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search

landlord and Tenant and
Housing.
TITLE 9

Landlord
Tenant

Barbara Thorne

Joe O'Connell

Don Clocksin

Janine Repp U.S. time

— Barbara G. Eichner

AW

34.03.180 — Did you give written
notice.

landlord retaliatory action
34.03.310

? reasonable

VF - bills

State affairs

LIST OF STATES WITH RETALIATORY EVICTION PROTECTIONS

- Alaska: Alaska Stat., §34.03.310 (Cum. Supp. 1974)
- Arizona: Ariz. Rev. Stat. Ann., §33-1381 (1974)
- California: Cal. Civ. Code, §1942.5 (West Supp. 1975), as amended as of Jan. 1, 1980; and Schweiger v. Superior Court, 3 Cal.3d 507, 476 P.2d 97, 90 Cal. Rptr. 729 (1970)
- Connecticut: Conn. Gen. Stat. Ann., §19-375a (Supp. Pamphlet 1975)
- Delaware: Del. Code Ann., tit. 25, §5516 (1974)
- District of Columbia: D.C. Code Encycl. Ann., §45-1624 (Supp. 1975-76); and Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968), cert. denied, 393 U.S. 1016 (1969)
- Florida: Rules of the Dept. of Legal Affairs, Rental Housing & Mobile Home Parks, ch. 2-11.07
- Hawaii: Hawaii Rev. Stat., §521-74 (Supp. 1974); and Windward Partners v. Santos, ___ Hawaii ___, 577 P.2d 326 (1978)
- Illinois: Ill. Ann. Stat., ch. 80, §71 (Smith-Hurd 1966); and Clore v. Fredman, 59 Ill.2d 20, 319 N.E.2d 18 (1974)
- Iowa: Iowa House File 2244, §36 (67th Gen. Ass., 1978)
- Kentucky: Ky. Rev. Stat. Ann., §383.705 (Supp. 1974)
- Maine: Me. Rev. Stat. Ann., tit. 14, §6001 (1974)
- Maryland: Md. Real Prop. Code Ann., §8-208.1 (Supp. 1974)
- Massachusetts: Mass. Gen. Laws Ann., ch. 186, §18 (Supp. 1975)
- Michigan: Mich. Comp. Laws Ann., §600.5720 (Supp. 1975-76)
- Minnesota: Minn. Stat. Ann. §§566.03, 566.08 (Supp. 1975-76)
- Montana: Mont. Rev. Codes Ann., §42-442 (1977)
- Nebraska: Neb. Rev. Stat., §76-1439 (Cum. Supp. 1974)

Nevada: Nev. Rev. Stat., tit. 10, §118A.510 (1977),
but law only applies to landlords who own
seven or more units

New Hampshire: N.H. Rev. Stat. Ann., §540.13 (Supp. 1973)

New Jersey: N.J. Stat. Ann., §2A:41-10.10 (Supp. 1975-76);
and E. & E. Newman, Inc. v. Hallock, 116 N.J.
Super. 220, 281 A.2d 544 (1971)

New York: N.Y. Unconsol. Laws, §§8590, 8609 (McKinney
1974)

North Carolina: 1979 N.C. Sess. Laws, ch. 807

Ohio: Ohio Rev. Code Ann., §5321.02 (Page Supp. 1974)

Oregon: Or. Rev. Stat., §91-865 (1974); and Or. Laws,
ch. 559, §32

Pennsylvania: Pa. Stat. Ann., tit. 35, §1700-1 (Supp.
1975-76)

Rhode Island: R.I. Gen. Laws Ann., §34-20-10 (1970)

Tennessee: Tenn. Code Ann., §53-5505 (Supp. 1974)

Texas: Sims v. Century Kiest Apartments, 567 S.W.2d
526 (1978)

Virginia: Va. Code Ann., §55-248.39 (Supp. 1975)

Washington: Wash. Rev. Code, §§59.18.240, 59.18.250 (Supp.
1973)

Wisconsin: Dickhut v. Norton, 45 Wis.2d 389, 173 N.W.2d
297 (1970)

1/2/81

**UNIFORM RESIDENTIAL
LANDLORD AND TENANT ACT**

Drafted by the

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

and by it

**APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES**

at its

**ANNUAL CONFERENCE
MEETING IN ITS EIGHTY-FIRST YEAR
AT SAN FRANCISCO, CALIFORNIA
AUGUST 4-11, 1972**

**WITH AMENDMENTS APPROVED, AUGUST, 1974
WITH COMMENTS**

**APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS
MIDYEAR MEETING IN HOUSTON, TEXAS, FEBRUARY, 1974**

UNIFORM LANDLORD AND TENANT ACT

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North Carolina: 1979 N.C. Sess. Laws, ch. 807

Ohio: Ohio Rev. Code Ann., §5321.72 (Page Supp. 1974)

Oregon: Or. Rev. Stat., §91-865 (1974); and Or. Laws,
ch. 559, §32

Pennsylvania: Pa. Stat. Ann., tit. 35, §1700-1 (Supp.
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UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

ARTICLE I

GENERAL PROVISIONS AND DEFINITIONS

PART I

SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT

SECTION 1.101. [*Short Title.*] This Act shall be known and may be cited as the "Uniform Residential Landlord and Tenant Act."

COMMENT

This Act concerns landlord-tenant relationships under rental agreements for residential purposes (Section 1.201). The Act does not apply to rental agreements made for commercial, industrial, agricultural or any purpose other than residential.

SECTION 1.102. [*Purposes; Rules of Construction.*]

(a) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this Act are

(1) to simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants;

(2) to encourage landlords and tenants to maintain and improve the quality of housing; and

(3) to make uniform the law with respect to the subject of this Act among those states which enact it.

COMMENT

Existing landlord-tenant law in the United States, save as modified by statute or judicial interpretation, is a product of English common law developed within an agricultural society at a time when doctrines of promissory contract were unrecognized. Thus, the landlord-tenant relationship was viewed as conveyance of a leasehold estate and the covenants of the parties generally independent. These doctrines are inappropriate to modern urban conditions and inexpressive of the vital interests of the parties and the public which the law must protect.

This Act recognizes the modern tendency to treat performance of certain obligations of the parties as interdependent.

Liberal construction of this Act and its application for promotion of its underlying purposes and policies will permit development by the courts in light of unforeseen and new circumstances and practices. However, proper construction of the Act requires that its interpretation and application be limited to its reason.

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SECTION 1.103. [*Supplementary Principles of Law Applicable.*] Unless displaced by the provisions of this Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

COMMENT

This section, adapted from Section 1-103 of the Uniform Commercial Code, indicates the continued applicability to landlord-tenant relations of all supplemental bodies of law except in so far as they are explicitly displaced by this Act. The listing given in this section is merely illustrative; no listing could be exhaustive.

SECTION 1.104. [*Construction Against Implicit Repeal.*] This Act being a general act intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

COMMENT

This section indicates the policy that no Act which bears evidence of carefully considered permanent regulative intention should lightly be regarded as impliedly repealed by subsequent legislation. This Act, carefully integrated and intended as a uniform codification of permanent character covering an entire "field" of law, is to be regarded as particularly resistant to implied repeal.

SECTION 1.105. [*Administration of Remedies; Enforcement.*]

(a) The remedies provided by this Act shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(b) Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

COMMENT

Subsection (a) is intended to negate unduly narrow or technical interpretation of remedial provisions and to make clear that damages must be minimized. The use of the words "aggrieved party" is intended to indicate that in appropriate circumstances rights and remedies may extend to third persons under this Act or supplementary principles of law (compare Article IV, Parts I and II).

Under subsection (b) any right or obligation described in this Act is enforceable by court action, even though no remedy may be expressly provided, unless a particular provision specifies a different and limited effect. Whether tort action, specific performance or equitable relief is available is determined not by this section but by specific provisions and supplementary principles (see Section 1.103).

SECTION 1.106. [*Settlement of Disputed Claim or Right.*] A claim or right arising under this Act or on a rental agreement, if disputed in good faith, may be settled by agreement.

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COMMENT

This section applies to settlements of claims asserted by either landlord or tenant.

Subsequent sections of this Act (a) forbid the tenant from prior waiver of rights (Section 1.403), and (b) subject the bargain of the parties to the test of conscionability (Section 1.303).

PART II

SCOPE AND JURISDICTION

SECTION 1.201. [*Territorial Application.*] This Act applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

SECTION 1.202. [*Exclusions from Application of Act.*] Unless created to avoid the application of this Act, the following arrangements are not governed by this Act:

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

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

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

COMMENT

A fraternal or social organization is deemed to also cover the "athletic club."

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

(5) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;

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

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

COMMENT

This Act regulates landlord-tenant relations in residential properties. It is not intended to apply where residence is incidental to another primary purpose such as residence in a prison, a hospital or nursing home, a dormitory owned and operated by a college or school, or residence by a landlord's employee such as a custodian, janitor, guard or caretaker rendering service in or about the demised premises. This Act is intended to apply to government or public agencies acting as landlords (Section 1.301(8)).

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This Act does not apply to occupancy by a purchaser under a contract of sale. This Act applies to occupancy by the holder of an option to purchase, as distinguished from a contract of sale.

This Act applies to roomers and boarders but is not intended to apply to transient occupancy. In many jurisdictions transient hotel operations are subject to special taxes and regulations and, where available, determinations under such authority constitute appropriate criteria.

All of the exclusions enumerated apply only to genuine, bona fide arrangements not created to avoid the application of the Act and are subject to the test of good faith (see Section 1.302).

[Section 1.203. *Jurisdiction and Service of Process.*]

(a) The [] court of this state may exercise jurisdiction over any landlord 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. In addition to any other method provided by rule or by statute, personal jurisdiction over a landlord may be acquired in a civil action or proceeding instituted in the court by the service of process in the manner provided by this section.

(b) If a landlord is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by this Act, or engages in a transaction subject to this Act, he may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing and filed with the [Secretary of State]. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the [Secretary of State], but service upon him is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.]

COMMENT

This section bestows jurisdiction on the courts of the enacting state over landlords who violate the Act and provides a method of obtaining personal jurisdiction by service of process. The brackets indicate that the section may be omitted by those states which already have "long-arm" statutes. The rights under this section are additional to those provided in Section 1.102 of this Act.

The words "Secretary of State" are bracketed since in some jurisdictions some other public official may be designated by law as empowered to receive service.

This section as drawn does not provide for substitute service and jurisdiction in an action brought against a tenant. In the view of the Commissioners authorization for such procedure, if deemed appropriate, should be made by general legislation applying to all debtors, naturally including tenants.

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PART III
GENERAL DEFINITIONS AND
PRINCIPLES OF INTERPRETATION: NOTICE

SECTION 1.301. [*General Definitions.*] Subject to additional definitions contained in subsequent Articles of this Act which apply to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act

(1) "action" includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined, including an action for possession;

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

COMMENT

Typical of such "building and housing codes" are housing, building, sanitation, electrical, plumbing, fire prevention, safety and security ordinances and regulations. It is intended to include all such codes whether enacted or promulgated under federal, state or local authority.

(3) "dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by 2 or more persons who maintain a common household;

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

(5) "landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by Section 2.102;

(6) "organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, and any other legal or commercial entity;

(7) "owner" means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises. The term includes a mortgagee in possession;

COMMENT

Accordingly, in the case of an active trust where all the duties and powers of management inure to the trustee and the rights of the beneficiary are limited to the receipt of income from the trust estate and the beneficiary has no right to the present use and enjoyment of the property, the trustee would be considered an owner but the beneficiary would not. In the case of the so-called "naked title" trust encountered in some jurisdictions where the trustee holds legal title but all powers of management and direction are vested in the beneficiary, the trustee, as the holder of legal title, would be considered an owner; the beneficiary, since he has a right under

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the trust agreement to present use and enjoyment of the property, would also be considered an owner. The same result would be reached if the trust were revocable at the direction of the beneficiary. In the case of property held in the name of a nominee or straw the beneficial owner would be considered an owner.

(8) "person" includes an individual or organization;

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

COMMENT

Agricultural leases are excluded from operation of the Act (Section 1.202 (7)). Inclusion of "grounds, areas and facilities held out for the use of tenants" does not alter the exclusion.

(10) "rent" means all payments to be made to or for the benefit of the landlord under the rental agreement;

(11) "rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under Section 3.102 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

COMMENT

"Rental agreement" will thus include the original agreement between landlord and tenant as well as any modification and all valid rules and regulations concerning use and occupancy as provided in Section 3.102.

(12) "roomer" means a person occupying a dwelling unit that does not include a toilet and either a bath tub or a shower and a refrigerator, stove, and kitchen sink, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure;

COMMENT

This Act provides lesser rights to a roomer as distinguished from the tenant of a dwelling unit. The definition requires certain facilities to be provided by the landlord. This requirement is not met by provision of the same by the tenant.

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

(14) "tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

SECTION 1.302. [*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.

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COMMENT

Section 1.302 is adapted from Section 1-203 of the Uniform Commercial Code. As the commentators there said, "This section sets forth a basic principle running throughout this Act. The principle involved is that in commercial transactions good faith is required in the performance and enforcement of all agreements or duties." The commentators there drew attention to particular applications of this general principle. The intention is that the rule be identical in landlord-tenant relationships and, similarly, particular applications of this general principle appear in specific provisions of this Act such as exclusions (Section 1.202), retaliatory eviction as well as complaints made to public authorities (Section 5.101), and obligation of the landlord to repair (Section 2.104).

SECTION 1.303. [Unconscionability.]

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

(1) a rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement 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 rental agreement 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 unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

COMMENT

This Section, adapted from the Uniform Commercial Code and the Consumer Credit Code, is intended to make it possible for the courts to police explicitly against rental agreements, clauses, settlements, or waivers of claim or right which they find to be unconscionable. This section is intended to allow the courts to pass directly on the issue of unconscionability and to make a conclusion of law as to unconscionability. The basic test is whether, in light of the background and setting of the market, the conditions of the particular parties to the rental agreement, settlement or waiver of right or claim are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the agreement or settlement. Thus, the particular facts involved in each case are of utmost importance since unconscionability may exist in some situations but not in others. Either landlords or tenants may, in appropriate circumstances, avail themselves of this section.

SECTION 1.304. [Notice.]

(a) A person has notice of a fact if

(1) he has actual knowledge of it,

(2) he has received a notice or notification of it, or

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(3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.

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

- (1) it comes to his attention; or
- (2) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by him as the place for receipt of the communication; or
- (3) in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to him at the place held out by him as the place for receipt of the communication, or in the absence of such designation, to his last known place of residence.

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

COMMENT

This section is adapted from Section 1-204(25) of the Uniform Commercial Code. Section 1.302 imposes the obligation of good faith and is, of course, applicable to this section.

PART IV
GENERAL PROVISIONS

SECTION 1.401. [*Terms and Conditions of Rental Agreement.*]

(a) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this Act or other rule of law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

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

(c) Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent is uniformly apportionable from day-to-day.

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

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COMMENT

In absence of an agreement for a definite term of lease, the tenant has a term of month-to-month without regard to the payment of rent weekly, monthly or otherwise, and a roomer who pays rent for longer intervals than week-to-week has a month-to-month term. As to termination of such tenancies, see Section 4.301(a) and 4.301(b).

SECTION 1.402. [*Effect of Unsigned or Undelivered Rental Agreement.*]

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

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

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

COMMENT

The subsections above apply to transactions in which a written rental agreement has been signed and delivered by either landlord or tenant, the parties have agreed on terms, and the defect is solely the absence of a signature. Delivery thus means legal rather than physical delivery alone. Thus knowledge or notice of the signing of the rental agreement is required. These subsections do not apply to applications for leases or similar writings regarded by the parties as preliminary to written agreements.

SECTION 1.403. [*Prohibited Provisions in Rental Agreements.*]

(a) A rental agreement may not provide that the tenant:

- (1) agrees to waive or forego rights or remedies under this Act;
- (2) authorizes any person to confess judgment on a claim arising out of the rental agreement;
- (3) agrees to pay the landlord's attorney's fees; or
- (4) agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith.

(b) A provision prohibited by subsection (a) included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him to be prohibited, the tenant may recover in addition to his actual damages an amount up to [3] months' periodic rent and reasonable attorney's fees.

COMMENT

Rental agreements are often executed on forms provided by landlords, and some contain adhesion clauses the use of which is prohibited by this section. Section 2.415 of the Uniform Consumer Credit Code provides "a buyer or lessee may not authorize any person to confess judgment on a claim arising out of a consumer credit sale or consumer lease." The official comment to this section states "This section reflects the view of the great majority of states in prohibiting authorization to confess judgment." Similarly, clauses

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attempting to exculpate the landlord from tort liability for his own wrong have been declared illegal by statutes in some states (compare Mass. G.L. Chapter 186, Sec. 15; New York Real Property Law Section 254; and Ill. Ann. Stat., Chapter 80, Section 15a (Smith-Hurd) 1966). Such provisions, even though unenforceable at law may nevertheless prejudice and injure the rights and interests of the uninformed tenant who may, for example, surrender or waive rights in settlement of an enforceable claim against the landlord for damages arising from the landlord's negligence.

Attorney's fees under the Act may be asserted against either the landlord or tenant as enumerated in the Act (see, for example, Sections 1.403(b); 2.101(c); 4.101(b); 4.105(a)). The right to recover attorney's fees against the tenant, however, must arise under the statute, not by contract of the parties.

SECTION 1.404. [*Separation of Rents and Obligations to Maintain Property Forbidden.*] A rental agreement, assignment, conveyance, trust deed, or security instrument may not permit the receipt of rent free of the obligation to comply with Section 2.104(a).

COMMENT

The obligation of the landlord to maintain fit premises in accordance with Section 2.104(a) and the rights and remedies of the tenant under Articles II and IV cannot be defeated or thwarted by the assignment of rents.

ARTICLE II LANDLORD OBLIGATIONS

SECTION 2.101. [*Security Deposits; Prepaid Rent.*]

(a) A landlord may not demand or receive security, however denominated, in an amount or value in excess of [1] month[s] periodic rent.

(b) Upon termination of the tenancy property or money held by the landlord as security may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with Section 3.101 all as itemized by the landlord in a written notice delivered to the tenant together with the amount due [14] days after termination of the tenancy and delivery of possession and demand by the tenant.

(c) If the landlord fails to comply with subsection (b) or if he fails to return any prepaid rent required to be paid to the tenants under this Act the tenant may recover the property and money due him together with damages in an amount equal to [twice] the amount wrongfully withheld and reasonable attorney's fees.

(d) This section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this Act.

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

COMMENT

Widely varying legislation has been enacted affecting security deposits: California—Chapter 1317, Acts of 1970, West. Cal. Civ. Code, Sec. 1951.

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- Colorado—H.B. No. 1250, Acts of 1971, Colo. Rev. Stat. Ann., Ch. 58 (Forcible Entry and Detainer), Sec. 1-26-28.
Delaware—H.B. 433, Acts of 1971, Del. Code Ann. (Landlord-Tenant), Title 25, Ch. 51, Sec. 5912.
Florida—Chapter 70-360, Acts of 1970, Fla. Stat. Ann. Civil Practice and Procedure, Ch. 83 (Landlord and Tenant), Sec. 83.261.
Illinois—P.A. 77-705, Sec. 3, Acts of 1971, Ill. Stat. Ann. Ch. 74 (Interest), Sec. 91-93.
Maryland—Chapter 633, Sec. 1 of Acts of 1969, as amended by Chapter 291 of Acts of 1971, Md. Ann. Code, Art. 53 (Landlord and Tenant), Sec. 41-43.
Massachusetts—Chapter 244, Sec. 1 of Acts of 1969, as amended by Chapter 666, Sec. 1 of Acts of 1970, Mass. Gen. Laws Ann., Ch. 186 (Title to Real Property), Sec. 15B.
Minnesota—Chapter 784 of Acts of 1971, Minn. Stat. Ch. 504 (Landlord and Tenant), Sec. 504.19.
New Jersey—S.B. 904, Acts of 1970, N.J. Rev. Stat., Sec. 2A: 46-8.
New York—Chapter 680, Sec. 70 of Acts of 1967, as amended, N.Y. Gen. Obligation Laws, Sec. 7-103 and 7-105.
Pennsylvania—Pa. Stat. Ann., Title 68 (Real and Personal Property), Sec. 250.512.

These statutes generally require a landlord to return security deposits to tenants within a specified time period, account for his claim to any part of the security deposit and provide for penalty in the event landlord fails to comply.

Difficulties in administration and accounting of security deposits have led some authorities to advocate their abolition (see Interim Report Landlord and Tenant Law Applicable to Residential Tenancies, Ontario Law Reform Commission [1968] pgs. 21 and 28). The Uniform Act preserves the security deposit but limits the amount and prescribes penalties for its misuse.

This section does not limit the amount of prepaid rent, as distinguished from security.

Subsection (e) of this section resolves a split of authority among the states. See 1 A.L.P. Section 3.73, nn 9-15. Note that under Section 2.105(a) of the Act the original landlord is bound.

SECTION 2.102. [Disclosure.]

(a) A landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of

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

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

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

(c) A person who fails to comply with subsection (a) becomes an agent of each person who is a landlord for:

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

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

COMMENT

This section requires disclosure to the tenant of names and addresses of persons who (a) have power to negotiate, make repairs, etc., in the operation of the premises; (b) are empowered to receive service of notice and process which binds all of the owners. In the absence of such disclosure the person collecting the rent shall be deemed to have the authority to accept notices and service and to provide for the necessary maintenance and repairs.

The purpose of this section is to enable the tenant to proceed with the appropriate legal proceeding, to know to whom complaints must be addressed and, failing satisfaction, against whom the appropriate legal proceedings may be instituted. Rights under this section are additional to those provided in Section 1.203.

Stat. 1972, Chapter 493 inserts into Chapter 143 of Massachusetts General Laws a provision requiring the posting of a non-resident owner's name, address and telephone number as well as the name, address and telephone number of any non-resident manager or agent subject to a fine of not more than \$50.00 for each day of violation. However, this statute does not make available to the tenant the remedies provided in the Uniform Act.

SECTION 2.103. [*Landlord to Deliver Possession of Dwelling Unit.*] At the commencement of the term a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and Section 2.101. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in Section 4.301(c).

COMMENT

Thus, the landlord may proceed directly against a squatter. The tenant may also, pursuant to Section 4.102(a), proceed with an action for possession. Where appropriate such actions may be in summary proceedings. It is thus possible that both landlord and tenant may have the right of action against third parties wrongfully in possession of the premises.

SECTION 2.104. [*Landlord to Maintain Premises.*]

(a) A landlord shall

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

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

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

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

(5) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental

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to the occupancy of the dwelling unit and arrange for their removal;
and

(6) supply running water and reasonable amounts of hot water at all times and reasonable heat [between [October 1] and [May 1]] except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

(b) If the duty imposed by paragraph (1) of subsection (a) is greater than any duty imposed by any other paragraph of that subsection, the landlord's duty shall be determined by reference to paragraph (1) of subsection (a).

COMMENT

Vital interests of the parties and public under modern urban conditions require the proper maintenance and operation of housing. It is thus necessary that minimum duties of landlords and tenants be set forth. Generally duties of repair and maintenance of the dwelling unit and the premises are imposed upon the landlord by this section. Major repairs, even access, to essential systems outside the dwelling unit are beyond the capacity of the tenant. Conversely, duties of cleanliness and proper use within the dwelling unit are appropriately fixed upon the tenant (see Sections 3.101 and 3.102).

(c) The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in paragraphs (5) and (6) of subsection (a) and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.

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

(1) the agreement of the parties is entered into in good faith and is set forth in a separate writing signed by the parties and supported by adequate consideration;

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

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

(e) The landlord may not treat performance of the separate agreement described in subsection (d) as a condition to any obligation or performance of any rental agreement.

COMMENT

This section follows the warranty of habitability doctrine now recognized in the jurisdictions of

California—*Hinson v. Delis*, 26 C.A. 3d 62.

Washington, D.C.—*Javins v. First National Realty* (U.S.C.A. D.C. 1970) 428 F. 2d 1071.

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Wisconsin—*Pines v. Persson*, (1961) 111 N.W. 2d 409.
New Jersey—*Resta Realty Corp. v. Cooper*, (1969) 53 N.J. 444.
Illinois—*Jack Springs Inc. v. Little*, (1972) 280 N.E. 2d 208.
Hawaii—*Lemler v. Breedin*, (1969) 462 P. 2d 470.
Michigan—*Rome v. Walker*, (1972) 196 N.W. 2d 850.
New Hampshire—*Kline v. Burns*, (1971) 276 A. 2d 248.
Colorado—*Guesenbury v. Patrick*, (March 1972) C.C.H. Pov. L. Rptr. Sec. 15,803.
Georgia—*Geuens v. Gray*, (April 1972) C.C.H. Pov. L. Rptr. Sec. 15,412.

Standards of habitability dealt with in this section are a matter of public police power rather than the contract of the parties or special landlord-tenant legislation. This section establishes minimum duties of landlords consistent with public standards. Generally duties of repair and maintenance of the dwelling unit and the premises are imposed upon the landlord by this section. Major repairs, even access, to essential systems outside the dwelling unit are beyond the capacity of the tenant. Conversely, duties of cleanliness and proper use within the dwelling unit are appropriately fixed upon the tenant (see Sections 3.101 and 3.102).

Except as specifically provided, these obligations may not be waived (Section 1.403).

SECTION 2.105. [*Limitation of Liability.*]

(a) Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this Act as to events occurring after written notice to the tenant of the conveyance. However, he remains liable to the tenant for all security recoverable by the tenant under Section 2.101 and all prepaid rent.

COMMENT

This section relieves a landlord, unless otherwise agreed, from liability under the rental agreement and this Act as to events occurring after a good faith sale and conveyance to a bona fide purchaser and after written notice to the tenant of the conveyance except as to security recoverable under Section 2.101 and all prepaid rent. As between the original landlord and tenant, it is intended that the loss for failure to account for security and prepaid rent if recoverable should fall upon the landlord who, in contrast to the tenant, can take steps to protect the integrity of the security and prepaid rent account at the time of sale. The landlord for the time being is liable for compliance with the rental agreement and this Act. See definition of "landlord" in Section 1.301(5). See also Sections 1.404 and 2.105(a).

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

ARTICLE III

TENANT OBLIGATIONS

SECTION 3.101. [*Tenant to Maintain Dwelling Unit.*] A tenant shall

(1) comply with all obligations primarily imposed upon tenants by

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applicable provisions of building and housing codes materially affecting health and safety;

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

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

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

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

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

(7) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises.

COMMENT

This section, the converse of Section 2.104, establishes minimum duties of tenants consistent with public standards of health and safety.

SECTION 3.102. [*Rules and Regulations.*]

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

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

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

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

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

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

(6) the tenant has notice of it at the time he enters into the rental agreement, or when it is adopted.

(b) If a rule or regulation is adopted after the tenant enters into the rental agreement that works a substantial modification of his bargain it is not valid unless the tenant consents to it in writing.

COMMENT

Under Section 1.301(11) the rental agreement includes valid rules and regulations.

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SECTION 3.103. [Access.]

(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 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.

COMMENT

Special remedies to landlord and tenant for abuse of rights of access are provided by Section 4.302. As to wrongful entry to take possession see Sections 4.107 and 4.207.

SECTION 3.104. [Tenant to Use and Occupy.] Unless otherwise agreed, a tenant shall occupy his dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of any anticipated extended absence from the premises [in excess of [7] days] no later than the first day of the extended absence.

ARTICLE IV
REMEDIES

PART I
TENANT REMEDIES

SECTION 4.101. [Noncompliance by the Landlord—In General.]

(a) Except as provided in this Act, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with Section 2.104 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omission constituting the breach and that the rental agreement will terminate upon a date not less than [30] days after receipt of the notice if the breach is not remedied in [14] days, and the rental agreement shall terminate as provided in the notice subject to the following:

- (1) If the breach is remediable by repairs, the payment of damages or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate by reason of the breach.

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(2) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within [6] months, the tenant may terminate the rental agreement upon at least [14 days'] written notice specifying the breach and the date of termination of the rental agreement.

(3) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.

COMMENT

Claims arising under this section if disputed in good faith may be settled by agreement (see Section 1.106). However, a prior settlement will not prevent a termination under Section 4.101(a)(2).

(b) Except as provided in this Act, the tenant may recover actual damages and obtain injunctive relief for noncompliance by the landlord with the rental agreement or Section 2.104. If the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees.

(c) The remedy provided in subsection (b) is in addition to any right of the tenant arising under Section 4.101(a).

(d) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant under Section 2.101 and all prepaid rent.

COMMENT

The availability of injunctive relief is determined by usual principles of equity. See Section 1.103.

Remedies available to the tenant pursuant to Section 4.101 are not exclusive (see Section 1.103). A duty to mitigate damages exists under Section 1.105. As to rights of third parties, see comment under Section 1.105.

SECTION 4.102. [*Failure to Deliver Possession.*]

(a) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in Section 2.103, rent abates until possession is delivered and the tenant may

(1) terminate the rental agreement upon at least [5] days' written notice to the landlord and upon termination the landlord shall return all prepaid rent and security; or

(2) demand performance of the rental agreement by the landlord and, if the tenant elects, obtain possession of the dwelling unit from the landlord or any person wrongfully in possession and recover the actual damages sustained by him.

(b) If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person an amount not more than [3] months' periodic rent or [threefold] the actual damages sustained, whichever is greater, and reasonable attorney's fees.

COMMENT

"Aggrieved person" includes a landlord entitled to proceed under Sections 2.103 and 4.301(c) as well as a tenant entitled to possession.

Injunctive relief may be available in an appropriate case.

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→ SECTION 4.103. [*Self-Help for Minor Defects.*]

(a) If the landlord fails to comply with the rental agreement or Section 2.104, and the reasonable cost of compliance is less than [\$100], or an amount equal to [one-half] the periodic rent, whichever amount is greater, the tenant may recover damages for the breach under Section 4.101(b) or may notify the landlord of his intention to correct the condition at the landlord's expense. If the landlord fails to comply within [14] days after being notified by the tenant in writing or as promptly as conditions require in case of emergency, the tenant may cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection.

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

COMMENT

The right of self-help may extend to areas outside of the dwelling. See Section 2.104 and the definition of premises in Section 1.301(9).

SECTION 4.104. [*Wrongful Failure to Supply Heat, Water, Hot Water, or Essential Services.*]

(a) If contrary to the rental agreement or Section 2.104 the landlord willfully or negligently fails to supply heat, running water, hot water, electric gas, or other essential service, the tenant may give written notice to the landlord specifying the breach and may

(1) take reasonable and appropriate measures to secure reasonable amounts of heat, hot water, running water, electric, gas, and other essential service during the period of the landlord's noncompliance and deduct their actual and reasonable costs from the periodic rent; or

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

(3) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(b) In addition to the remedy provided in paragraph (3) of subsection (a) the tenant may recover the actual and reasonable cost or fair and reasonable value of the substitute housing not in excess of an amount equal to the periodic rent, and in any case under subsection (a) reasonable attorney's fees.

(c) If the tenant proceeds under this section, he may not proceed under Section 4.101 or Section 4.103 as to that breach.

COMMENT

The remedies under Sections 4.107 and 5.101(b) are applicable where the landlord affirmatively acts to interrupt or diminish services, etc., and those remedies are in addition to the remedies provided in Sections 4.101, 4.103 and 4.104.

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Section 4.104(a)(1) permits collective action by tenants to secure essential services.

Section 1.302 imposes the obligation of good faith and is, of course, applicable to this section.

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

SECTION 4.105. [Landlord's Noncompliance as Defense to Action for Possession or Rent.]

(a) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may [counterclaim] for any amount he may recover under the rental agreement or this Act. In that event the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and the balance by the other party. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession. If the defense or counterclaim by the tenant is without merit and is not raised in good faith, the landlord may recover reasonable attorney's fees.

(b) In an action for rent when the tenant is not in possession, he may [counterclaim] as provided in subsection (a) but is not required to pay any rent into court.

COMMENT

Article 7 defines the obligations of the landlord which the tenant may enforce against him (Section 4.105). While *Lindsey v. Normet* (405 U.S. 56) holds no principle of constitutional law requires the admission of the habitability defense in a summary proceeding maintained by the landlord against the tenant, Section 4.105 is consistent with modern procedure reform in permitting the tenant to file a counterclaim or other appropriate pleading in the summary proceeding to the end that all issues between the parties may be disposed of in one proceeding. It is anticipated that upon filing of the counterclaim the court will enter the order deemed appropriate by him concerning the payment of rent in order to protect the interests of the parties. See cases in comment to Section 2.104(e).

SECTION 4.106. [Fire or Casualty Damage.]

(a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may

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

(2) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the

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tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(b) If the rental agreement is terminated the landlord shall return all security recoverable under Section 2.101 and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

COMMENT

Under common law, notwithstanding leased premises were destroyed, the tenant was still under obligation to pay rent. Legislation has been adopted in various states providing that if the premises are so destroyed or injured as to be untenable or unfit for occupancy the tenant may quit and surrender possession of the premises:

Arizona Rev. Stat., Sec. 33-343 (1956)
Connecticut Gen. Stat. Ann., § 47-24 (1960)
Michigan Stat. Ann., Sec. 26.112 (1953)
Minnesota Stat. Ann., Sec. 504.05 (1947)
Mississippi Code Ann., Sec. 898 (1957)
Wisconsin Stat. Ann., 231.17 (1957)

West Virginia in 1931 adopted Section 37-6-28 providing for
... a reasonable reduction of the rent for such time as may elapse until there be placed again upon the premises buildings, or other structures, of as much value to the tenant for his purposes as those destroyed, ...

SECTION 4.107. [*Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion, or Diminution of Service.*] If a landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric, gas, or other essential service, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than [3] months' periodic rent or [threefold] the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated the landlord shall return all security recoverable under Section 2.101 and all prepaid rent.

COMMENT

This section provides a remedy for the violation of Section 4.207. See also comment to Section 4.101(c).

Injunctive relief may be available in an appropriate case.

PART II
LANDLORD REMEDIES

SECTION 4.201. [*Noncompliance with Rental Agreement; Failure to Pay Rent.*]

(a) Except as provided in this Act, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with Section 3.101 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions

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constituting the breach and that the rental agreement will terminate upon a date not less than [30] days after receipt of the notice. If the breach is not remedied in [14] days, the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within [6] months, the landlord may terminate the rental agreement upon at least [14] days' written notice specifying the breach and the date of termination of the rental agreement.

COMMENT

Claims arising under this section if disputed in good faith may be settled by agreement (see Section 1.106). However, a prior settlement will not prevent a termination under the last sentence of Section 4.201(a).

(b) If rent is unpaid when due and the tenant fails to pay rent within [14] days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(c) Except as provided in this Act, the landlord may recover actual damages and obtain injunctive relief for noncompliance by the tenant with the rental agreement or Section 3.101. If the tenant's noncompliance is willful the landlord may recover reasonable attorney's fees.

COMMENT

The availability of injunctive relief is determined by the usual principles of equity. See Section 1.103.

Remedies available to the landlord pursuant to Section 4.201 are not exclusive (see Section 1.103). A duty to mitigate exists under Section 1.105. As to rights of third parties, see comment under Section 1.105.

SECTION 4.202. [Failure to Maintain.] If there is noncompliance by the tenant with Section 3.101 materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within [14] days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, 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 as rent on the next date periodic rent is due, or if the rental agreement has terminated, for immediate payment.

COMMENT

The landlord may proceed under either Section 4.201 or Section 4.202. In event of a recurring breach, he can proceed under either section. He must serve notice in all cases.

SECTION 4.203. [Remedies for Absence, Nonuse and Abandonment.]

(a) If the rental agreement requires the tenant to give notice to the

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landlord of an anticipated extended absence [in excess of [7] days] pursuant to Section 3.104 and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.

(b) During any absence of the tenant in excess of [7] days, the landlord may enter the dwelling unit at times reasonably necessary.

(c) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, it terminates as of the date of the new tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month-to-month or week-to-week, the term of the rental agreement for this purpose is deemed to be a month or a week, as the case may be.

SECTION 4.204. [*Waiver of Landlord's Right to Terminate.*] Acceptance of rent with knowledge of a default by the tenant or acceptance of performance by him that varies from the terms of the rental agreement constitutes a waiver of the landlord's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred

COMMENT

If breach of a continuing duty is involved, acceptance of rent or performance will not bar the landlord's remedy for a later breach. Acceptance of unpaid rent paid after expiration of a termination notice does not constitute a waiver of the termination

SECTION 4.205. [*Landlord Liens: Distress for Rent.*]

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

(b) Distraint for rent is abolished.

SECTION 4.206. [*Remedy after Termination.*] If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees as provided in Section 4.201(c).

SECTION 4.207. [*Recovery of Possession Limited.*] A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric, gas, or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in this Act.

COMMENT

See Section 4.107

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PART III

PERIODIC TENANCY; HOLDOVER; ABUSE OF ACCESS

SECTION 4.301. [*Periodic Tenancy; Holdover Remedies.*]

(a) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least [10] days before the termination date specified in the notice.

(b) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least [60] days before the periodic rental date specified in the notice.

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if the tenant's holdover is willful and not in good faith the landlord may also recover an amount not more than [3] month's periodic rent or [threefold] the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, Section 1.401(d) applies.

COMMENT

See Section 1.402 as to effect of occupancy under lease signed by only one party and Section 2.103 as to tenant's rights to bring an action for possession against a prior holdover tenant.

SECTION 4.302. [*Landlord and Tenant Remedies for Abuse or 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.

COMMENT

See Section 3.103 as to right of access.

ARTICLE V

RETALIATORY CONDUCT

SECTION 5.101. [*Retaliatory Conduct Prohibited.*]

(a) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:

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

(2) the tenant has complained to the landlord of a violation under Section 2.104; or

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

(b) If the landlord acts in violation of subsection (a), the tenant is entitled to the remedies provided in Section 4.107 and has a defense in any retaliatory action against him for possession. In an action by or against the tenant, evidence of a complaint within [1] year before the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. "Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(c) Notwithstanding subsections (a) and (b), a landlord may bring an action for possession if:

(1) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of his family, or other person on the premises with his consent; or

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

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

(d) The maintenance of an action under subsection (c) does not release the landlord from liability under Section 4.101(b).

COMMENT

State and federal courts in California (*Aweeka v. Bonds*, 20 Cal. App. 3d 281, 97 Cal. Rptr. 650 [1971]; *Schweiger v. Bonds*, 3 Cal. App. 2d 507, 90 Cal. Rptr. 729 [1970]), Florida (*Bowles v. Blue Lake Development Corp.*, [S. Florida, 1971], C.C.H. Pov. L. Rptr. Sec. 12,920), Massachusetts (*McQueen v. Druker*, 317 F. Supp. 1122 [D. Mass. 1970]), New Jersey (*Alexander Hamilton Savings and Loan Assn. v. Whalen*, 107 N.J. Super. 89, 257 A. 2d 7 [1969]; *Engler v. Capital Management Corp.*, 112 N.J. Super. 445, 271 A. 2d 615 [1970]; *E. F. Newman Inc. v. Hallock*, 116 N.J. Super. 220, 281 A. 2d 544 [1971]; *Silberg v. Lipscomb*, 117 N.J. Super. 491, 285 A. 2d 86 [1971]), New York (*Hoscy v. Club Van Courtlandt*, 299 F. Supp. 501 [S.D.N.Y. 1969]), Ohio (T.R.O. granted, Case No. 8375 [S.D. Ohio]), Wisconsin (*Dickhut v. Norton*, 45 W. 2d 309, 173 N.W. 2d 297 [1970]) and the District of Columbia (*Edwards v. Habib*, 397 F. 2d 687 [D.C. Cir. 1968]) have upheld the defense of retaliatory eviction.

A number of states by statute have recognized the defense: Cal. C.C. Sec. 1942.5; Conn. Gen. St. Ann., Sec. 42-540a [Supp. 1969]; Del. Ch. 25 Sec.

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5917 [Supp. 1971]; Ha. Ch. 666 Sec. 43 [Supp. 1971]; Ill. Rev. St. Ch. 80, Sec. 71 [Supp. 1971]; Me. Rev. St. Tit. 14 Sec. 6001, 6002; Md. Laws Ch. 687 Sec. 9-10 [Supp. 1971]; Mass. Comp. Laws Ann., Ch. 186 Sec. 18 [Supp. 1970]; Mich. Comp. Laws Ann., Ch. 600, Sec. 5646 [Am'd P.S. 1969]; Minn. Stat. Ch. 240 Sec. 566.03 [Supp. 1971]; N.J. Stat. Ann. 2A Sec. 2-10.10; N.Y. Uncont'd Laws, Tit. 23 Sec. 8590, 8609 [Supp. 1971]; Pa. St. Ann. Ch. 35, Sec. 1700-1 [Supp. 1971]; R.I. Gen. Laws Ann. Sec. 34-20-10 [1968]. The legislatures of Maine, Massachusetts, New Jersey, Michigan, and Rhode Island also protect tenants from eviction if they have organized or become a member of a tenants' union or similar organization.

The question as to whether the landlord is engaging in retaliatory conduct as prohibited by the statute is a question of fact to be determined by the court. In an action by or against the tenant, evidence of a complaint within one year before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. This presumption will not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services.

ARTICLE VI
EFFECTIVE DATE AND REPEALER

SECTION 6.101. [*Effective Date.*] This Act shall become effective on [.....]. It applies to rental agreements entered into or extended or renewed on and after that date.

COMMENT

This section, drawn from Section 10-101 of the Uniform Commercial Code, is also drawn with the idea of an effective date considerably in advance so there may be ample time for all of those who may be affected by the provisions of the Act to become familiar with it. It is intended that the Act apply to all leases, renewals, and other events occurring after its effective date.

SECTION 6.102. [*Specific Repealer.*] The following Acts and parts of Acts are hereby repealed: [List appropriate Acts]

SECTION 6.103. [*Savings Clause.*] Transactions entered into before the effective date of this Act, and not extended or renewed on and after that date, and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this Act as though the repeal or amendment had not occurred.

SECTION 6.104. [*Severability.*] If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Alaska Statutes

Title 34. Property.

Chapter

- 03. Uniform Residential Landlord and Tenant Act (§§ 34.03.010 — 34.03.380)
- 05. Rentals (§§ 34.05.010 — 34.05.050)
- 06. Emergency Residential Rent Regulation and Control (§§ 34.06.010 — 34.06.060)
- 07. Horizontal Property Regimes Act (§§ 34.07.010 — 34.07.460)
- 10. Land Registration Law (§§ 34.10.010 — 34.10.240)
- 15. Conveyances (§§ 34.15.010 — 34.15.350)
- 20. Mortgages and Trust Deeds (§§ 34.20.010 — 34.20.150)
- 22. Trusts (§ 34.22.010)
- 25. Validation of Formal Defects (§§ 34.25.010 — 34.25.090)
- 35. Liens (§§ 34.35.005 — 34.35.530)
- 40. Fraudulent Transfers (§§ 34.40.010 — 34.40.130)
- 45. Unclaimed Property (§§ 34.45.010 — 34.45.090)
- 50. Actions for Injuries to Property Interests (§§ 34.50.010 — 34.50.020)
- 55. Uniform Land Sales Practices Act (§§ 34.55.004 — 34.55.046)
- 60. Relocation Assistance and Real Property Acquisition Practices (§§ 34.60.010 — 34.60.150)

Chapter 03. Uniform Residential Landlord and Tenant Act.

Article

- 1. Purposes and Rules of Construction (§ 34.03.010)
- 2. Rental Agreements (§§ 34.03.020—34.03.060)
- 3. Landlord Obligations (§§ 34.03.070—34.03.110)
- 4. Tenant Obligations (§§ 34.03.120—34.03.150)
- 5. Tenant Remedies (§§ 34.03.160—34.03.210)
- 6. Landlord Remedies (§§ 34.03.220—34.03.280)
- 7. Periodic Tenancy, Holdover, and Abuse of Access (§§ 34.03.290—34.03.300)
- 8. Retaliatory Action (§ 34.03.310)
- 9. General Provisions (§§ 34.03.320—34.03.380)

Article 1. Purposes and Rules of Construction.

Section

- 10. Purposes; rules of construction

Sec. 34.03.010. Purposes; rules of construction. (a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this chapter are to
(1) simplify, clarify, modernize and revise the law governing the

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

(3) make uniform the law among those states which enact it. (§ 1 ch 10 SLA 1974)

Legislative committee report. — For report on ch. 10, SLA 1974 (SCSCSHB 226), see 1974 Senate Journal, p. 20.

Article 2. Rental Agreements.

Section	Section
20. Terms and conditions of rental agreement	50. Separation of rents and obligations to maintain property forbidden
30. Effect of unsigned or undelivered rental agreement	60. Sublease and assignment
40. Prohibited provisions in rental agreements	

Sec. 34.03.020. Terms and conditions of rental agreement. (a) The landlord and tenant may include in a rental agreement, clauses and conditions not prohibited by this chapter or by law, including rent, terms of agreement, and other provisions governing the rights and obligations of the parties.

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

(c) Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit. Unless otherwise agreed, rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments. Unless otherwise agreed, rent shall be uniformly apportionable from day to day and shall be paid on the date the periodic tenancy begins and payable on or before the same date of each and every month thereafter until the tenancy terminates.

(d) Unless the rental agreement fixes a definite term, the tenancy shall be week to week in the case of a tenant who pays weekly rent, and in all other cases month to month. (§ 1 ch 10 SLA 1974)

Sec. 34.03.030. Effect of unsigned or undelivered rental agreement. (a) If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

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

(c) If a rental agreement given effect by the operation of this section

Sec. 34.03.040. Prohibited provisions in rental a
No rental agreement may provide that the tenant or lan-

(1) agrees to waive or to forego rights or remedies in this chapter;

(2) authorizes a person to confess judgment on a claim under the rental agreement;

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

(4) agrees to pay the landlord's attorney fees.

(b) A provision prohibited by (a) of this section in a rental agreement is unenforceable. If a landlord or tenant in a rental agreement containing provisions known by him to be prohibited by the other party may recover the amount of his actual damages. (10 SLA 1974)

Sec. 34.03.050. Separation of rents and obligations to maintain property forbidden. A rental agreement, assignment, trust deed, or security instrument may not permit the tenant to be free of the obligation to comply with § 100(a) of this chapter. (10 SLA 1974)

Sec. 34.03.060. Sublease and assignment. (a) Unless otherwise agreed in writing, the tenant may not sublet his premises under a rental agreement to another without the landlord's consent.

(b) The tenant's right to sublease his premises or to assign a rental agreement to another shall be conditioned on obtaining the landlord's consent, which may be withheld only upon the grounds specified in this section; no further restrictions on sublease or assignment shall be enforceable.

(c) When the rental agreement requires the landlord's consent to a sublease or assignment, the tenant may secure one or more prospective tenants who are willing to occupy the premises. Each prospective tenant shall make a written offer signed and delivered by him to the landlord containing the following information on the prospective tenant:

(1) name, age and present address;

(2) marital status;

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

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

(5) two credit references, or responsible persons with whom the prospective occupant has the financial responsibility of the prospective occupant;

(6) names and addresses of all landlords of the premises during the prior three years.

by a written rejection signed and delivered by him to the tenant, containing one or more of the following reasonable grounds for rejecting the prospective occupant:

- (1) insufficient credit standing or financial responsibility;
- (2) number of persons in the household;
- (3) number of persons under 18 years of age in the household;
- (4) unwillingness of the prospective occupant to assume the same terms as are included in the existing rental agreement;
- (5) proposed maintenance of pets;
- (6) proposed commercial activity; or
- (7) written information signed by a previous landlord, which shall accompany the rejection, setting out abuses of other premises occupied by the prospective occupant.

(e) In the event the written rejection fails to contain one or more grounds permitted by (d) of this section for rejecting the prospective occupant the tenant may consider the landlord's consent given, or at his option may terminate the rental agreement by a written notice given without unnecessary delay to the landlord at least 30 days before the termination date specified in the notice.

(f) If the landlord does not deliver a written rejection signed by him to the tenant within 14 days after a written offer has been delivered to him by the tenant, the landlord's consent to the sublease or assignment shall be conclusively presumed. (§ 1 ch 10 SLA 1974)

Article 3. Landlord Obligations.

Section	Section
70. Security deposits; prepaid rent	100. Landlord to maintain fit premises
80. Disclosure	110. Limitation of liability
90. Landlord to supply possession of the dwelling unit	

Sec. 34.03.070. Security deposits; prepaid rent. (a) A landlord may not demand or receive prepaid rent or a security deposit, however denominated, in an amount or value in excess of two months' periodic rent.

(b) Upon termination of the tenancy, property or money held by the landlord as prepaid rent or as a security deposit may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with § 120 of this chapter. The accrued rent and damages must be itemized by the landlord in a written notice delivered to the tenant together with the amount due no later than 14 days after termination of the tenancy and delivery of possession by the tenant. "Damages" do not include wear resulting from ordinary use of the premises.

(c) All money paid to the landlord by the tenant as prepaid rent or as a security deposit in a lease or rental agreement shall be promptly deposited by the landlord, wherever practicable, in a trust account in a

the prepaid rent or security deposit or portions or withheld by the landlord; nothing in this chapter prohibits from commingling prepaid rents and security deposit financial account.

(d) If the landlord wilfully fails to comply with (b) of the tenant may recover an amount not to exceed two amount withheld.

(e) This section does not preclude a landlord or recovering other damages to which he may be entitled chapter.

(f) The holder of the landlord's interest in the premises the termination of the tenancy is bound by this section. (1974)

Sec. 34.03.080. Disclosure. (a) The landlord or person to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the name and address of

- (1) the person authorized to manage the premises; and
- (2) an owner of the premises or a person authorized to behalf of the owner for the purpose of service of process purpose of receiving and receipting for notices and demands

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

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

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

(2) performing the obligations of the landlord under the rental agreement and expending or making available purpose all rent collected from the premises. (§ 1 ch 10 SLA)

Sec. 34.03.090. Landlord to supply possession of dwelling unit. At the commencement of the term the landlord shall supply possession of the premises to the tenant in compliance with agreement and § 100 of this chapter. The landlord may bring for possession against any person wrongfully in possession recover the damages provided in § 290 of this chapter. (§ 1974)

Sec. 34.03.100. Landlord to maintain fit premises landlord shall

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

(2) keep all common areas of the premises in a clean condition;

kitchen and other facilities and appliances, including elevators, supplied or required to be supplied by him;

(4) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(5) supply running water and reasonable amounts of hot water and heat at all times, insofar as energy conditions permit, except where the building that includes the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection; and

(6) if requested by the tenant, provide and maintain locks and furnish keys reasonably adequate to insure safety to the tenant's person and property.

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

(c) The landlord and tenant of a one- or two-family residence may agree in writing that the tenant perform the landlord's duties specified in (a)(4), (5) and (6) of this section. They may also agree in writing that the tenant perform specified repairs, maintenance tasks, alterations and remodeling. Agreements are allowed under this subsection only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

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

(1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set out in a separate writing signed by the parties and supported by adequate consideration; and

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

(e) The landlord may not treat performance of a separate agreement described in (d) of this section as a condition to an obligation or performance of a rental agreement. (§ 1 ch 10 SLA 1974)

Sec. 34.03.110. Limitation of liability. (a) Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to written notice to the tenant of the conveyance. However, the landlord remains liable to the

specifically assigned to and accepted by the purchaser.

(b) Unless otherwise agreed, a manager of premises of a dwelling unit is relieved of liability under the rental agreement of this chapter as to events occurring after written notice to the termination of his management. (§ 1 ch 10 SLA 1974)

Article 4. Tenant Obligations.

Section	Section
120. Tenant to maintain dwelling unit	140. Access
130. Rules and regulations	150. Tenant to use and occupy

Sec. 34.03.120. Tenant to maintain dwelling unit. shall

(1) keep that part of the premises that he occupies and uses in a clean and safe as the condition of the premises permit;

(2) dispose from his dwelling unit all ashes, rubbish, and other waste in a clean and safe manner;

(3) keep all plumbing fixtures in the dwelling unit or tenant as clean as their condition permits;

(4) use in a reasonable manner all electrical, plumbing, heating, ventilating, air-conditioning, kitchen and other fixtures and appliances including elevators in the premises;

(5) not deliberately or negligently destroy, deface, damage, or remove a part of the premises or knowingly permit any person to do so;

(6) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that does not unreasonably disturb his neighbor's peaceful enjoyment of the premises. (§ 1 ch 10 SLA 1974)

Sec. 34.03.130. Rules and regulations. (a) A landlord may make rules and regulations, which shall be posted prominently in the premises, concerning the tenant's use and occupancy of the premises. The rule or regulation is enforceable against the tenant only if

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

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

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

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

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

(b) A rule or regulation adopted after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption is given to the tenant and it does not work a substantial modification of his rental agreement. (§ 1 ch 10 SLA 1974)

Sec. 34.03.140. Access. (a) The tenant may 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) The landlord may enter the dwelling unit without the consent of the tenant in the case of emergency.

(c) No landlord may abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least 24 hours notice of his intent to enter and may enter only at reasonable times and with the tenant's consent.

(d) The landlord has no other right to access except by court order, and as permitted by § 230(b) of this chapter, or if the tenant has abandoned or surrendered the premises. (§ 1 ch 10 SLA 1974)

Sec. 34.03.150. Tenant to use and occupy. Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a dwelling unit. The rental agreement shall require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of seven days; however, the notice shall be given as soon as reasonably possible after the tenant knows his absence will exceed seven days. (§ 1 ch 10 SLA 1974)

Article 5. Tenant Remedies.

Section	Section
160. Noncompliance by the landlord: General	190. Landlord's noncompliance as defense to action for possession or rent
170. Failure to deliver possession	200. Fire or casualty damage
180. Wrongful failure to supply heat, water, hot water or essential services	210. Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service

Sec. 34.03.160. Noncompliance by the landlord: General. (a) Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with § 100 of this chapter materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and specifying that the rental agreement will terminate upon a date not less than 20 days after receipt of the notice if the breach is not remedied in 10 days, and the rental agreement shall terminate as provided in the notice subject to

breach before the date specified in the notice, the tenant may terminate the rental agreement upon written notice specifying the breach and the date of termination of the rental agreement. The tenant may not terminate the rental agreement by the deliberate or negligent act or omission of the tenant or any member of his family or other person on the premises with the consent of the landlord.

(b) Except as provided in this chapter, the tenant may not recover damages and obtain injunctive relief for any breach of the rental agreement or §§ 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170 of this chapter. (§ 1 ch 10 SLA 1974)

(c) The remedy provided in (b) of this section is in addition to the remedy provided in (a) of this section.

(d) If the rental agreement is terminated, the tenant may recover all prepaid rent or security deposits recoverable under § 100 of this chapter. (§ 1 ch 10 SLA 1974)

Sec. 34.03.170. Failure to deliver possession. If the landlord fails to deliver possession of the dwelling unit to the tenant in § 90 of this chapter, rent abates until possession is delivered to the tenant.

(1) upon at least 10 days written notice to the landlord and upon termination the landlord shall refund the prepaid rent and security deposits; or

(2) demand performance of the rental agreement if the tenant elects, maintain an action for possession of the dwelling unit against the landlord and any person wrongfully in possession and recover the damages sustained by him.

(b) If a person's failure to deliver possession of the dwelling unit in good faith, an aggrieved tenant may recover the amount of the rent not to exceed one and one-half times the amount of the rent. (§ 1 ch 10 SLA 1974)

Sec. 34.03.180. Wrongful failure to supply heat or essential services. (a) If, contrary to the rental agreement, the landlord deliberately or negligently fails to supply running water, hot water, heat, sanitary facilities, or essential services, the tenant may give written notice to the landlord of the breach and may immediately

(1) procure reasonable amounts of hot water, hot water, heat, sanitary facilities and essential services during the landlord's noncompliance and deduct their actual cost from the rent;

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance and, in addition, may recover the amount by which the actual and reasonable cost exceeds rent.

(b) If the tenant proceeds under this section, he may not proceed under § 160 of this chapter as to that breach.

(c) Rights do not arise under this section until the tenant has given written notice to the landlord. Rights do not arise under this section if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent. (§ 1 ch 10 SLA 1974)

Sec. 34.03.190. Landlord's noncompliance as defense to action for possession or rent. (a) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount which he may recover under the rental agreement or this chapter. If a counterclaim is made, the court shall determine whether the defense is supported by the evidence and, if so, may order that

(1) the periodic rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance;

(2) the action be continued for a reasonable time to enable the landlord to cure the violation;

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

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

(b) In an action for rent where the tenant is not in possession, the tenant may counterclaim as provided in (a) of this section but the tenant is not required to pay rent into court. (§ 1 ch 10 SLA 1974)

Sec. 34.03.200. Fire or casualty damage. (a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to the extent that enjoyment of the dwelling unit is substantially impaired, the tenant shall

(1) immediately vacate the premises and notify the landlord of his

(2) if continued occupancy is lawful, vacate the unit rendered unusable by the fire or casualty, tenant's liability for rent is reduced in proportion to the fair rental value of the dwelling unit.

(b) If the rental agreement is terminated, the landlord's prepaid rent and security deposits recoverable under this chapter. Accounting for rent in the event of termination shall occur as of the date of the casualty. (1974)

Sec. 34.03.210. Tenant's remedies for landlord's exclusion, or diminution of service. If the landlord removes or excludes the tenant from the premises or diminishes services to the tenant by interrupting or interrupting of electric, gas, water, sanitary or other services to the tenant, the tenant may recover possession of the dwelling unit under the rental agreement and, in either case, recover an amount not more than one and one-half times the actual damages. If the rental agreement is terminated, the landlord shall return all prepaid deposits recoverable by the tenant under § 70 of this SLA 1974)

Article 6. Landlord Remedies.

Section	Section
220. Noncompliance with rental agreement: Failure to pay rent	250. Landlord lien abolished
230. Remedies for absence, nonuse and abandonment	260. Disposition of premises after abandonment
240. Waiver of landlord's right to terminate	270. Recovery of possession after termination

Sec. 34.03.220. Noncompliance with rental agreement to pay rent. (a) Except as provided in this chapter, if the tenant is in noncompliance with the rental agreement with § 120 of this chapter material, and safety, the landlord may deliver a written notice specifying the acts and omissions constituting the breach, specifying that the rental agreement will terminate less than 20 days after receipt of the notice. If the tenant remedies the breach in 10 days, the rental agreement terminates. If the tenant does not remedy the breach, the notice subject to the provisions of this section shall be deemed to be a notice of termination. If the tenant adequately remedies the breach before the date of the notice, the rental agreement will not terminate. In the event of a breach by the tenant, if substantially the same act or omission constituted a prior noncompliance of which notice was given within six months, the landlord may terminate the

(b) If rent is unpaid when due and the tenant fails to pay rent within 10 days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period of time, the tenancy terminates unless the landlord agrees to allow the tenant to remain in occupancy, and the landlord may terminate the rental agreement and immediately recover possession of the rental unit; only one written notice of default need be given the tenant by the landlord as to any one default.

(c) Except as provided in this chapter, the landlord may recover his actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement of § 120 of this chapter. (§ 1 ch 10 SLA 1974)

Sec. 34.03.230. Remedies for absence, nonuse and abandonment.

(a) When the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven days as required in § 150 of this chapter and the tenant wilfully fails to do so, the landlord may recover an amount not to exceed one and one-half times the actual damages.

(b) During an absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary as provided in § 140 of this chapter.

(c) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental value. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the agreement is considered terminated on the date the new tenancy begins. The rental agreement is considered terminated by the landlord on the date the landlord has notice of the abandonment if the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental value or if the landlord accepts the abandonment as a surrender. If the tenancy is from month to month, or week to week, the term of the rental agreement for purposes of this section shall be considered a month or a week, as the case may be. (§ 1 ch 10 SLA 1974)

Sec. 34.03.240. Waiver of landlord's right to terminate. Acceptance of rent with knowledge of a default by the tenant or acceptance of performance by the tenant that varies from the terms of the rental agreement or rules or regulations subsequently adopted by the landlord constitutes a waiver of the right of the landlord to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred. (§ 1 ch 10 SLA 1974)

Sec. 34.03.250. Landlord liens; distraint for rent abolished. (a) A lien or security interest on behalf of the landlord in the tenant's household goods is not enforceable unless perfected before March 19, 1974.

(b) Distraint for rent is abolished. (§ 1 ch 10 SLA 1974)

limited to, a termination after expiration of a lease or abandonment of the premises, a tenant has left personal property on the premises, and the landlord reasonably believes the tenant has abandoned this personal property, the landlord may

(1) notify the tenant of his demand that the property be removed within the dates set out in the notice (but not less than 15 days after delivery or mailing of the notice), and that if the property is not removed within the time specified, the property on the premises is not removed within the time specified, the landlord may sell the property at a public sale; and (2) dispose of perishable commodities in any manner he deems proper.

(2) if the tenant has left personal property which the landlord determines to be valueless or of such small value that the cost of storing and conducting a public sale would exceed the amount that would be realized from the sale, the landlord may notify the tenant that the property be removed within the time specified in the notice (but not less than 15 days after delivery or mailing of the notice), and that if the property is not removed within the time specified, the landlord intends to destroy or otherwise dispose of the property; if the property is not removed within the time specified in the notice, the landlord may destroy or otherwise dispose of the property; in his notice, the landlord shall indicate he will store certain items of the tenant's personal property at a public sale or destroy or otherwise dispose of the remainder.

(b) After notice as provided in (a) of this section, the landlord shall store all personal property of the tenant in a place of safekeeping and shall exercise reasonable care of the property, but is not liable for loss or damage caused by the landlord's deliberate act. The landlord may elect to store the property in a place of safekeeping previously demised, in which event the storage cost shall not exceed the fair rental value of the premises. If the tenant's property is stored in a commercial storage company, the storage cost shall be charged to the tenant. The landlord shall charge for the storage and removal from the premises storage.

(c) After landlord's notice under (a) of this section, if the tenant makes timely response in writing of his intention to remove the personal property from the premises and does so within the time specified in the landlord's notice or within 15 days after delivery or mailing of the tenant's written response (whichever is later), the tenant may be conclusively presumed that he has abandoned the property and the landlord removes the property after notice, the landlord shall be liable for the cost of storage for the period the property has been in the landlord's safekeeping.

(d) The landlord may not be held to respond in damages for loss or damage by a tenant claiming loss by reason of the lan-

corresponding to (4), (5) or (6) of this subsection.

(d) Notwithstanding (a) of this section, the landlord may increase the rent if he

(1) has become liable for a substantial increase in property taxes, or a substantial increase in other maintenance or operating costs not associated with his complying with the complaint or request, not less than four months before the demand for an increase in rent; and the increase in rent bears a reasonable relationship to the net increase in taxes or costs;

(2) has completed a capital improvement of the dwelling unit or the property of which it is a part and the increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the dwelling units benefited by the improvement;

(3) can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar dwelling units in his building or, in the case of a single-family residence or if there is no similar dwelling unit in the building, does not exceed the fair rental value of the dwelling unit.

(e) Maintenance of the action under (c) of this section does not release the landlord from liability under § 160(b) of this chapter. (§ 1 ch 10 SLA 1974)

Article 9. General Provisions.

Section	Section
320. Obligation of good faith	360. Definitions
330. Application and exclusions	370. Applicability
340. Service of process	380. Short title
350. Attorney fees	

Sec. 34.03.320. Obligation of good faith. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement. The aggrieved party has a duty to mitigate damages. (§ 1 ch 10 SLA 1974)

Sec. 34.03.330. Application and exclusions. (a) This chapter applies to and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit in this state.

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

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

(2) occupancy under a contract of sale of a dwelling unit or the

(3) occupancy by a member of a fraternal or social the portion of a structure operated for the benefit of the

(4) transient occupancy in a hotel, or motel, lod transient facility;

(5) occupancy by an employee of a landlord whose rig is conditioned upon employment substantially for : tenance, or repair to the premises;

(6) occupancy by an owner of a condominium unit c proprietary lease in a cooperative;

(7) occupancy under a rental agreement covering pr the occupant primarily for agricultural purposes. (§ 1 ch

Sec. 34.03.340. Service of process. If a landlord is n this state or is a corporation not authorized to do busin and engages in any conduct in this state governed by t engages in a transaction subject to this chapter, he ma agent upon whom service of process may be made in t agent shall be a resident of this state or a corporation at business in this state. The agent shall be the same per under § 80 of this chapter. The designation shall be in w with the commissioner of commerce. If no designation filed or if process cannot be served in this state upon t agent, process may be served upon the commissioner of c the service upon him is not effective unless the plaintiff immediately mails a copy of the process and pleading or registered mail to the defendant or respondent at ttainable address. An affidavit of compliance with shall be filed with the clerk of the court having jurisdic the return day for the process, if any, or within any allowed by the court. (§ 1 ch 10 SLA 1974)

Sec. 34.03.350. Attorney fees. Attorney fees shall be : prevailing party in any proceeding arising out of this rental agreement. (§ 1 ch 10 SLA 1974)

Sec. 34.03.360. Definitions. In this chapter

(1) "abandonment" means that the tenant has left the and his personal belongings in it and has been absent for period of seven days or longer without giving notice under chapter and has defaulted in the payment of rent;

(2) "building and housing codes" include any law, governmental regulation concerning fitness for habit: construction, maintenance, operation, occupancy, use, or a a premise or dwelling unit;

(3) "dwelling unit" means a structure or a part of a str used as a home, residence, or sleeping place by one maintains a household or by two or more persons who

(4) "fair rental value" means the average rental rate in the community for available dwelling units of similar size and features;

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

(6) "landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by § 80 of this chapter;

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

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

(9) "person" includes an individual or organization;

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

(11) "prepaid rent" means that amount of money demanded by the landlord at the initiation of the tenancy for the purpose of ensuring that rent will be paid, but does not include the first month's rent or money received as security for damage;

(12) "rent" means the uniform periodic payment due the landlord, however denominated;

(13) "rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under § 130 of this chapter embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

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

(15) "single family residence" means a structure maintained and used as a single dwelling unit;

(16) "tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

(17) "undeveloped rural area" means an area where public sewer or water services are not available;

(18) "wear resulting from ordinary use" means deterioration of the premises which is the result of the tenant's normal nonabusive living and includes but is not limited to deterioration caused by the landlord's failure to prepare for expected conditions or by the landlord's failure to comply with his obligations. (§ 1 ch 10 SLA 1974)

Sec. 34.03.370. Applicability. After March 19, 1974, this chapter applies to any rental agreement, lease, or tenancy entered into,

Sec. 34.03.380. Short title. This chapter may be cited as "Uniform Residential Landlord and Tenant Act." (§ 1 ch 10 SLA 1974)

Chapter 05. Rentals.

Article

1. Real Property (Repealed)
2. Personal Property (§§ 34.05.030 — 34.05.050)

Article 1. Real Property.

Section

10—20. (Repealed)

Secs. 34.05.010—34.05.020.

Repealed by § 4 ch 10 SLA 1974.

Editor's note. — The repealed article derived from §§ 22-1-1 to 22-1-4, ACLA 1949; § 1, ch. 98, SLA 1970. **Legislative committee report** on ch. 10, § 226, see 1974 Senate

Article 2. Personal Property.

Section

30. Obtaining rental equipment with intent to defraud

Section

40. Failure to return rental equipment
50. Definitions

Sec. 34.05.030. Obtaining rental equipment with intent to defraud. (a) A person who, with intent to defraud, obtains possession of equipment from its owner or a person who has obtained possession of equipment with the owner's consent, by agreeing in writing to rent the equipment for use of the equipment, upon conviction, is punishable by imprisonment for not more than one year, or by a fine of \$1,000, or by both.

(b) Obtaining possession of the equipment by means of fraudulent representations, or false impersonation in connection with obtaining possession of the equipment, upon conviction, is punishable by imprisonment for not more than one year, or by a fine of \$1,000, or by both. (§ 1 ch 81 SLA 1966)

Legislative committee report. — For report on ch. 81, SLA 1966, see 1966 House Journal, p. 128.

Sec. 34.05.040. Failure to return rental equipment. A person who obtains possession of equipment under an agreement in writing to return the equipment to a particular place or person at a particular time who refuses or wilfully neglects to return it to the place or person at the time specified in the agreement in writing, or who sells or attempts to sell the equipment or any part thereof, upon conviction, is punishable by imprisonment for not more than one year, or by a fine of not more than \$1,000, or by both. (§ 1 ch 81 SLA 1966)

Legislative committee report. — For report on ch. 81, SLA 1966, see 1966 House Journal, p. 128.

chapter shall be conducted under the Administrative Procedure Act (AS 44.62).

(b) A final determination or order issued, or a regulation promulgated, under this chapter is subject to judicial review under the Administrative Procedure Act (AS 44.62). (§ 1 ch 128 SLA 1974)

Sec. 34.06.041. Prohibitions. (a) During a proclaimed housing emergency, regardless of any existing contract, lease or other agreement, no person may demand or receive an increase in rent for a residential housing accommodation without justification for that increase as the commissioner of commerce may prescribe by regulation, or perform or omit to perform an act which violates this chapter or a regulation or order issued under this chapter.

(b) During a proclaimed housing emergency, no person may remove or attempt to remove from a residential housing accommodation the tenant or occupant of the accommodation or refuse to renew the lease or agreement for the use of the accommodation because the tenant or occupant has taken or proposes to take action authorized by this chapter or a regulation or order issued under it.

(c) During a proclaimed housing emergency, no landlord or person acting on his behalf, with intent to cause a tenant to vacate, may engage in a course of conduct including but not limited to interruption or discontinuance of essential services which interferes with or is intended to interfere with the quiet enjoyment of the tenant in his use or occupancy of a residential housing accommodation.

(d) No officer, employee, agent, or consultant of the department may disclose, other than in the course of his official duty under this chapter, information obtained under this chapter or use any of that information for his personal benefit. (§ 5 ch 108 SLA 1975)

Effective date. — Section 8, ch. 108, Legislative committee report. — SLA 1975, makes this section effective on June 4, 1975, in accordance with AS 01.10.070(c). For report on ch. 108, SLA 1975 (FCCS HCSSB 290), see 1975 Senate Journal, pp. 1123, 1124.

Sec. 34.06.043. Injunctive relief. After exhausting the administrative remedies provided under the regulations promulgated under this chapter, an aggrieved person or the department may apply to the superior court for an order enjoining any act which is or may be a violation of this chapter or a regulation or order issued under it. The court order shall be granted without bond. (§ 5 ch 108 SLA 1975)

Effective date. — Section 8, ch. 108, Legislative committee report. — SLA 1975, makes this section effective on June 4, 1975, in accordance with AS 01.10.070(c). For report on ch. 108, SLA 1975 (FCCS HCSSB 290), see 1975 Senate Journal, pp. 1123, 1124.

Sec. 34.06.045. Action for damages. For a violation of this chapter or regulation or order issued under it, an aggrieved person may bring

whichever is the longer period of time. In that action party may recover attorney fees and costs in addition determined by the court. (§ 5 ch 108 SLA 1975)

Effective date. — Section 8, ch. 108, Legislative committee report. — SLA 1975, makes this section effective on June 4, 1975, in accordance with AS 01.10.070(c). For report on ch. 108 HCSSB 290), see 1975 Senate Journal, pp. 1123, 1124.

Sec. 34.06.047. Criminal penalties. A person who violates a provision of this chapter or a regulation or order issued under it who falsifies an eviction notice application, is guilty of a crime and upon conviction is punishable by a fine of not more than \$1000 or by imprisonment for not more than one year, or by both. (SLA 1975)

Effective date. — Section 8, ch. 108, Legislative committee report. — SLA 1975, makes this section effective on June 4, 1975, in accordance with AS 01.10.070(c). For report on ch. 108 HCSSB 290), see 1975 Senate Journal, pp. 1123, 1124.

Sec. 34.06.050. Definitions. In this chapter
(1) "commissioner" means the commissioner of commerce;
(2) "department" means the Department of Commerce;
(3) "residential housing accommodation" means a single unit private dwelling, including mobile homes, or a structure on land that may be leased for any term of one week or longer in a condition of tenancy, that is used for dwelling purposes.
(4) "essential services" means running water, hot water, sanitary facilities, or the supply of other like services; and garbage or other solid waste disposal services when provided by a landlord. (§ 1 ch 128 SLA 1974; am § 6 ch 105 SLA 1975)

Effect of amendment. — The 1975 amendment, effective June 4, 1975, added paragraph (4). HCSSB 290), see 1975 Senate Journal, pp. 1123, 1124.

Legislative committee report. — For report on ch. 108, SLA 1975 (FCCS

Sec. 34.06.060. Short title. This chapter may be cited as the Emergency Residential Housing Rent Regulation and Control Act. (ch 128 SLA 1974)

Section. He is liable for actual damages and penal damages of an amount not to exceed actual damages.

(e) A public sale authorized under the provisions of this section shall be conducted under the provisions of AS 09.35.140. The landlord may dispose of any property upon which no bid is made at the public sale. (§ 1 ch 10 SLA 1974)

Sec. 34.03.270. Remedy after termination. If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement. (§ 1 ch 10 SLA 1974)

Sec. 34.03.280. Recovery of possession limited. A landlord may not recover or take possession of the dwelling unit by action or otherwise, including wilful diminution of services to the tenant by interrupting or causing the interruption of electricity, gas, water, sanitary or other essential services to the tenant, except in case of abandonment, surrender, circumstances beyond his control due to energy conditions, or as permitted in this chapter. (§ 1 ch 10 SLA 1974)

Article 7. Periodic Tenancy, Holdover, and Abuse of Access.

Section

290. Periodic tenancy and holdover

300. Landlord and tenant remedies for abuse of access

Sec. 34.03.290. Periodic tenancy and holdover. (a) While rent is current, the landlord or the tenant may terminate a week to week tenancy by a written notice given to the other at least 14 days before the termination date specified in the notice.

(b) The landlord or the tenant may terminate a month to month tenancy by a written notice given to the other at least 30 days before the rental due date specified in the notice.

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or after its termination, the landlord may bring an action for possession and if the tenant's holdover is wilful and not in good faith the landlord, in addition, may recover an amount not to exceed one and one-half times the actual damages. If the landlord consents to the tenant's continued occupancy, § 20 of this chapter applies. (§ 1 ch 10 SLA 1974)

Sec. 34.03.300. Landlord and tenant remedies 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 an amount not to exceed the actual damages or one month's periodic rent, whichever is greater. If the landlord terminates the rental agreement, he shall give

(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 an amount not to exceed the actual damages or one month's periodic rent, whichever is greater, court costs and reasonable attorney fees. If the tenant terminates the rental agreement, he shall give written notice to the landlord at least 10 days before the date specified in the notice. (§ 1 ch 10 SLA 1974)

Article 8. Retaliatory Action.

Section

310. Retaliatory conduct prohibited

Sec. 34.03.310. Retaliatory conduct prohibited. (a) Except as provided in (c) and (d) of this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after the tenant has

(1) complained to the landlord of a violation of § 100 of this chapter;
(2) endeavored to avail himself of rights and remedies granted him under the provisions of this chapter;

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

(4) complained to a governmental agency responsible for enforcement of governmental housing, wage, price or rent controls.

(b) If the landlord acts in violation of (a) of this section, the tenant is entitled to the remedies provided in § 210 of this chapter and has a defense in an action against him for possession.

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

(1) the tenant is in default in rent;
(2) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit;

(3) the tenant is committing waste, or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of his rental agreement;

(4) he seeks in good faith to recover possession of the dwelling unit for personal purposes;

(5) he seeks in good faith to recover possession of the dwelling unit for the purpose of substantially altering, remodeling, or demolishing the premises;

(6) he seeks in good faith to recover possession of the dwelling unit for the purpose of immediately terminating for at least six months use of the dwelling unit as a dwelling unit; or

NZ-

Dear Senator:

Please expedite passage of HB 1 now being considered by the State Affairs Committee. This bill corrects a difficulty for both tenant and landlord in change of lease, making 30 days notice adequate rather than 30 days from next rent due date, which most often is more than 30 days total notice. It also clarifies other sections of the Landlord-Tenant Act.

Thanks for your assistance!

Signed:

Datti J. Mesloh
Charles L. Kane
Deborah S. Kane

Lon Mesloh
(K & M Apartments)

Dear Senator:

Please expedite passage of HB 1 now being considered by the State Affairs Committee. This bill corrects a difficulty for both tenant and landlord in change of lease, making 30 days notice adequate rather than 30 days from next rent due date, which most often is more than 30 days total notice. It also clarifies other sections of the Landlord-Tenant Act.

Thanks for your assistance!

Signed: Maurice Schwanter

For tenants

Change typeface
lines under Q's.
Indent provisions -
Pass by MONTE.

LANDLORD TENANT FACTSHEET

IF YOU'RE A TENANT, THE REFORMS IN HB 1 ARE NOT IN YOUR BEST INTEREST!

WHAT DOES HB 1 DO?

*If you don't give proper notice that you're leaving, your landlord could collect 1 1/2 times your rent as a penalty, even if a new tenant moves in the next day! If the landlord doesn't give you proper notice to leave, NO PENALTY applies to him or her.

* "Self-help evictions" would be legal. Your landlord could personally evict you after getting a judgement from a judge. Now, state troopers have to be present when a landlord evicts you. That way your rights are better protected.

physically

as a tenant

*Your landlord could bring you to court to evict you and, at the same time, charge you for damages. All this would happen on 3 or 4 days' notice. Right now, you may get evicted on short notice, but you have several weeks to prove whether or not you caused any damages.

*If you complained about conditions in your place, your landlord could not legally evict you in retaliation. But that protection would last for only 60 days. Most states with "presumption of retaliatory eviction" clauses prohibit the landlord from evicting you for one year—and they impose penalties if the landlord tries to evict you illegally.

That's an improvement.

*Your landlord could end your lease or increase your rent in mid-month, with thirty days' notice. Right now, the landlord and tenant must give notice 30 days from the RENTAL DUE DATE. If you sign a lease or have a month-to-month oral lease, you have the right to use the house or apartment for the entire month, provided you pay the rent on time. Your landlord violates the lease if s/he tries to evict you, increase the rent or decrease services during that month for which you've already paid. That's the deal. If HB1 passes the SENATE, all that changes.

SO WHAT DOES ALL THIS MEAN FOR ME?

Chances are you'll be paying more for housing if HB 1 passes--in increased penalties, increased damages, quicker rent increases.

WHO IS IN FAVOR OF HB 1?

.....All testified in favor of the bill when it was considered by the state HOUSE last year.

WHAT CAN I DO TO MAKE SURE HB 1 DOESN'T PASS THE SENATE?

Write your Senator a letter opposing HB1, c/o Pouch V, Juneau, AK 99811. Or better yet, call 278-3668 here in Anchorage and send your Senator a Public Opinion Message. It's FREE, so do it today.

List Senators?

5/2x14?

Nov 17th

10.18.83

federal rejection of alaska's plan for minority contracting is most unfortunate. the approach proposed by DOT was based on success in the private sector and would have worked well under state projects.

at this time, i surely hope the action by the Reagan administration will not slow down highway construction in Alaska or reduce the amount of federal aid highway funds available to us.....

the state made a real good faith effort to increase the amount of highway contracts going to firms owned by Blacks, Natives, and women, and just because Washington bureaucrats didn't sympathize with it should not now jeopardize the people of alaska

(ref to ak human rights commission and other endorsements)

now, of course, it's critical that DOT commissioner dan casey and his people quickly put into effect an alternate method of assuring continued eligibility for federal assistance and promote more equitable participation of minorities and women in state construction work.

to date, the state record ... has been abominable, and that may well be the reason why the feds looked with skepticism at the state's latest plan.

(here cite highway and public facility participation figures. compare w/ federal targets)

fischer said the hearing is being held now partly in response to the federal rejection of alaska's minority contracting plan. "we had been planning hearings nearer to next legislative session, but the time to do that obviously is now".

the senate state affairs committee has been working on the problems of small and minority contractors for several years> "It's been horrendously frustrating to work with the bureaucracies and entrenched interests that don't want to take the steps necessary to permit small businesses, minority or not, to participate in

Bonding has been a particularly serious impediment to small business participation in state contracts.... a bill by fischer to establish was vehemently opposed by the bond surety industry.

"the time has come to take vigorous action to redress the inequities...

"I'm particularly appalled by the extent to which general contractors put the squeeze against small businesses and minority subcontractors, both in public and private construction work. The

MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senator Vic Fischer,
Chairman

RE: Interim Committee Meeting

DATE: November 2, 1983

This is to inform you that on November 17, 1983, at 1:30 p.m., the Senate State Affairs Committee will meet specifically on the federal rejection of Alaska's plan for minority and female business contracting.

An agenda will be following this memo.

If you have any questions, please contact Virginia Baim at 278-3654.

Thank you.

little Alaska firms are being ground up in the competitive struggle for state bucks.

"time and again, w2e hear reports of minority and other local firms getting aced out of subcontracts on which they submitted low bids, usually in favor of favorite insiders, often to make way for outside firms or carpetbaggers."

the senate hearing will deal with all aspects of state construction contracts, not just with highways. The state spends of total of \$_____ on capital projects, of which \$_____ goes for road construction (probably needs to be related to last or current fiscal year)

"We've got to have public involvement in this process. Rather than agencies their makibng up their minds and developing their plans withpout consulting those most directly involved, I want us to hear from the people first. There are a lot of good ideas ...

Aside from DOTPF, Sen Fischer is inviting the Alaska Human Rights Cpmmission, Associated General Contractors, the state DEpartment of Administration, (put AGC after DoA) (then list some minority groups, also there was testimoby in Juno from someone representing small or independent businesses - list them), and other groups.

persons wishing to testify at the hearing should call GB at 278 3654 or write>

???hearing will be held jointly with sen transp comm chaired by sen pappy moss???k

ADN/10/26/83 02-1

Federal government rejects plan to favor firms that hire minorities

By KARIN DAVIES
Daily News reporter

WASHINGTON — Alaska's program for giving contractors who hire minorities and women more state contracts for projects that include federal funds has been rejected by the Federal Highway Administration.

The plan submitted by the state Department of Transportation and Public Facilities was turned down because it would inhibit "free and

open competitive bidding" and could result in more collusive bidding. Federal Highway Administrator Ray Barnhart said in a letter that arrived in Juneau Thursday.

The program also could unnecessarily increase the cost of federal aid projects, Barnhart said. Alaska receives about \$148 million a year from the federal government for construction projects.

"It was a disappointment," said Fred Seeger, a state

transportation department deputy commissioner. The Sheffield administration nevertheless will stick to its commitment to funnel more business to minority and female firms, he said.

The transportation department program was drafted in response to two lawsuits filed against the state in 1978 and this year claiming the department was not giving enough business to minorities.

See Back Page, STATE

State contracting program rejected in D.C.

Continued from Page A-1

Alaska is well below a federal minimum goal of 10 percent minority business participation in contracts using federal funds. Between 5 percent and 6 percent of the contracts awarded by the department go to minorities, and one Native firm receives the bulk of those contracts.

Seeger said the the concerns of the highway administration are unfounded.

"Our proposal is innovative, and because it is innovative, it doesn't follow (the highway administration's) regimented, cookbook procedure," he said.

Seeger criticized the Reagan administration for touting a policy of new federalism, but "refusing to give responsibility and authority to states."

Federal law requires contractors to make "a good

faith effort" to hire minority firms. Seeger said the policy generates a lot of paperwork and few results.

The transportation department plan would require contractors to indicate the number of minority firms they would hire when they bid on a project. Up to 2 percent of the bid total would be added or subtracted from a contractor's bid under the plan, depending upon estimates of minority involvement.

Barnhart said the state proposal would increase costs and violate a highway administration requirement that contracts be awarded to the lowest bidder.

But Seeger said costs would not increase because contractors would be spared the time and expense of keeping records to prove they made a "good faith effort."

Seeger said collusion would be unlikely because more

than a dozen bids are submitted for any one project and because contractors' estimates of the amount of business that would go to minority or female firms would be averaged.

Barnhart also objected because the state plan would not require 10 percent of each contract to go to a minority or female firm, but would strive to achieve that goal overall.

A second phase of the transportation department proposal was accepted by the highway administration on the condition that it is amended. In that phase, the department would calculate whether contractors' actual employment of minority firms measured up to their pledges.

Firms that met their hiring goals would receive a bonus payment, and those that fall short would pay a penalty of from 1 to 2 percent of their contracts.

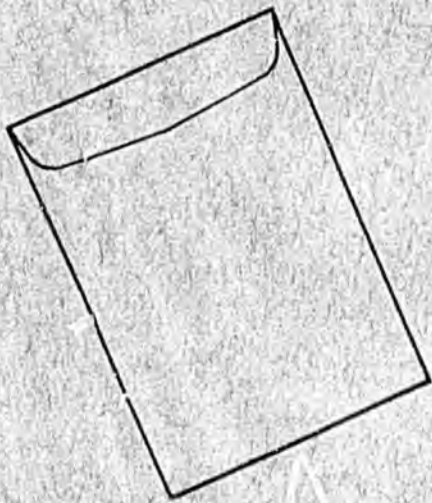
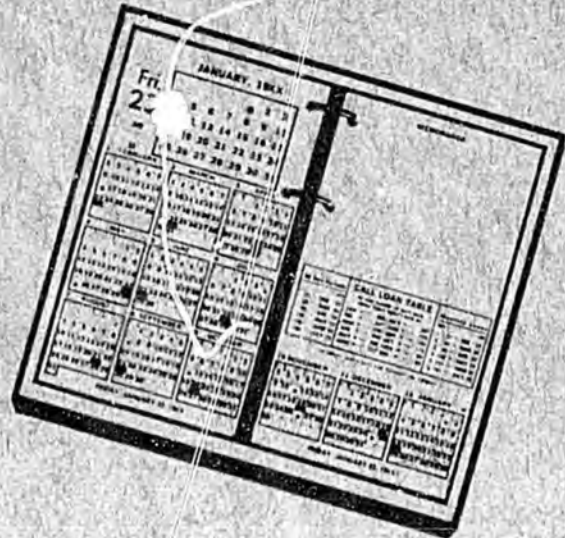
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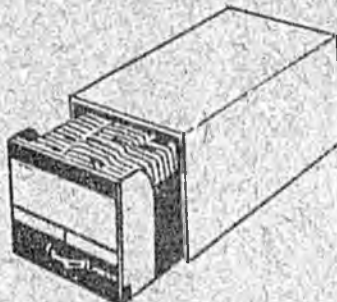
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LETTER #11: SALE \$4.95 ea.
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LEGAL #12: SALE \$5.40 ea.
REG. \$8.05

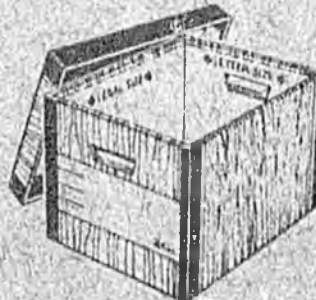
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LETTER #311: SALE \$7.65 ea.
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REG. \$13.85

R-Kive
FILE



LETTER/LEGAL #725
SALE: \$2.75 ea.
REG.: \$3.95



**PILOT
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FINELINERS (SWPP)

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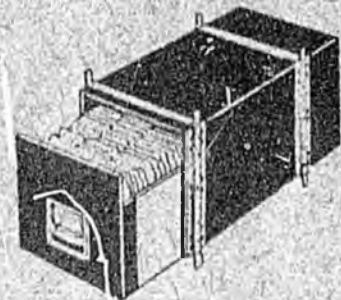
REG.-.79 SALE-.59 EA

RAZORPOINTS (SWIOPP)

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REG.-.89 SALE-.69 EA.

STAX ON STEEL.
TRANSFER FILE



LETTER #511: SALE \$16.90 ea.
REG. \$24.70

LEGAL #512: SALE \$18.90 ea.
REG. \$27.20

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Issues, divided by topic. Some items may appear on several lists.

A=comes from Anchorage issues list S=from state issues list

*Increased housing opportunities:

- A Homeownership for people with low and mod incomes
- A Additional rental housing for low inc. people
- A Target programs for special populations--Comp. in terms of satis. needs
- A Monitor emergency housing
- A. Hostel for bush transients
- A Check out strategies with military in other cities
- A ~~Geneurrent-travel~~ University housing
- A Special needs housing: elderly, handicapped, group homes
- S Increase housing stock for homeowner/rental at all inc. levels
- S Push for "appropriate housing, for seniors, disabled, less expensive
- S Push state to participate/subsidize Rural Housing Authorities
- S Increase \$ to BLM so they can work to help get clear title to land
- S Push for hostels for rural Alaskans, additional shelters elsewhere

*Housing standards:

- A Increase enforcement against management and for health and saf. Violat.
- A Examine health and fire codes
- A Building codes--comprehensive energy, special situation of AK
- A Increase bonding on builders--political action
- S State require building codes in all areas, try for minimum state standards
- S Push for higher housing standards--ASHA, HUD
- S Establish some kind of statewide housing code, maintenance code
- S Push for better enforcement of existing codes
- S Appropriate technology for water and sewer facilities
- S Push for increased bonding, housing warranties for contractors

*Citizen education re: housing

- A Homeownership manual
- A Make housing an issue
- A Education--status of neighborhood
- A Media work to highlight housing data
- A Increase citizen participation in housing programs
- A Community action--increase power of tenants
- S Put together housing maintenance handbooks/materials, homebuyer ed.
- S Cost out capital expenses for infrastructure--long-term maintenance
- S Talk with Sen. Sturgulewski about working around housing needs study
- S Enforce present barrier free regulations
- S Work with state/national networks to make HUD keep strong 504 regs.
- S Study "who benefits" from AHFC and publicize
- S Educate public on housing needs
- S increase housing loans in bush--education
- S Educate public on loan programs

*Financing

- A Homeownership for people with low and moderate inc.
- A Additional rental housing for low income people
- A City land use policies--consider attaching strings
- A Environmental impact statement for housing--for bid developments
- A State pick up the difference more between costs and price

Financing continued

- A Cost: decrease labor costs, look at appropriateness of housing
- A Push banks for creative financing, especially just below min. Requ.
- A Condos: first option, better deal for residents
- S Increase \$ limit on weatherization programs
- S Appropriate technology for water and sewer facilities
- S Cost out capital expenses for infrastructure--long-term maintenance
- S Push state to participate/subsidize Rural Housing Authorities
- S Study who benefits from AHFC and publicize
- S Increase housing loans in bush--education
- S Education on loan programs
- S Develop alternative programs to bring private \$ into the bush

Planning*

- A Target programs for special populations--comprehensive in terms of satisfying needs
- A Zoning for mobile homes, land use
- A City land use--strings attached
- A Ask for more useful, concrete data
- A Comprehensive housing plan, position of commercial building
- A Education--status of neighborhood
- A "Environmental Impact Statement" for housing, for big developments
- A Increase citizen participation in housing program
- A Role of condos
- A Special needs housing--zoning--have place in community
- S Increase housing stock for homeowner/rental at all income levels
- S Rent review, control where appropriate
- S Push for comprehensive state/local housing plans/policies
- S Push for "appropriate housing", for seniors, disabled--less expen.
- S Cost out capital expenses for infrastructure--long term maintenance
- S Push for good Housing Assistance Plans
- S Talk with Sen. Sturgulewski about working around housing needs study

*Political work

Make housing an issue

- S State pick up difference between costs and price more
- S Increase bonding on builder--political action
- S State require building codes in all areas--try for minimum standards
- S Push for higher housing standards--ASHA, HUD
- S Establish some kind of statewide housing code/maintenance code
- S Increase \$ limit on weatherization programs
- S Increase housing stock for homeowner/rental at all inc. levels
- S Draft and lobby Landlord Tenant Act changes
- S Talk with Sen. Sturgulewski about working around housing needs study
- S Push state to participate/subsidize Rural Housing Authorities
- S Study "who benefits" from AHFC and publicize

*Regulatory--mostly federal

Redefine low income
Monitor small cities CDBG
Push for good Housing Assist. Plans

Enforce present barrier free regs
Work with networks for strong 504
regs.

*Miscellaneous

Recruit and screen qualified state and local housing administrators

Establish statewide network--800 number?

Political action--change face of legislature, voter registration,
redefine fair market rent

Hazards of commuting to Anchorage

Tax rates

Condos--costs of displacement, Juneau example

1st meeting info.

Anchorage Housing Fact Sheet

Vacancy and Rental Rates:

While being real low in 1981-82, vacancy rates are on the rise

June 1982 - 1.4%	} Municipality
Jan. 1983 - 5.0%	
June 1983 - 6.5%	

Highest rate was in March 1983 with 9.5%

Rates are rising because of low priced condos being built which allows former renters to now buy

Feb. 1981: eff. and 1 bdroom= \$380 average rent

2 bdroom = \$438 " "

3 bdroom = \$513 " "

Feb. 1983: Efficiency = \$385 - \$583 Median \$450

1 bdroom = \$183 - \$722 Median \$575

(Most Common) 2 bdroom = \$276 - \$845 Median \$525 } Partial Survey

3 bdroom = \$304 - \$1236 Median \$654

In 1981, vacancy rates were highest in the low rent places, with rates in medium and high rent places following respectively. In 1983, vacancy rates are highest in the medium rent category, with low and high rent places following respectively. This is because of the increasing # of building permits.

Dept. of Housing and Urban Development's vacancy rate for cities in a period of economic growth is 4 to 6% in order to meet immigration and turnover needs.

Other Rent Facts:

In 1980: - 43.5% of housing units were renter occupied

- Median # of rooms in a house was 4.8, 55.4% of the housing units had 5+ rooms

- Total # of occupied housing w/out plumbing is 1.2%, of this 67.1% were rented

In 1970, 20.3% of the units under contract rent cost under \$150/month; In 1980, only 3.6% " " " " " " " " " "

In 1981 - total dwelling units rose from 1,397 to 3,432 as a result of subsidized secondary financing through the Alaska Housing Finance Corporation

1982 - the largest % of people lived in airport - Jewell Lake area (tract 23); this area also had the most single family houses.

Complaints received by the Coalition's Hot Line = June 1982= 214/month
June 1983= 255/month

Places close to downtown have the most renters, outlying areas have the most single family houses.

Senior Housing:

Chugach View (specifically designed for elderly) 120 People - 80 people on waiting list

Fairmont - 41 people

Willow Park - 14 people

174 certificates for 1 bdroom and efficiency

Pioneer Home - live in Alaska for 15 yrs., 65+ includes nursing for additional cost - not adjusted by income - fixed rate; \$225/month, \$375 w/nursing

Association for Stranded Rural Alaskans - open to anyone from rural Alaska

5 people, 2 in Hyder House, 3 in Haven of Rest, Inlet (for families) is full at the moment

- also use Youth Hostel and Providence House
- 80% of people using program are natives
- people coming to Anchorage for medical emergencies
- crime victims and 4th Ave. types - Assoc. will send them back to village after making sure they have a place to go, a means of support or someone responsible for them

Street People:

- Warehouse at 3rd and Post Road - accomodate approx. 200, completed by beginning of October, run by Catholic Archdioces and former staff of Brother Francis Shelter. There are approximately 500 street people - some of these are handled by other organizations like Association for Stranded Rural Alaskans.

Future City Plans:

1) Operation Match: city would screen and match elderly people w/young tenants like college kids - young people would provide company and do small chores (shoveling snow) in exchange for little or no rent.

2) Home Equity Conversion Program: convert equity into monthly income - i.e. old lady sells house to a lender at discount - lender profits because of discount and lady is guaranteed residence plus monthly income; when she dies, lender gets house.

FEDERAL HOUSING FACT SHEET

Most of the federal housing programs are administered by the AK State Housing Authority (ASHA). ASHA was established in 1945 to "develop decent, safe and sanitary housing by building and operating public housing."

In 1971, Regional Native Housing Authorities (RHAs) were established; these serve the function of an authority in the bush and ASHA mostly confines its energies to the southcentral and Southeast parts of the state.

PUBLIC HOUSING

Owned and administered by ASHA, federal help with capital and operating expenses, tenants pay between 26 and 30% of adjusted income (used to be 25%, phasing up to 30%).

- 891 units, 500 families on the waiting list.
- Average inc: \$7,350; average rent paid: \$150/mo.
- 5 new projects in the pipeline for a total of 188 new units.

SECTION 3 NEW CONSTRUCTION

Administered by ASHA, federal guarantees to private developers for construction. Tenants pay between 26 and 30% of adjusted income.

- 5 projects, 285 units.
- Average income: \$6,400; average rent paid: \$133/mo.

SECTION 8 EXISTING

Demand-side response. Eligible participants get certificates. They arrange a lease with landlord at a federally established "fair market rent" or less, then HUD pays the difference between rent and 26-30% of the tenant's income.

- 1032 certificates under contract.
- 1363 allocated (eligible recipients who haven't found housing yet.)
- Average income: \$7,100; average rent paid: \$148/mo.

RHA PROGRAMS

The RHAs have developed 129 rental units and administer the Mutual Help for Indians Program. Under the latter, families invest \$1,500 of labor, materials or equity for a house. They then pay 25% of their income towards mortgage payments and administrative fees. HUD picks up the balance, and at the end of the term of the mortgage, the house is turned over to the family.

- 2547 were financed through mid-1981.

OVERALL

--In addition to administrative involvement in these programs, ASHA supplements HUD funding in general as many HUD expenditure limits aren't realistic in the Alaska housing market.

--In general, changes at the federal level in housing programs will increase the payments made by tenants and cut back on the amount of new construction authority drastically.

STATE HOUSING FACT SHEET

State Homeowner Loan Programs--Administered by the AK Housing Finance Corp:

- Special Mortgage Loan Purchase Program (SMLPP)
- The State-Assisted Mortgage (SAM) program uses bond proceeds and state appropriations to purchase owner-occupied residential mortgage loans on the secondary market at below-market interest rates.
 - The Home Ownership Assistance (HOF) program provides monthly subsidy payments to qualified low- and moderate-income borrowers who purchase properties under the SAM program.
 - The Pledged Account Mortgage (PAM) program ^{provides} ~~provides~~ SAM borrowers with a mechanism to structure a graduated payment mortgage.
 - The Mortgage Bond Subsidy Tax Act Loan Program uses bond proceeds from tax exempt bond sales to purchase mortgage loans which qualify under the Mortgage Bond Subsidy Tax Act of 1980.
 - The Mobile Home Loan Purchase (MHLPP) program uses state funds appropriated to the Homeownership fund for the purchase of mobile home loans.
 - The Rural Housing Purchase (RHPP) program uses state funds appropriated to the Homeownership Fund for the purchase of mortgage loans for owner-occupied residences in rural Alaska.
 - The Rural Nonowner-Occupied Mortgage Purchase program purchases mortgage loans for multifamily structures in rural Alaska with state appropriated funds appropriated to the Homeownership Fund.
- Overall, 59% of the activity is in Anchorage, 3.1% in rural areas.
-State contribution thru 1982 has been \$891.98 million.
-Between July 1980 and October 1981, the state provided \$667.1 million.
-AHFC was established in 1971 to "assist in alleviation of the shortage of affordable housing for low income residents."
-Of the SMLPPs, 0% of the households make less than \$10,000 a year, 12% less than \$20,000 and 36% more than \$50,000.
-Average subsidy to homebuyers: \$12,150 for a \$88,500 home over 10 years.

Dept. of Community and Regional Affairs Housing Programs:

Senior Housing

- The state Senior Citizen Housing Development Program was set up in 1980 to help develop or improve existing housing for seniors. It's contributed to the construction of 350 units. Primary purpose is to leverage other funds; the program has leveraged \$3.50 for each \$1 expended.
- Nona McVickers of OPAG has said that housing is the biggest problem the elderly in AK face today.

Non-Conforming Housing

- Established in 1980, 177 units as of early 1982, 75% of participants have incomes over \$30,000.
- Although enabling legislation mandates a maximum of 20% of participation in urban areas, 75% of the loans have been closed in urban areas. Similar to SMLPPs.

Alaska State Housing Authority (see federal factsheet for more info):

Only completely state-funded housing project was ASHA's Marine View in '72 in Juneau. High operating costs forced ASHA to lease the bottom four floors as office space. No development since.

- 64% of residents in ASHA housing are very low income.
- 38% are elderly --40% are native --8% are black

The biggest gap between need and support is in the bush, where the programs almost exclusively serve homebuyers. The degree of involvement by the state in housing in AK is tremendous compared to other states. The Governor has established a Task Force on Housing.

Notes on Housing Meeting
7-25-83

People who attended:

John Gant- ALSC
Laurie Terrall- CEJ
Michael Baffry- ATAG
Larry Dicheisa- CEJ
Chris Herberger- AkPIRG
Susan Zaccardi- CEJ
Joanie Cleary
Monte Engel- ALSC
Maureen Kennedy- AkPIRG
Cheryl Thomas

The following are various concerns voiced by the people at the meeting.

- Should this housing task force have as its main aim the problems in Anchorage or all of Alaska.
- Should we have committees for different issues
- Legislation on the landlord-tenant law
- AHFC
- How to get people involved
- Get low income people to vote
- Make low income housing a problem addressed by politics
- Cooperative housing
- Home ownership should be available to anyone who wants it
- Build houses that will last
- Just-cause eviction
- Condo conversion law
- Mobile home courts zoning
- Subsidized down payments
- City and state need coherent plan for all economic groups through zoning
- Need for education
- 90% of AHFC money goes to high income people

A list of activities occurring with the housing situation was then listed followed by a list of issues which could be worked on and which would address the housing activities and problems.

ACTIVITIES

- Neighborhood Housing Service
- Hot line and organizing
- 0% vacancy in mobile home parks
- Glut of moderate/high income rentals
- Filtration
- Lack of city planning, zoning and data
- Available information but no action
- Changes in HUD regulations (no money for building)
- Creative financing
- Cost of new construction and materials
- Rental management (powerful)
- Health and safety
- Street people
- Transience
- Military impact

ACTIVITIES cont.

- University spill over
- Deterioration of housing
- Energy cost
- Bond on new construction
- Building codes are non-existent or inadequate
- Movement to Valley
- Commercial development leading to displacement
- Condo conversion leading to displacement and decreased construction

ISSUES

- Homeownership for people with low and moderate income
- Additional rental housing for low income people
- Redefine low income
- Target programs for special populations- comprehensive in terms of satisfying needs
- Homeownership manual
- Political action:
 - change legislature
 - landlord/tenant law
 - voter registration
 - redefine fairmarket rate
 - Federal regulations and authority
- Make housing an issue
- Zoning for mobile homes, land use
- City land use- strings attached
- Ask for more useful, concrete data
- Comprehensive housing plan, position of commercial building
- Education- neighborhood status
- Environmental impact statement for housing, for big developments
- Media work to highlight data
- Increase citizen participation in housing program
- State pick up difference more
- Cost- decrease labor, look at appropriateness of housing
- Increase enforcement against management and for health and safety
- Community action- increase power of tenants
- Examine health and fire codes
- Hazards of commuting to wilds of Anchorage
- Tax rates??
- Monitor emergency housing
- Poverty cycle- disadvantaged people (street people, welfare)
- Hostel for bush transients
- Check out strategies with military in other cities- concurrent travel
- University housing
- Building codes- comprehensive energy, special situation of Alaska
- Increase bonding on builders- political action
- State require building codes in all areas- try for state minimum standards
- Push banks for creative financing, especially just below min. requirements
- Condos- political action:
 - 1st option
 - good deal
 - displacement cost
 - Juneau info.
 - building code
- Special needs housing:
 - elderly, handicapped, group homes
 - zoning- have place in community

Purpose of meeting: Housing action is occurring but there is no coalition legislatively, administratively.

There were no additions to the list of Anchorage housing issues and resources.

The following are givens in the Alaska housing situation:

- Rural authorities of building housing
- Senior housing- interest subsidy
- No operational subsidies from state
- Conversely, operating subsidy, no construction subsidy
- Need for state to help with housing, not scare away feds
- No HUD money specifically for developmentally disabled/lack of funding at state level
- Need for new construction barrier free, rather than retrofit; Senior, too
- Emphasis on institutional care for developmentally disabled rather than community based
- Lack of coordinated statewide policy
- AHFC/C&RA programs
- Overcrowding
- Weatherization
- Shoddy construction- lack of building codes, inspectors, plus environmental factors
- Per house limit on money
- Lack of maintenance funds
- Farmers home program- poor control on construction, hidden costs
- High cost of materials
- ASHA- home ownership
- Energy costs/water and sewer
- Qualified housing administrators, contractors
- Landlord-Tenant Act
- Lack of housing referral, information, assistance(no CEJ), no statewide organizing
- Very restricted housing availability
- 14 C transfer- homestead in rural areas
- Windows of assistance
- Health and safety
- For natives, loans are foreign concept
- Lack of private money in bush
- Clear title programs
- 1991 influence
- Special needs people forced to urban areas- lack of facilities in bush
- Need for "Level 2" housing situation
- Stranded Alaskans, transients
- Pioneer homes
- Economics of appropriate housing
- Housing needs study
- Governor's Task Force
- Joint private/community housing development
- Political support for status quo

The following is a list of issues based on the "givens":

- fb --Push for higher housing standards--ASHA, HUD
- fb --Establish some kind of statewide housing code/maintenance code
- b --Push for better enforcement of existing codes
- c --Put together housing maintenance handbooks/ materials, homebuyer ed.
- fd --Increase \$ limit on weatherization programs
- fea --Increase housing stock for homeowner/rental at all income levels
(how's that for a broad issue?)
- e --Rent review/control where appropriate
- e --Push for comprehensive state/local housing plans/policies
- ea --Push for "appropriate" housing, for seniors, disabled--less expensive
- db --Appropriate technology for water and sewer facilities
- edc --Cost out capital expenses for infrastructure--long-term maintenance
- b --Push for increased bonding, housing warranties for contractors
- Recruit and screen qualified state and local housing administrators
- f --Draft and lobby Landlord Tenant Act changes
- Establish housing network statewide--800 number?
- a --Monitor small cities CDBG
- gd --Push for good Housing Assistance Plans
- fc --Talk with Arliss Sturgislewski about working around housing needs study
- fa --Push state to participate/ subsidize Rural Housing Authorities
- a --Increase \$ to BLM so they can work to help get clear title to land
- ge --Enforce present barrier-free regulations
- ge --Work with state/national networks to make HUD keep strong 504 regs.
- fa --Push for hostels for rural Alaskans, additional shelters elsewhere.
- fc --Study "who benefits" from AHFC and publicize
- c --Educate public on housing needs
- ac --Increase housing loans in bush--education
- ac --Educate public on loan programs
- a --develop alternative programs to bring private \$ into the bush

Other remarks:

Focus on a few issues so our energy is concentrated and not diffuse
NEED state housing policy

We need priorities

How do we carry out the work--subgroups?

Will need background research

Think in terms of a timeline--issues with an immediate deadline, short-term deadline and longterm time line.

Next meeting: Wednesday, September 7th, 7 PM.

Working materials for 9/7/83

Issues, divided by topic. Some items may appear on several lists.

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*Increased housing opportunities:

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- S Work with state/national networks to make HUD keep strong 504 regs.
- S Study "who benefits" from AHFC and publicize
- S Educate public on housing needs
- S increase housing loans in bush--education
- S Educate public on loan programs

*Financing

- A Homeownership for people with low and moderate inc.
- A Additional rental housing for low income people
- A City land use policies--consider attaching strings
- A Environmental impact statement for housing--for bid developments
- A State pick up the difference more between costs and price

Financing continued

- A Cost: decrease labor costs, look at appropriateness of housing
- A Push banks for creative financing, especially just below min. Requ.
- A Condos: first option, better deal for residents
- S Increase \$ limit on weatherization programs
- S Appropriate technology for water and sewer facilities
- S Cost out capital expenses for infrastructure--long-term maintenance
- S Push state to participate/subsidize Rural Housing Authorities
- S Study who benefits from AHFC and publicize
- S Increase housing loans in bush--education
- S Education on loan programs
- S Develop alternative programs to bring private \$ into the bush

Planning*

- A Target programs for special populations--comprehensive in terms of satisfying needs
- A Zoning for mobile homes, land use
- A City land use--strings attached
- A Ask for more useful, concrete data
- A Comprehensive housing plan, position of commercial building
- A Education--status of neighborhood
- A "Environmental Impact Statement" for housing, for big developments
- A Increase citizen participation in housing program
- A Role of condos
- A Special needs housing--zoning--have place in community
- S Increase housing stock for homeowner/rental at all income levels
- S Rent review, control where appropriate
- S Push for comprehensive state/local housing plans/policies
- S Push for "appropriate housing", for seniors, disabled--less expen.
- S Cost out capital expenses for infrastructure--long term maintenance
- S Push for good Housing Assistance Plans
- S Talk with Sen. Sturgulewski about working around housing needs study

*Political work

Make housing an issue

- S State pick up difference between costs and price more
- S Increase bonding on builder--political action
- S State require building codes in all areas--try for minimum standards
- S Push for higher housing standards--ASHA, HUD
- S Establish some kind of statewide housing code/maintenance code
- S Increase \$ limit on weatherization programs
- S Increase housing stock for homeowner/rental at all inc. levels
- S Draft and lobby Landlord Tenant Act changes
- S Talk with Sen. Sturgulewski about working around housing needs study
- S Push state to participate/subsidize Rural Housing Authorities
- S Study "who benefits" from AHFC and publicize

*Regulatory--mostly federal

Redefine low income
Monitor small cities CDBG
Push for good Housing Assist. Plans

Enforce present barrier free regs
Work with networks for strong 504
regs.

Minutes of 9-7-83 Housing
Meeting

Additions to issues list:

- H.B. 131--Parenthood Deserimination
- Federal govt. not dealing with large impact issues
- Deserimination against people on public assistance

The people at the meeting spoke of what resov^{es} they are able to offer and on which issues they would like to work.

Janet Bradley(Alaska State Commission for Human Rights) in conjunction with Paul Connerty is offering a workshop in the fall to educate the public on housing issues.

Nancy Groszek- wants to stop H.B. 1 and has connections in Juneau.

David Maltman- would like more community-based houses for developmentally disabled; has access to statewide telephone tree, newsletter, mailing list and PADD offices in Fairbanks and Juneau.

Jay Cost-works for the Municipality's Housing and Community Services and has access to statistics.

Gail Stolz- head of Vista volunteers.

Bernita Roetto(OPAG)- has access to Senior Voice newsletter.

Maureen Kennedy and Chris Herberger(AkPIRG)- have access to copying machine, mailing list and plans to write a homebuyers manual with the help of the Coalition for Economic Justice.

Joanie Cleary and Pudge Kleinkauf(National Organization of Social Workers)- interested in low-income housing problems and has access to newsletter, Anchorage telephone tree and have some lobbying capability.

Laurie Terrall(Coalition for Economic Justice)-has Tenant Hotline and would like to work on voter registration, Landlord/Tenant Act and low-income housing.

It was decided that the group should limit itself to three issues, with one having good possibilities of being won. The three issues are increased funding for low-income and special populations, defeating H.B. 1 and working on prohibiting deserimination of basis of parenthood. The group split into three committees to work on each issue.

<u>Low-income:</u>	Nancy Groszek	<u>H.B. 1:</u>	Maureen Kennedy
	Jay Cost		Nancy Groszek
	Gail Stolz		Chris Herberger
	Joanie Cleary		Laurie Terrall
	Pudge Kleinkauf		Pudge Kleinkauf
	Bernita Roetto		

Parenthood Deserimination: Paul Connerty
Janet Bradley
Susan Shomberg
Catalino Barril

Minutes on Housing Meeting
9-28-83

People from the three subcommittees--funding for low-income housing, discrimination on the basis of parenthood, and the Landlord/Tenant Act--reported on their individual meetings.

Low-income housing: Possible action on city level-

- 1) Putting in land for city owned mobile home park
- 2) A tax on office buildings being built
- 3) A tax on condo conversions

Possible action on state level-

- 1) Direct subsidy for low-income home ownership
- 2) Appropriation to ASHA
- 3) Either create and get passed a new bill dealing with housing for developmentally disabled and physically handicapped or amend the present statute dealing with senior citizen housing to include these other two groups.

Possible action on federal level-

- 1) Raise ceiling on fair-market rental rate
- 2) Deal with Senator Stevens on Section 8

It was decided that priorities should be placed working with Stevens on Section 8 and dealing with getting housing for the developmentally disabled and handicapped by either working with the present senior citizen statute or creating a new bill.

Landlord/Tenant Act: H.B. 1 is presently in the Senate State Affairs Committee and Vic Fischer has promised Nancy Groszek to notify her if he has to move the bill. It is hoped that Mitch Abood will not prioritize this bill. We will not do any thing to stop the bill in hope that if no rucus is made, the bill will quietly go away. Preparations though will be made to mobilize opposition to the bill--preparations such as a letter, leaflets, mailing lists and telephone trees. Also the bill will be written into layperson's terms.

Discrimination on the basis of parenthood:

H.B. 131 of the Alaskan legislature and S.1220 of the U.S. Congress were handed out. S.1220 deals with fair housing. Sponsors of H.B. 131 will be spoken with and more research done on these two bills.

A name was decided upon for the group--HOME= Housing Opportunities Made Equal

RESOURCE LIST

from
Rural CAP

I. National Housing Advocacy Organizations

1. National Rural Housing Coalition, 215 Eighth St., N.E., Washington, D.C. 20002. (202) 544-2544. Founded in 1969 as the only national public interest lobby dedicated solely to improving the quality of low-income rural housing. The Coalition can take much of the credit for inclusion of major provisions for rural housing programs in comprehensive housing acts, including rural rent supplement, reinstatement of home repair grants and expansion of farm labor housing, self-help and other programs. Contact: Bill Powers, Vice Chairperson.
2. National Low Income Housing Coalition, 215 Eighth St., N.E., Washington, D.C. 20002. (202) 544-2544. A coalition of individuals and organizations focusing on the housing problems of low-income people. The Coalition is actively engaged in a program of education, organization and advocacy. It follows low-income housing needs closely, develops policy positions, and works with Congress and the Administration to get them adopted. Contact: Cushing Dolbeare, President.

II. State Housing Advocacy Organizations

1. New York State Rural Housing Coalition, 32 Main St. Genesco, New York 14454. (716) 243-1330. Contact: John Burk.
2. California Coalition for Rural Housing, P.O. Box 351, Visalia, California 93279. (415) 548-5369. Contact: Ms. Susan Peck, Chairperson.
3. Wisconsin Rural Housing Cooperative, 1810 S. Park Street, Madison, Wisconsin 53713. (608) 251-9567. Contact: Mr. Martin Evanson, Exec. Director.

II. State Housing Advocacy Organizations (con't.)

4. Maine CAP Housing Council, 12 Park Hill Avenue, Auburn, Maine 04210. (207) 786-3588. Contact: Ms. Roberta Youmans.
5. Washington Coalition for Rural Housing 1616 South Woodlawn, Spokane, Washington 99216. (509) 922-3250 (evenings). Contact: Mr. Kim Herman, Chairperson.
6. Vermont Fair Housing Coalition, Box 396, Bellows Falls, Vermont 05101. (802) 463-9951. Contact: Mr. John Durgin, Coordinator.
7. Utah Issues, 1719 South Eleven Hundred East, Salt Lake City, Utah 84105. (801) 484-8581 Contact: Irene Fisher.
8. Texas ACORN, 503 W. Mary, Austin, TX 78704. (512) 442-8321. Contact: Mr. Mark Shroder.
9. Palmetto Issues Conference, P.O. Box 11597, Columbia, SC 29211. (803) 788-5338. Contact: Mr. Samuel J. Selph.
10. Puerto Rico Community Services Administration, Department of Labor and Human Resources, Commonwealth of Puerto Rico, Box 25-A, Hato Rey, Puerto Rico 00919. Contact: Mr. Manuel Mena, Exec. Director.
11. Pennsylvania-Delaware Association for Community Action, Inc., P.O. Box 848 Harrisburg, PA 17103. (717) 233-1075. Contact: Mr. Jack Staffaroni.
12. Southwestern Oregon CAC, 1993 Sherman, P.O. Box 427, North Bend, Oregon 97459. (503) 756-3176. Contact: Olivia Clark.
13. Corporation for Ohio Appalachian Development, P.O. Box 120, Marietta, Ohio 45750. (614) 592-4759. Contact: Mr. Roger McCuley.

II. State Housing Advocacy Organizations (con't.)

14. CAP, Belknap-Merrimack Counties, Inc.,
P.O. Box 1016, 2 Industrial Park Drive,
Concord, New Hampshire 03301. (603)
225-3295. Contact: Mr. Ralph Littlefield,
Executive Director.
15. Idaho Migrant Council, 715 S. Capitol Blvd.,
Suite 403, Boise, Idaho 83702. (208)
345-9761. Contact: Ms. Terry Warner.
16. MACA Project Director, Missouri Association
for Community Action, Inc., 127 E. High
Street, Jefferson City, Missouri 65101.
(314) 634-2969. Contact Mr. James M. Sheehan.
17. Citizens Housing and Planning Association, Inc.,
7 Marshall Street, Boston, Massachusetts 02108.
(617) 742-0920. Contact: Mr. Robert E. McKay.
18. Federation of Appalachian Housing Enterprises,
Inc., P.O. Box Drawer B, Berea, Kentucky 40403.
(606) 986-2321. Contact: Mr. Robert J. Van Denend.
19. Georgia Housing Coalition, 133 Lucky Street,
8th Floor, Atlanta, Georgia 30303. (404)
656-6021. Contact: Ms. Donna Boxer.
20. Alabama Council in Human Relations, P.O. Box 409,
Auburn, Alabama 36830. (205) 321-8336. Contact:
Mr. Bill Edwards.
21. Arizona Community Action Association, 1001 N.
Central Ave., Suite 312, Phoenix, Arizona 85004.
Contact: Mr. Danny Valenzuela.

III. National Resource Organizations

1. Housing Assistance Council, 1025 Vermont Ave.,
N.W., Suite 606, Washington, D.C. 20005 (202)
842-8600. Established in 1971 as a national,
nonprofit federally funded corporation to in-
crease availability of rural low-income housing.
HAC provides seed money loans, technical
assistance, program and policy analysis, re-
search and demonstration projects, training,
and information services to public, nonprofit
and private organizations.

III. National Resource Organizations (con't.)

2. Rural America, 1346 Connecticut Ave., N.W., Washington, D.C. 20036, (202) 659-2806. A national nonprofit organization concerned with giving people in rural areas and small towns a stronger voice in Washington. Rural America provides analysis of rural housing programs of HUD and FmHA, including farmworker, self-help, cooperative housing and community development programs.
3. National Hispanic Housing Coalition, 810 18th St., N.W., Suite 705, Washington, D.C. 20006 (202) 783-1478. A Coalition of individuals and national, state and community based organizations providing technical assistance, training, research and advocacy services to rural and urban hispanic communities.
4. National Housing Law Project, 2150 Shattuck Ave., Suite 300, Berkely, California 97104, (415) 548-9400. Washington office: 1016 16th St., N.W., Suite 800, Washington, D.C. 20036. (202) 659-0050. The national back-up center for Legal Service attorneys and paralegals. Funded by the Legal Service Corporation.
5. Conferences on Alternative State and Local Policies, 2000 Florida Ave., N.W., Washington, D.C. (202) 387-3060. National clearinghouse and policy and research center for state and local officials, community activists and policy analysts. The Conference sponsors conferences and publishes reports on innovative policy studies and legislative proposals.

IV. Housing and Community Development Publications

1. The Congressional Round-Up. Published by the National Rural Housing Coalition, 215 Eighth St., N.E., Washington, D.C., 20002. \$25 per year for individuals \$100 per year for organizations. Covers activities of Congress and the Administration affecting rural low-income housing. Issued twice a month during long recesses.
2. The Low Income Housing Round-Up. Published by the National Low Income Housing Coalition, 215 Eighth St., N.E., Washington, D.C. 20002. \$25 per year to individuals, \$10 to organizations of low income people, \$25 to state and local community organizations, \$150 for regular subscription. Covers activities of Congress and the administration affecting low-income housing. Issued twice a month when Congress is in session and once a month during long recesses.

IV. Housing and Community Development Publications (con't.)

3. Housing Affairs Letter. Published by Community Development Publications, 399 National Press Bldg., Washington, D.C. 20045, (202) 638-6113; \$127 per year. A weekly report on housing, covering legislative and administrative matters and reports on publications and statistics.
4. Community Development Digest. Published by Community Development Publications, 399 National Press Bldg., Washington, D.C. 20045, (202) 638-6113, \$137 per year. A report semi-monthly on community development matters, including legislative, administrative, rehabilitation, planning and state and local news.
5. Housing and Development Reporter. Published by the Bureau of National Affairs, Inc., 1231 25th St., N.W., Washington, D.C. 20037, (202) 452-4200; \$425 per first year, \$412 per renewal year. Weekly report on housing and community development matters, including legislative and administrative developments and planning, fair housing, energy, land use, business, finance, and state housing program issues. Includes text of regulations and statutes and narrative on most housing programs.

V. NEWSLETTERS

1. HAC News. Published by the Housing Assistance Council, 1025 Vermont Ave., N.W., Suite 606, Washington, D.C., 20005 (no charge). Bi-weekly report on rural housing issues, including legislative and administrative matters, notices of reports, conferences and other rural housing concerns.
2. The RHA Reporter. Published by Rural America, 1346 Connecticut Ave., N.W., Suite 500, Washington, D.C. 20036; \$10 per year. The RHA (Rural Housing Alliance) Reporter is issued monthly and summarizes rural housing and Farmers Home Administrative programs.
3. The Housing Law Bulletin. Published by the National Housing Law Project, Suite 300, 2150 Shattuck Ave., Berkeley, California 94704; no charge to Legal Services attorneys, nonprofit housing groups, legislators, and government housing agencies, \$15 to all others. Analysis of legal and program issues concerning housing and community development matters.

V. NEWSLETTERS (con't.)

4. The Planners Network Newsletter. Published by the Planners Network, P.O. Box 4671, Sather Gate Station, Berkeley, California 94704; contributions encouraged. Publication of progressive planners on housing, community development and planning issues.
5. Shelterforce. Published by the Shelterforce Collective, 380 Main Street, East Orange, New Jersey 07101; (201) 678-6778; \$5 individual, \$7 law offices, \$10 institutional. Quarterly newspaper for tenants and housing activists with focus on tenant actions and grassroots solutions to tenant/landlord problems, and reports on new housing laws, displacement, rent control, exclusionary zoning, and bank practices.
6. Ways and Means. Published by the Conferences on Alternative State and Local Public Policies. 2000 Florida Ave., N.W., Washington, D.C. 20009, (202) 387-3060. \$10 per year. Bi-monthly newsletter on policy initiatives in state and local government in such areas as energy, housing, economic development, taxes, and agriculture.

VI. Sources of Information on Housing

1. House Documents Room H-226, United States Capitol, Washington, D.C. 20515. For copies of bills and reports from the U.S. House of Representatives.
2. Senate Documents Room, S-325, United States Capitol, Washington, D.C. 20510. For copies of bills and reports from the U.S. Senate.
3. Congressional Record. Published by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402; \$75 per year, 50¢ per copy. The public proceedings of each House of Congress.
4. The Federal Register. Published by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402; \$75 per year, \$1.00 per copy. The official record of federal agency regulations, Presidential proclamations, Executive Orders and documents required to be published for public comment. Also available in many public libraries and public offices.



Official Business

1. 1/20/83
JOEOCONNELL

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • 1024 W. 6th Ave., Suite 204 C,
Anchorage, Alaska 99501
(907) 278-3654

July 19, 1983

Joe O'Connell,
Alaska Legal Services Corp
615 H Street
Anchorage, Alaska

Dear Mr. O'Connell;

During the interim, my staff will be looking into Alaska's rental situation.

I would appreciate any suggestions you might have on this subject.

Specifically, any written comments you could submit to me and the committee on HB 1 would be most helpful.

Best regards,



Senator Vic Fischer

see Housing file in 3rd
drawer.

BIA - Rural Housing Authority
Monty Engel

Displacement

fixed income
Taxes (fixed)

Chris Williams

Laurie Surrill
Coalition for Econ. Justice
276-7888

Cheryl Foast, Rule
Firms on AB 1

Veterans Bonds (Real Estate Section)

— Get Housing Needs Survey

Fair Market Rental Rate:
now calculated at the 40th
percentile of area wide
rental costs for housing.

Dear Mann - ~~unhappy~~
- resolve murky areas -

HB 131 - single bedroom units too small

- problem w/ safety, lack of play areas, special design for adults.

ASHA - Sec 8 program - set occupancy standards.

(vacance 6.8% in South)
(2% low to med - low inc.)

- too many refs -
- some units suitable for families now occupied by single women or the like.

HRG III AXC

Review after state's

MEMO

TO: Vic

FROM: Suzy

RE: HB 1-- landlord/tenant

DATE: 11/21/83

Enclosed is the more pertinent back-up on HB 1. Ginger knows where the files are located in the office in case there is anything more you want. I will be in Juneau doing the survey on vet's preference until wednesday night -- I will be back for the meeting. I'll give you a call on monday from Juneau.

Much of the following information is a summary of the back-up information from the file.

Section 1: Would allow landlady or landlord to enforce a judgement for restitution of real property. Currently the landlord must obtain a writ of assistance to be served by the state troopers if the tenant does not peaceably vacate as the court has directed. The proposed section 1 would allow landlords to try to forcibly evict the tenant.

*where origin
- why
- ALP that was found*

is that meaning

could do w/ st. troopers.

1) section 1 places the power of the state into the hands of individuals who are already in a confrontational situation.

→ 2) if the state is going to condone the use of force by individuals ?

a) the level of accepted force needs to be defined.

b) who would be allowed to use force would have to be clear to all parties. (i.e. would a tenant be able to protect themselves from the force used by the landlord.)

c) who would be liable for injuries?

3) Would the tenant have to be present for the landlord to remove their possessions?

4) If the tenant is not present when the landlord is removing possessions, who is responsible for the possessions until the tenant finds a new place for the belongings?

5) Would unannounced lock-outs be permissible as a means of enforcement?

6) What are the rights and potential liabilities of person's who witness altercations and intervene on one side or the other?

7) Wouldn't this section make it more difficult for landlords to get police assistance in helping with evictions?

Section 2: To the cases of unlawful of holding by force, this section adds those who have a periodic tenancy agreement and who remain in the possession of a dwelling unit after they have been given a notice to terminate the tenancy (30 days before the rental due date if renting on a monthly basis). (See attached statute.)

1) According to a memo from Mitch Abood's office, the current cases of unlawful of holding by force include lease agreements but not periodic tenancy agreements.

Sect. on 3: States that if the rental agreement is terminated by the tenant and the tenant fails to give notice (the failure is assumed to be wilfull and not in good faith unless criteria suggest otherwise), then the landlord may recover an amount not to exceed one and one-half times the actual damages.

1) present law already imposes liability for compensatory damages, I don't really understand the need for landlord to be awarded punitive damages.

2) this section would open up the possibility for tenants who are ignorant of the timely notice requirement to be abused by the landlords.

Section 4: allows either the landlord or the tenant to terminate the rental agreement with 30 days notice before the termination date (instead of 30 days before the rental due date currently in statute).

1) this change in the notice requirement would destroy the uniform opening up of rental units on the first of the month-- making it difficult for renters to find dwellings.

2) If the landlord increases the rent during the middle of the rental period, when is the increased rent due?

3) If the tenant decided to leave rather than pay the increase, can he or she remain until the date the increase becomes effective?

in Wash 59 - 30 days rent inc not, renter must give 20 days notice of
now if notice on 15, tenant has to pay 1 1/2 mths.

to keep people from walking away

4) Should tenants pay only prorated portion of the prior rent to cover the period they intend to stay, and would doing so violate the terms of their lease and give cause for a termination for breach?

(See letter from legal services for more on this section).

Section 5: This section amends present language to permit the landlord or landlady to bring an action for recovery of actual damages as well as possession if the tenant remains in possession of the rental dwelling after the expiration of the terms of the rental agreement.

This section also makes it possible for a landlord or landlady to receive punitive damages to the amount of $1\frac{1}{2}$ times the actual damages when the tenant remains in possession of the dwelling if the holdover is either wilfull or not in good faith (Currently, the holdover must be wilfull and not in good faith).

1) Lowering the standard for a landlord or landlady to receive punitive damages exposes tenants who choose to fight eviction to the possibility of paying punitive damages-- obviously they are wilfully in possession of the dwelling.

2) I spoke with Joe O'Connell about this section at great length. He felt that there was a due process problem in section 5. His interpretation of the intent of section 5 was to allow the use of forcible entry and detainer court proceedings to cover not only the subject of actual possession of the rental unit, but also the "actual damages" that the landlord or landlady would like to recover. Under current law, forcible entry and detainer proceedings may only be used to

decide whether a tenant should remain in possession of the rental property; the court action takes place between 2 and 4 days after the tenant has been served the summons. The claims for damages come out through the normal civil proceedings; then tenant has 20 days in which to counter claim the landlord or landlady. If the claims for damages are to be covered under the forcible entry and detainer proceeding, the tenant obviously would not be able to adequately prepare for their defense as they wouldn't have time. This is where due process problems come in: Has ~~their~~ been adequate notice of the claim (against the tenant)?, Has ~~their~~ been meaningful opportunity for the tenant to be heard? If Joe O'Connell is correct in his interpretation of section 5, then there may be a due process problem. I have written a letter to legislative legal services asking about a due process problem in section 5.

3) Joe also felt that there may be an equal protection problem in section 5. Assuming that his interpretation of section 5 is correct in that the intention is to allow landlords to recover "actual damages" during the forcible entry and detainer proceeding, then the state would be treating tenants differently from other persons in financial court actions. In any other circumstance where someone is taken to court due regarding financial matters, that person always has 20 days to respond to the summons and complaint.

4) If you look at section 5 of Mitch Abood's sectional analysis of HB 1, you will see that one of his justifications for this section is that improper hold-overs cost the landlord financially. That justification is simply untrue (at least on paper). The landlord or landlady is entitled to rent during hold-overs. In hold-over

*liable
to new
renter
for occupancy
cost of hotel,
storage, ✓*

situations, rent is determined at fair market value. So in reality, if the landlady wanted to evict a tenant to increase the rent and the tenant didn't leave, the rent owed to the landlady may actually be more than the rent agreed upon by the landlord and tenant in their rental agreement.

Section 6: would make it illegal for the landlord to retaliate against the tenant by evicting them.

Section 7: would make it a presumption that the landlady acted in retaliation to the tenant if they increase rent, decrease services, terminate agreement or provide notice of termination, or bring or threaten to bring action within 60 days after the tenant ~~has~~

- 1) complained to the landlord.
- 2) enforce their rights.
- 3) organize a tenant's union.
- 4) complain to a governmental agency.

Maureen Kennedy from Akpirg informed me the other day that most other states assume that landladies hhave acted in retaliation if they evict (etc...) the tenant within one year of the tenant's organizinf a union (etc...).

Offered: 3/16/83
Referred: Rules

Original sponsor: Abood

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 1 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to landlords and tenants."

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

8 ✓ * Section 1. AS 09.45 is amended by adding a new paragraph to read:

9 Sec. 09.45.085. ENFORCEMENT. A judgment for the restitution of
10 real property rendered in an action for forcible entry or detention
11 may be enforced by the plaintiff without further judicial action and
12 the plaintiff may not be required to obtain a writ of assistance or
13 other order to enforce the judgment.

14 ✓ * Sec. 2. AS 09.45.090 is amended by adding a new paragraph to read:

15 (4) when, after a notice to terminate the tenancy as pro-
16 vided in AS 34.03.290 with reference to termination of a periodic
17 tenancy, a person continues in possession of a dwelling unit after
18 expiration of the time for determining the tenancy.

19 ✓ * Sec. 3. AS 34.03.270 is amended by adding a new subsection to read:

20 (b) If the rental agreement is terminated by the tenant, the
21 tenant fails to provide the notice required under AS 34.03.290(a) or
22 (b), and the failure to provide the notice is wilful or not in good
23 faith the landlord may recover an amount not to exceed one and one-
24 half times the actual damages. Failure by the tenant to provide the
25 notice required under AS 34.03.290(a) or (b) is presumed to be wilful
26 and not in good faith.

27 * Sec. 4. AS 34.03.290(b) is amended to read:

28 (b) The landlord or the tenant may terminate a month to month
29 tenancy by a written notice given to the other at least 30 days before

*not a matter
of dispute 51*

1 the termination [RENTAL DUE] date specified in the notice.

2 * Sec. 5. AS 34.03.290(c) is amended to read:

3 (c) If the tenant remains in possession without the landlord's
4 consent after expiration of the term of the rental agreement or after
5 its termination, the landlord may bring an action for possession and
6 recovery of actual damages. If [IF] the tenant's holdover is wilful
7 or [AND] not in good faith the landlord, in addition, may recover an
8 amount not to exceed one and one-half times the actual damages. If
9 the landlord consents to the tenant's continued occupancy. AS 34.03.-
10 020 applies.

11 * Sec. 6. AS 34.03.310(a) is amended to read:

12 (a) Except as provided in (c) and (d) of this section, a land-
13 lord may not retaliate by increasing rent, [OR] decreasing services,
14 terminating the rental agreement or providing notice of termination,
15 or by bringing or threatening to bring an action for possession after
16 the tenant has

17 (1) complained to the landlord of a violation of AS 34.03.-
18 100;

19 (2) endeavored to enforce [AVAIL HIMSELF OF] rights and
20 remedies granted to a tenant [HIM] under the provisions of this
21 chapter;

22 (3) organized or become a member of a tenant's union or
23 similar organization; or

24 (4) complained to a governmental agency responsible for
25 enforcement of governmental housing, wage, price or rent controls.

26 * Sec. 7. AS 34.03.310 is amended by adding a new subsection to read:

27 (f) A landlord is presumed to have violated (a) of this section
28 if the landlord increases rent, decreases service, terminates the
29 rental agreement or provides notice of termination, or brings or

1 threatens to bring an action for possession within 60 days after a
2 tenant has engaged in an action listed under (a)(1) - (4).

Offered: 3/16/83
Referred: Rules

*apply for rent
for more units*

Original sponsor: Abood

1 IN THE HOUSE

BY THE ~~JUDICIARY~~ COMMITTEE

SENATE CS 4

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 1 (Judiciary)

3
4
5

IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE - FIRST SESSION
A BILL

6 For an Act entitled: "An Act relating to landlords and tenants."

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

8 * Section 1. AS 09.45 is amended by adding a new paragraph to read:

9 Sec. 09.45.085. ENFORCEMENT. A judgment for the restitution of
10 real property rendered in an action for forcible entry or detention
11 may be enforced by the plaintiff without further judicial action and
12 the plaintiff may not be required to obtain a writ of assistance or
13 other order to enforce the judgment.

(after line 13, insert)

* Sec. 2. AS 34.03 is amended by adding a new section to read:

Sec. 34.03.015. PROHIBITED PRACTICES. A landlord or other person
having the right to lease or rent real property may not refuse to execute
a rental agreement or may not terminate a rental agreement to lease or rent
the real property to a person solely because of sex, marital status, changes
in marital status, pregnancy, parent^hood, race, religion, color or national
origin.

20 (b) If the rental agreement is terminated by the tenant, the
21 tenant fails to provide the notice required under AS 34.03.290(a) or
22 (b), and the failure to provide the notice is wilful or not in good
23 faith the landlord may recover an amount not to exceed one and one-
24 half times the actual damages. Failure by the tenant to provide the
25 notice required under AS 34.03.290(a) or (b) is presumed to be wilful
26 and not in good faith.

27 * Sec. 4. AS 34.03.290(b) is amended to read:

28 (b) The landlord or the tenant may terminate a month to month
29 tenancy by a written notice given to the other at least 30 days before

1 the termination [RENTAL DUE] date specified in the notice.

2 * Sec. ~~8.4~~ AS 34.03.290(c) is amended to read:

3 (c) If the tenant remains in possession without the landlord's
4 consent after expiration of the term of the rental agreement or after
5 its termination, the landlord may bring an action for possession and
6 recovery of actual damages. If [IF] the tenant's holdover is wilful
7 or [AND] not in good faith the landlord, in addition, may recover an
8 amount not to exceed one and one-half times the actual damages. If
9 the landlord consents to the tenant's continued occupancy, AS 34.03.-
10 020 applies.

11 * Sec. ~~8.~~⁴ AS 34.03.310(a) is amended to read:

12 (a) Except as provided in (c) and (d) of this section, a land-
13 lord may not retaliate by increasing rent, [OR] decreasing services,
14 terminating the rental agreement or providing notice of termination,
15 or by bringing or threatening to bring an action for possession after
16 the tenant has

17 (1) complained to the landlord of a violation of AS 34.03.-
18 100;

19 (2) endeavored to enforce [AVAIL HIMSELF OF] rights and
20 remedies granted to a tenant [HIM] under the provisions of this
21 chapter;

22 (3) organized or become a member of a tenant's union or
23 similar organization; or

24 (4) complained to a governmental agency responsible for
25 enforcement of governmental housing, wage, price or rent controls.

26 * Sec. 7.⁵ AS 34.03.310 is amended by adding a new subsection to read:

27 (f) A landlord is presumed to have violated (a) of this section
28 if the landlord increases rent, decreases service, terminates the
29 rental agreement or provides notice of termination, or brings or

1 threatens to bring an action for possession within 60 days after a
2 tenant has engaged in an action listed under (a)(1) - (4).

AS 09.15.090.—Actual force is a term well understood, and so is not defined by statute; but constructive force is defined by AS 09.45.090, and that only is constructive force which that section declares to be such. *Miners' & Merchants' Bank v. Brice*, 5 Alaska 418 (1915).

Actual possession must be shown.—Since forcible entry and detainer is an action purely for possession, and not to try title (AS 22.15.050), such an action cannot be maintained without showing actual possession. *Wills v. Peterson*, 5 Alas. L.J. No. 12, p. 266 (Dec., 1967).

Possession of tenant does not make such tenant an agent or employee of his landlord. *Wills v. Peterson*, 5 Alas. L.J. No. 12, p. 266 (Dec., 1967).

Sec. 09.45.080. Undertaking on appeal. If judgment is rendered against the defendant for the restitution of the real property described in the complaint or any part of it, no appeal may be taken by the defendant from the judgment until he gives, in addition to an undertaking required upon appeal, an undertaking to the adverse party with two sureties. The sureties shall justify, in the manner as bail upon arrest, for the payment to the plaintiff of twice the real value of the real property of which restitution shall be adjudged from the rendition of the judgment until final judgment in the action, if the judgment is affirmed upon appeal. (§ 17.03 ch 101 SLA 1962)

Sec. 09.45.090. Unlawful holding by force. The following are cases of unlawful holding by force within the meaning of §§ 60—160 of this chapter:

(1) when the tenant or person in possession of a premises fails or refuses to pay the rent due on the lease or agreement under which he holds, or deliver up the possession of the premises for 10 days after demand made in writing for the possession;

(2) when, after a notice to quit as provided in §§ 60—160 of this chapter, a person continues in the possession of the premises at the expiration of the time limited in the lease or agreement under which that person holds, or contrary to a condition or covenant in the lease or agreement, or without a written lease or agreement;

(3) when, after a notice to terminate the tenancy as provided in this title with reference to termination of estate at will or by sufferance, a person continues in possession of the premises after expiration of the time for determining the tenancy. (§ 17.04 ch 101 SLA 1962)

Section defines detainer article is designed to prevent.—This section of the forcible entry and detainer act suggests the character of the de-

of way, 47 ALR 556.

Criminal offense of forcible detainer where entry was peaceable, 49 ALR 957.

Forcible entry and detainer as a remedy of tenant against stranger wrongfully interfering with his possession, 12 ALR2d 1199.

Right of landowner who has conveyed property to third person to maintain forcible detainer or similar summary possessory action, 47 ALR2d 1170.

tainer which the statute was intended to prevent. *Steil v. Dessmore*, 3 Ala. 392 (1907).

LAW OFFICES OF
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September 30, 1983

Senator Vic Fischer
Chairman, Senate Committee on State Affairs
1024 West Sixth Avenue, Suite 204C
Anchorage, Alaska 99501

Re: Rental housing needs

Dear Senator Fischer:

Recently I returned from an extended vacation to find your July 19th request for information concerning Alaska's rental situation and specifically HB 1. Thank you for the opportunity to comment on both.

Taking HB 1 first, I have the following section by section observations:

Section 1

The proposed AS 09.45.085 would permit landlords to try to forcibly evict tenants after they have obtained a judgment for possession without seeking the assistance of the police. It is a terrible idea.

Under present law, landlords must not only obtain a court order, but also obtain a writ of assistance to be served by the Alaska State Troopers if the tenant does not peaceably vacate as the court has directed. This means that in those situations where physical confrontation is most likely, an Alaska State Trooper is already on the scene. The proposed delegation of authority to landlords creates a situation similar to a forcible entry, which is a crime in many states. A forcible entry occurs where the landlord, without resort to legal process, attempts to remove the tenant from possession. The necessity of first obtaining a court order under the proposed amendment addresses some of the policy considerations against permitting forcible entries, but not the concern with public safety at the root of the concept that the state, not private citizens, should evict people.

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Delegating responsibility for enforcement of court orders to private citizens raises several interesting questions. By doing so, does the legislature intend to grant landlords the privilege of using reasonable force in executing eviction orders? How much force is reasonable? If the landlord uses excessive force, is the privilege of using reasonable force lost? If excessive force is used, is the tenant privileged to respond with force reasonable in the situation as a matter of self defense? What are the rights and potential liabilities of third parties who witness an altercation and intervene on one side or the other? What if the landlord jumps the gun, and tries to oust the tenant after obtaining an order but before the deadline for vacating expires?

Private enforcement of eviction orders is a bad idea. It implies that the legislature approves of the use of intimidation or force on the part of one private citizen against another. The proposed amendment contains no requirement that attempts at private enforcement occur at a reasonable time. The question of a landlord's liability for the property of a tenant removed from the premises is not addressed. The question of whether unannounced lock-outs are a permissible means of enforcement is not addressed, nor is the issue of whether locking a tenants property into the apartment constitutes an illegal distraint for rent under AS 34.03.250.

Not only would the proposed legislation encourage abuses against tenants, it may also make it more difficult for landlords to obtain police assistance with evictions, since present procedures concerning writs of assistance may be abolished. Finally, adoption of the proposed amendment would only encourage litigation to determine the scope of the landlord's privilege and remedy abuses. For reasons of public safety, personal dignity and administrative convenience the proposed amendment should be rejected.

Section 2

This section seems to be intended for purposes of clarification. It makes no substantive change in the law, since landlords may already bring a forcible entry and detainer action upon the expiration of a periodic tenancy. I am not sure what is meant by the last three words "determining the tenancy". Perhaps "determining" is meant to be "terminating".

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Section 3

This section imposes punitive damages on the tenant for wilfully or in bad faith failing to give timely notice to the landlord of his or her intention to terminate the tenancy. It also establishes a presumption that failure to give such notice is wilful and not in good faith.

Creation of a presumption that failure to give timely notice is wilful and in bad faith is simply not warranted. Most people tend to regard housing as a personal necessity rather than a business matter, and landlords and tenants alike are frequently ignorant of specific legal requirements, particularly when notices must be given to be effective. Creation of such presumption could put tenants in the position of having punitive damages awarded against them without the issue of wilfulness or bad faith ever explicitly having been raised. Landlords would neither have to plead or prove either issue, but tenants could suffer punitive damages simply by neglecting through ignorance to raise the issue.

As to the imposition of punitive damages itself, no corresponding penalties are imposed upon a landlord for giving untimely notice or for trying to enforce an untimely notice. Imposing such a penalty on tenants thus seems a bit one-sided. A better idea would be to follow the example of AS 34.03.300 (regarding abuse of access) and impose the same liability on landlords and tenants for similar violations.

Imposing punitive damages for failing to give timely notice upon either landlords or tenants make little sense. Present law already imposes liability for compensatory damages. The drafters of the Uniform Residential Landlord and Tenant Act (1972) from which Alaska's URLTA was adopted, saw no need for punitive damages in this situation, and the need probably does not exist.

Section 4

I am opposed to adoption of this section because it would be a significant change in the amount of time necessary to terminate a tenancy without cause. Under present law, the landlord must give the tenant one full rental period's notice be-

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fore terminating the tenancy or raising the rent. As most Anchorage rental agreements are month to month tenancies, as a practical matter this generally means thirty (30) days notice for the tenant. The significance of the proposed change is that it would permit material changes in the rental agreement, such as termination or a rent increase, to take place in the middle of the rental period.

At common law, when a lease is entered into the tenant obtains a right to possession upon performance of certain conditions for the duration of the leasehold interest. In the absence of breach by the tenant, neither the terms of the lease agreement nor the duration of the possessory interest may be altered, unless the parties have made some agreement to the contrary. Section 4 would change that relationship by permitting material changes during a time for which the tenant had already paid for possession.

Changing that relationship would raise some interesting questions not addressed by the bill. If the landlord increases the rent during the middle of a rental period, when is the increased rent due? If the tenant decides to leave rather than pay the increase, can he or she remain until the date the increase becomes effective? Should tenants pay only a prorated portion of the prior rent to cover the period they intend to stay, and would doing so violate the terms of their lease and give cause for a termination for breach? If the tenant pays the full month's rent and elects to leave, what are the landlord's responsibilities with regard to returning the unused portion of the rent? If cleaning or damage charges are claimed, may the landlord deduct such charges from the unused portion of the rent as well as any damage deposit held? If so, do the provisions of AS 34.03.070 control the itemization of such deductions and the time in which notice must be given? If the landlord gives notice which would terminate the lease in the middle of a rental period, how much money should the tenant pay at the beginning of the month? Again, if the tenant pays the full rental amount, how much time does the landlord have to return the unused portion?

The proposed Section 4 would give legislative approval to what are considered under present law to be breaches of con-

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tract, that is, material changes in the rules of the game during a time for which the tenant has already paid for possession. It is not unreasonable to demand of landlords a full rental period's notice before such changes are made. Under present law, there is at least some uniformity in when apartments change hands. With the proposed change, apartment turnover could take place on any day of the month, and tenants could face increased difficulty in finding a new apartment which would be available without interruption. Since the only interest to be protected by the proposed section is a landlord's desire to end a tenancy without cause, the burden such a change would impose on tenants should outweigh the minimal convenience to be gained by landlords. The proposed amendment should be rejected.

Section 5

This section amends present language to permit the landlord to bring an action for recovery of actual damages as well as possession, and lowers the standard for recovering punitive damages. As to the former change, landlords already have the right to sue for actual damages, so such an amendment seems pointless. However, if inclusion of the additional language is intended to permit the landlord to recover damages in a summary forcible entry and detainer proceeding, serious due process problems would arise.

An FED takes place on only two (2) to four (4) days notice. The sole issue to be tried is that of possession. Damages are put off for decision in the course of a normal civil lawsuit. It is difficult enough to prepare for an FED hearing in the limited time available without the necessity of investigating damages claims as well. Frequently, discovery is necessary to ascertain the legitimacy of the amount claimed, and time is needed to evaluate and gather evidence concerning available defenses. Combining the damages and possession issues into one summary proceeding would raise significant questions as to whether the hearing afforded a tenant under such circumstances could be called meaningful.

The second change, reducing the standard for recovery of punitive damages from a "wilful and not in good faith" to a

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"wilful or not in good faith" standard is in line with the proposed standard for punitive damages contained in Section 3 of the bill. It is subject to the same arguments. A high standard of proof should be required before punitive damages are imposed. Lowering the standard in this instance to not require bad faith would expose tenants to punitive damages in all instances where they elected to fight an eviction in court, no matter what the merits of their position. By electing to stay, tenants could be said to have "wilfully" held over beyond the termination of the tenancy, and if they lost in court, landlords could request the punitive damages permitted by the proposed amendment. Such a risk may well have a chilling effect upon tenants' willingness to challenge unlawful terminations, even in cases where the eviction is clearly retaliatory. Furthermore, this chilling effect may have a disparate impact upon low income tenants.

A standard which would expose tenants to punitive damages for insisting upon their day in court should not be adopted.

Section 6

This and Section 7 seem to be only tenant oriented provisions in the entire bill. The changes contained in the proposed Section 6 are mainly cosmetic, except for explicitly including termination of the rental agreement or providing notice of termination to the list of retaliatory conduct. Specific inclusion of both is a good idea.

Section 7

The sixty (60) day presumption created by this section would avoid some of the proof problems inherent in raising a claim of retaliatory eviction. Considering that the presumption would only arise in the four (4) situations enumerated in AS 34.03.310(a), the potential for abuse seems minimal. Also, it is reasonable to attach a retaliatory motive to evictions occurring within sixty (60) days of a tenant's engaging in one of the four (4) categories of protected activity, something which cannot be said of the presumption proposed in Section 3 of the bill.

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This section is a good idea, but it does not go far enough, particularly considering the punitive damages against tenants recommended in Sections 3 and 5 of the bill. For the sake of consistency and fairness, if landlords are to be awarded punitive damages when the tenant breaches, so should tenants be awarded punitive damages in the event of a landlord's retaliation. Since if the tenant wins a retaliation claim there are likely to be no actual damages beyond attorney's fees, an appropriate statutory amount would be one and one-half (1 1/2) times the monthly rent. Adding teeth to the retaliation statute would also serve the salutary purpose of actively discouraging interference with the exercise of protected rights as opposed to merely preventing such interference when it is brought to the attention of the court.

Other Matters

That concludes my comments regarding HB 1. As far as Alaska's rental situation in general, what I have to say falls more under the heading of ideas than suggestions.

Tenants in Alaska have little security when it comes to rental increases. Rents can usually be raised on only one (1) month's notice, and there is no limit on the amount of the increase. This factor combined with the current shortage of housing in the Anchorage area makes for a very strong sellers market, and this is hurting low income people quite a bit. I would like to see some limits on the use of month to month rental agreements, some restrictions on the availability of evictions without cause in the absence of sale or changes in the use of the property, and some limits on how often and by how much rent can be increased.

I note that AS 34.06.010 - .060, which expired July 1, 1977, used to authorize the governor to declare a state of housing emergency if conditions warrant it. Upon such a declaration, residential rents came under regulatory control. One possibility would be reactivating Title 34 Chapter 6, to make rent control available in housing emergencies. The problem with this or any other course of action raising the specter of rent control is that as soon as the issue arises, rents go

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up. I don't know how to get around this problem, but I suspect that one way would be a gradual increase in the rights of tenants, and in particular getting rid of no-cause evictions.

Thank you again for the opportunity to comment. Please do not hesitate to ask again in the future.

Sincerely,

ALASKA LEGAL SERVICES CORPORATION

Joseph D. O'Connell / gh

Joseph D. O'Connell
Attorney at Law

JDO/gh

cc: John

STATE OF ALASKA
FISCAL NOTE

Revision Date March 21, 1983

I. REQUEST

Bill/Resolution No.: CSHB 1 (Judiciary)
 Title: Landlords and Tenants
 Sponsor: Representative Abood
 Requestor: House Finance Committee

II. FISCAL DETAIL

Agency Affected: Dept. of Law
 Program Category Affected: Public Protection
 BRU, Program of Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		5.0				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	5.0	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	5.0	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No information provided.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: March 21, 1983
 Approved by Commissioner: Richard I. Pegues/for/ Norman C. Gorsuch, Attorney General Date: March 21, 1983
 Department: Department of Law

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)

ANALYSIS
CSHB 1

The committee substitute does not change the department's involvement in landlord/tenant matters where we are only permitted to provide information on land'ord and tenant rights.

This bill amends the state's existing statutes setting out the private rights and remedies accorded to both landlords and tenants, and in so doing the bill modifies some of those rights and remedies. Alaska law does not provide for government intervention or enforcement and any remedial action is a private civil matter of either landlord or tenant, or both. AS 44.23.020(b)(8) does provide, however, that the Attorney General shall prepare, publish and revise an information packet on landlord and tenant rights. Enactment of this bill will require the revision of existing landlord/tenant handbook, the costs for which (\$5,000) are included in this fiscal note.

Alaska State Legislature

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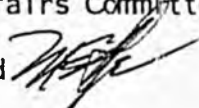
CHAIRMAN
STATE AFFAIRS

MEMBER
TRANSPORTATION
LEGISLATIVE COUNCIL

Representative Mitch Abood
HOUSE DISTRICT 11

MEMORANDUM

TO: Senator Vic Fischer
Chairman, Senate State Affairs Committee

FROM: Representative Mitch Abood 

RE: Committee Substitute for Sponsor Substitute for House Bill
No. 1 (House Judiciary)
"AN ACT RELATING TO LANDLORDS AND TENANTS"

DATE: Synopsis as of April 30, 1983

The Alaska Statutes governing Landlords and tenants is not entirely clear in defining certain areas of concern to both the landlord and the tenant. Both the landlord and the tenant hold certain unalienable rights in the property they own as a landlord or rent as a tenant. With the 0% to 4% vacancy rate in most of Alaska, and because over 35% of the population in Alaska rent their dwellings, it is necessary to update the laws to answer the needs of the landlord and tenant. I introduced House Bill No. 1 to answer some of these needs. I feel that it is fair and equitable to both parties.

Section 1: This provision authorizes enforcement of a judgment for the restitution of real property obtained in an action for forcible entry or detention. No other order to enforce the judgment may be required. (This simply means that the landlord does not have to go through an additional step to rightfully acquire his property.)

Referring to Section 2. of CSSHB 1, the landlord's rights are more clearly defined in relation to termination of a "periodic tenancy" held by a tenant. As the law stands now, it refers only to a lease or agreement, (a predetermined period of time) or an "estate at will", (for which the tenant is at the mercy of the landlord, and has no say in how long the tenancy will last). A "periodic tenancy" refers to a month to month period of time. Unlike a lease or agreement, it can be indefinite, and a good majority of rental arrangements today are based on a periodic tenancy. By inserting this new paragraph, it assists the landlord in enforcing his rights, should any conflicts arise due to termination.

Section 3 of CSSHB 1 was added by the Labor and Commerce Committee to further clarify AS 34.03.290 (c) relating to the 30 day notice. If the tenant fails to give notice of termination, then the landlord is entitled to an amount not to exceed one and one-half times the actual damages.

Section 4 provides for a 30 day notice. I feel that this is an equitable time frame to both tenants and landlords. Due to the tight rental market in Alaska at the present time, it is quite difficult to find adequate housing, especially for those families with children or pets, not to mention the elderly and minorities. "Rental due date" refers to the date on the same day each month that rent is to be paid. The landlord may wish to give notice of termination to the tenant before the "rental due date", and replacing "rental due date" with the word "termination" date provides for either time frame. It does not restrict either party to the exact date the rent is due when giving a termination notice. The question arises, "What if the tenant gives notice on, say May 17th?" This means that the termination date would be June 16th, (or 30 days). The landlord would not lose any rental income even though the termination date falls after the "rental due date".

Section 5 provides for recovery of "actual damages", as well as one and one-half times the actual damages as compensation to the landlord. This deters the tenant from staying on past termination or the expiration of the rental agreement and in effect, is incentive to the tenant to vacate the premises.

An improper hold-over by a tenant has caused landlords financial difficulties. If a tenant continues to occupy a dwelling after his tenancy expires, he is causing the landlord loss of potential income needed to make mortgage payments, as well as the loss of time to make necessary repairs before renting the unit to the next party. Alaska law allows landlords to sue for damages, but the time, effort and money involved is not always feasible to pursue.

Section 6 adds terminating a rental agreement or providing notice of termination to the list of the actions that a landlord may not take when a tenant attempts to enforce his rights.

Section 7 was included in this bill to protect the tenant from landlords who abuse the right to access or evict the tenant for retaliatory reasons. The tenant has a right to his/her privacy, and the landlord must give "reasonable" notice to the tenant before entering the property. This new subsection also provides that the tenant may not be evicted because they have made a complaint, (for just causes), against the landlord, as long as they abide by the laws governing landlords and tenants. Sixty days is a sufficient amount of time to correct a problem or answer a complaint.

This bill is intended to update the present laws governing both the landlord and tenant. I feel that it provides both parties with fair and equal provisions to answer some of the overwhelming problems that have arisen over the past several years, due to the increase of the Alaskan population.

* * * * *

(It should be noted here: that an increase in rents well as substantial or material changes in the existing rental agreement may also constitute a form of termination. This is, in effect, terminating the rental agreement then in existence and offering a new rental agreement at different terms. If the tenant does not accept the "new terms", then he must vacate 30 days after the receipt of notice of changes in the existing rental agreement. If the tenant does not respond to the landlord's notice of changes, then at the end of the 30 day period, the new rental agreement takes effect.)