34.03.400. UNCONSCIONABILITY. (a) If the court, as a matter
2 of law, finds

3 (1) a rental agreement or any provision of it was unconscion-
4 able when made, the court may refuse to enforce the agreement, enforce
5 the remainder of the agreement without the unconscionable provision, or
6 limit the application of any unconscionable provision to avoid an un-
7 conscionable result; or

8 (2) a settlement in which a party waives or agrees to forego
9 a claim or right under this chapter or under a rental agreement was un-
10 conscionable at the time it was made, the court may refuse to enforce
11 the settlement, enforce the remainder of the settlement without the
12 unconscionable provision, or limit the application of any unconscionable
13 provision to avoid an unconscionable result.

14 (b) If unconscionability is put into issue by a party or by the
15 court upon its own motion the parties shall be afforded a reasonable
16 opportunity to present evidence as to the setting, purpose, and effect
17 of the rental agreement or settlement to aid the court in making the
18 determination.

19 Sec. 34.03.410. NOTICE. (a) A person has notice of a fact if he
20 has actual knowledge of it, or he has received a notice or notification
21 of it, or from all the facts and circumstances known to him at the time
22 in question he has reason to know that it exists. A person "knows" or
23 "has knowledge" of a fact if he has actual knowledge of it.

24 (b) A person "notifies" or "gives" a notice or notification to
25 another by taking steps reasonably calculated to inform the other in
26 ordinary course whether or not the other actually comes to know of it.

27 (c) A person "receives" a notice or notification when it comes to
28 his attention, or in the case of the landlord, it is delivered at the
29 place of business of the landlord through which the rental agreement was

1 made or at any place held out by him as the place for receipt of the
2 communication, or in the case of the tenant, it is delivered in hand to
3 the tenant or mailed by registered or certified mail to him at the place
4 held out by him as the place for receipt of the communication, or in the
5 absence of such designation, to his last known place of residence.

6 (d) "Notice", knowledge of a notice or notification received by
7 an organization is effective for a particular transaction from the time
8 it is brought to the attention of the individual conducting that trans-
9 action, and in any event from the time it would have been brought to his
10 attention if the organization had exercised reasonable diligence.

11 Sec. 34.03.420. APPLICATION AND EXCLUSIONS. (a) This chapter
12 applies to and determines rights, obligations and remedies under a rental
13 agreement, wherever made, for a dwelling unit in this state.

14 (b) Unless created to avoid the application of this chapter, the
15 following arrangements are not governed by this chapter

16 (1) residence at an institution, public or private, if
17 incidental to detention or the provision of medical, geriatric, educa-
18 tional, counseling, religious, or similar services;

19 (2) occupancy under a contract of sale of a dwelling unit or
20 the property of which it is a part, if the occupant is the purchaser or
21 a person who succeeds to his interest;

22 (3) occupancy by a member of a fraternal or social organiza-
23 tion in the portion of a structure operated for the benefit of the
24 organization;

25 (4) transient occupancy in a hotel, or motel, lodgings or
26 other transient facility;

27 (5) occupancy by an employee of a landlord whose right to
28 occupancy is conditioned upon employment primarily for services, main-
29 tenance, or repair to the premises;

1 (6) occupancy by an owner of a condominium unit or a holder
2 of a proprietary lease in a cooperative;

3 (7) occupancy under a rental agreement covering premises used
4 by the occupant primarily for agricultural purposes.

5 Sec. 34.03.430. SERVICE OF PROCESS. If a landlord is not a resi-
6 dent of this state or is a corporation not authorized to do business in
7 this state and engages in any conduct in this state governed by this
8 chapter, or engages in a transaction subject to this chapter, he may
9 designate an agent upon whom service of process may be made in this
10 state. The agent shall be a resident of this state or a corporation
11 authorized to do business in this state. The designation shall be in
12 writing and filed with the commissioner of commerce. If no designation
13 is made and filed or if process cannot be served in this state upon the
14 designated agent, process may be served upon the commissioner of
15 commerce, but service upon him is not effective unless the plaintiff or
16 petitioner forthwith mails a copy of the process and pleadings by certi-
17 fied or registered mail to the defendant or respondent at his last
18 ascertainable address. An affidavit of compliance with this section
19 shall be filed with the clerk of the court on or before the return day
20 for the process, if any, or within any further time allowed by the court

21 Sec. 34.03.440. DEFINITIONS. In this chapter:

22 (1) "building and housing codes" include any law, ordinance,
23 or governmental regulation concerning fitness for habitation, or the
24 construction, maintenance, operation, occupancy, use, or appearance of
25 any premises or dwelling unit;

26 (2) "dwelling unit" means a structure or a part of a structure
27 that is used as a home, residence, or sleeping place by one person who
28 maintains a household or by two or more persons who maintain a common
29 household, and includes mobile homes, and in the case of mobile home

1 parks, the lot or space upon which a mobile home is placed;

2 (3) "good faith" means honesty in fact in the conduct of
3 the transaction concerned;

4 (4) "landlord" means the owner, lessor, or sublessor of the
5 dwelling unit or the building of which it is a part, and it also means
6 a manager of the premises who fails to disclose as required by sec. 140
7 of this chapter;

8 (5) "organization" includes a corporation, government,
9 governmental subdivision or agency, business trust, estate, trust,
10 partnership or association, two or more persons having a joint or common
11 interest, and any other legal entity;

12 (6) "owner" means one or more persons, jointly or severally,
13 in whom is vested all or part of the legal title to property or all or
14 part of the beneficial ownership of property and a right to present use
15 of the premises; and the term includes a mortgagee in possession;

16 (7) "person" includes an individual or organization;

17 (8) "premises" means a dwelling unit and the structure of
18 which it is a part and facilities and appurtenances therein and grounds,
19 areas and facilities held out for the use of tenants generally or whose
20 use is promised to the tenant;

21 (9) "rent" means the uniform periodic payment due the land-
22 lord, however denominated;

23 (10) "rental agreement" means all agreements, written or
24 oral, and valid rules and regulations adopted under sec. 190 of this
25 chapter embodying the terms and conditions concerning the use and
26 occupancy of a dwelling unit and premises.

27 (11) "roomer" means a person occupying a dwelling unit that
28 lacks a major bathroom or kitchen facility, in a structure where one or
29 more major facilities are used in common by occupants of the dwelling

1 unit and other dwelling units. Major facility in the case of a bathroom
2 means toilet and either a bath or shower, and in the case of a kitchen
3 means a refrigerator, stove or sink;

4 (12) "sanitary facility" means a flush toilet and proper
5 drainage for all toilets, sinks, basins, bathtubs and showers;

6 (13) "single family residence" means a structure maintained
7 and used as a single dwelling unit. Notwithstanding that a dwelling
8 unit shares one or more walls with another dwelling unit, it is a single
9 family residence if it has direct access to a street or thoroughfare
10 and shares neither heating facilities, hot water equipment, nor any
11 other essential facility or service with any other dwelling unit;

12 (14) "tenant" means a person entitled under a rental agree-
13 ment to occupy a dwelling unit to the exclusion of others;

14 (15) "undeveloped rural area" means any area where public
15 sewer or water services are not available.

16 Sec. 34.03.450. SHORT TITLE. This chapter shall be known and may
17 be cited as the "Uniform Residential Landlord and Tenant Act".

18 * Sec. 3. AS 09.45 is amended by adding a new section to read:

19 Sec. 09.45.496. ACTIONS AGAINST RESIDENTIAL AND AGRICULTURAL
20 TENANTS. (a) In an action for possession under the Uniform Residential
21 Landlord and Tenant Act (AS 34.03), the summons and complaint shall be
22 served not less than five nor more than seven days before the date of
23 trial. No continuance shall be granted plaintiff or defendant except
24 for good cause shown.

25 (b) A tenant whose lease or occupancy is for agricultural purposes
26 and who breaches the rental agreement, or continues in possession of the
27 premises at the expiration of the time limited in or contrary to a con-
28 dition or covenant in the lease or agreement under which he holds, shall
29 be provided with a written notice specifying the breach and demanding he

1 quit the premises at least 30 days before commencement of an action for
2 the recovery of the property. The tenant shall have free access to the
3 premises to cultivate and harvest crops or produce planted by him before
4 the service of the notice of the breach and demand to quit the premises.

5 * Sec. 4. The following laws are repealed: AS 09.45.060 - 09.45.160;
6 AS 09.45.690; AS 34.05.010 - 34.05.020.

7 * Sec. 5. This Act takes effect on the day after its passage and approval
8 or on the day it becomes law without approval.

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