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Majority Leader
House of Representatives

Executive Director
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February 18, 1981

Mr. Paul Quesnel
Pouch V, State Capitol
Juneau, Alaska

Dear Mr. Quesnel:

In response to your request for information on landlord-tenant laws in the states, I have enclosed several legislative reports which discuss this issue. With regard to discrimination against families with children in rental housing, the Children's Defense Fund is sending a list to me of the eight states which have laws prohibiting discrimination against families with children. I will send that list to you when received.

For any additional information, I suggest you contact the National Housing Law Project in Berkeley, California (415-548-9400).

I hope that this information will be helpful.

Sincerely,

Mindy Gaynes

Mindy Gaynes
Research Analyst

Enclosures

)TITLE: MEASURING RESTRICTIVE RENTAL PRACTICES AFFECTING FAMILIES WITH CHILDREN: A NATIONAL SURVEY.

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PUBLISHER: U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

LOCATION: WASHINGTON, D.C.
PUBLISHED: 01/01/80

SCOPE
50 FE

ABSTRACT

THIS STUDY EXPLORES THE EXTENT TO WHICH FAMILIES HAVE EXPERIENCED DISCRIMINATION IN FINDING RENTAL HOUSING BECAUSE THEY HAVE CHILDREN. IT EXAMINES: (1)FACTORS ASSOCIATED WITH DIFFERENT LANDLORD POLICIES; (2) ATTITUDES AND PREFERENCES OF TENANTS AND MANAGERS; (3)THE EXTENT TO WHICH RENTERS WITHOUT CHILDREN DEMAND HOUSING THAT EXCLUDES CHILDREN; (4)HOW RESTRICTIVE POLICIES ARE JUSTIFIED; AND (5)THE DEGREE TO WHICH HOUSING OPPORTUNITIES ARE LIMITED FOR FAMILIES WITH CHILDREN. (THIS PUBLICATION IS AVAILABLE FROM: SUPERINTENDENT OF DOCUMENTS, U.S. GOVERNMENT PRINTING OFFICE, WASHINGTON, D.C. 20402. REFER TO PUBLICATION NUMBER HUD-0001627.) BIBL., CONT., ILL. INCLUDED.

NCSL IDENTIFICATION NUMBER: PUB8000148

Harvard Civil Rights

Civil Liberties Law Review

BEYOND URLTA: A PROGRAM FOR ACHIEVING REAL TENANT GOALS

Richard E. Blumberg and Brian Quinn Robbins

Reprinted from
Vol. 11, No. 1
Winter, 1976

BEYOND URLTA: A PROGRAM FOR ACHIEVING REAL TENANT GOALS

Richard E. Blumberg and Brian Quinn Robbins***

The once well-entrenched notion of the unique character of the landlord-tenant relationship has steadily eroded in the decade of reform symbolized by *Javins v. First National Realty Corp.*[1] *Javins* and its successors recognized the anachronism of applying feudal property law in the modern urban context and replaced the traditional land conveyance view of residential tenancy with the contractual doctrine of an implied warranty of habitability. Growing legislative and judicial concern has led to the rapid spread of the implied warranty doctrine and to the development of a panoply of related reforms.

A portion of this Article addresses the content of the increasingly popular Uniform Residential Landlord-Tenant Act (URLTA) and discusses various state adoptions of it. The URLTA has provoked much recent comment adequately summarizing its content.[2] For the most part, while recognizing that URLTA will not by itself achieve decent housing and fair treatment of tenants,[3] virtually none of the commentators has dealt with the question of further reform. In addition to reviewing URLTA and surveying the adoption of URLTA and its component measures by state legislatures, this Article looks beyond the Uniform Act and proposes further reforms necessary to attain the goals of decent housing and fair treatment.

Part I examines each of the URLTA component reforms, its contribution to the achievement of the above-mentioned goals and

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[1] 428 F.2d 1071 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970).

[2] A summary of the issues surrounding the drafting of URLTA is contained in Note, *Uniform Residential Landlord and Tenant Act: Facilitation of or Impediment to Reforms Favorable to the Tenant?*, 15 WM. & MARY L. REV. 845 (1974).

[3] Criticisms of URLTA and suggestions for further reform can be found in Strum, *Proposed Uniform Residential Landlord and Tenant Act: A Departure from Traditional Concepts*, 8 REAL PROP. PROB. & TR. J. 495 (1973); *The Uniform Residential Landlord and Tenant Act: Some Suggestions for Improvement*, 9 REAL PROP. PROB. & TR. J. 402 (1974); and Clocksin, *Consumer Problems in the Landlord-Tenant Relationship*, 9 REAL PROP. PROB. & TR. J. 572 (1974).

the Act's status in each American jurisdiction. The authors seek to provide the reader with a ready guide, through the citations included, to the status of each examined reform in each American jurisdiction. However, it must be recognized that landlord-tenant law is extremely dynamic. In any dynamic area of the law, the "correct rule of law" at any given time may be difficult to identify. Lower courts, for example, may be granting certain remedies as a matter of course although older appellate opinions addressing the issue in the same jurisdiction are unfavorable and have not yet been reversed. For purposes of this survey, the most recent opinion on the topic of the highest appellate court is assumed to be definitive. Nevertheless, the practitioner should not assume, given the rapidity of change, that the present lack of favorable precedent in the jurisdiction will mean an automatic denial of any generally recognized tenant remedy.

Part II discusses landlord-tenant reforms going beyond the Uniform Act and tenant tactics useful in achieving decent housing. Included are the remedies of receivership, retroactive rent abatement, specific performance of the warranty of habitability, a proposed landlord security deposit act, and a tenant-mortgagee negotiating strategy. Part III looks beyond the Uniform Act provisions for fair treatment of tenants, proposing a system of security of tenure/just cause eviction. An epilogue focuses on tenant organizing activities and their relationship to realization of the goals of decent housing and fair treatment.

No claim is made that the reform of rights and duties of landlords and tenants will, by itself, solve all the problems of the modern tenant. The enactment of a housing code does not, by itself, solve the problem of dilapidated housing. Much of the unfair treatment of tenants and of the paucity of decent housing available for low and moderate income tenants stems from the tenants' lack of bargaining power in today's housing markets. Ultimate and complete resolution of this plight may await the eradication of poverty itself. However, affluence alone will not eliminate all landlord-tenant conflicts.[4] Legal reform is a necessary, though not sufficient, precondition of the achievement of these dual objectives. The reforms herein proposed offer promise of significant advancement towards fair treatment and decent housing for rich and poor alike.

[4] Boston Globe, Mar. 3, 1975, at 3, col. 4 (tenant militancy in a Boston luxury apartment building).

I. THE UNIFORM RESIDENTIAL LANDLORD-TENANT ACT

The Uniform Residential Landlord-Tenant Act [1] incorporates most of the recent legal reforms in the area of landlord-tenant relations. This legislative package of reform measures has been adopted with variation in 13 states[2] and has been introduced in the legislatures

[1] In 1969, the National Conference of Commissioners on Uniform State Laws established a subcommittee to study landlord-tenant relations. The conference approved a revised proposal of the subcommittee in August 1972. The American Bar Association endorsed the Act in February 1974. *See generally* J. Levi, Uniform Residential Landlord and Tenant Act: A Brief History, 1972 (available from Conf. of Comm'rs); Blumberg & Robbins, *The Uniform Residential Landlord-Tenant Act: The National Experience*, 1 Housing Dig. Rep., No. 15, I-2 (Nov. 28, 1973) [hereinafter cited as *National Experience*]; Strum, *Proposed Uniform Residential Landlord and Tenant Act: A Departure from Traditional Concepts*, 8 Real Prop. Prob. & Tr. J. 495 (1973); Note, *Uniform Residential Landlord and Tenant Act: Reconciling Landlord-Tenant Law with Modern Realities*, 6 Ind. L. Rev. 471 (1973).

[2] Alaska, Arizona, Delaware, Florida, Hawaii, Kansas, Kentucky, Nebraska, New Mexico, Ohio, Oregon, Virginia, and Washington. The respective statutes and commentary are as follows: Alaska—Alaska Stat. §§ 34.03.010-34.03.380 (1974). *See* Note, *Landlord-Tenant Reform: Habitability and Repair under the Uniform Residential Landlord and Tenant Act*, 3 U.C.L.A.-Alas. L. Rev. 123 (1973). Arizona—Ariz. Rev. Stat. Ann. §§ 33-1301 to 33-1381 (1974). *See* Clark & Hutchinson, *Landlord-Tenant Reform: Arizona's Version of the Uniform Act*, 16 Ariz. L. Rev. 79 (1974); Blumberg & Robbins, *Analysis of Recently Enacted Arizona and Washington State Landlord-Tenant Bills*, 7 Clearinghouse Rev. 134 (1973) [hereinafter cited as *Arizona and Washington*]. Delaware—Del. Code Ann. tit. 25, § 5100 *et seq.* (1974). Florida—Fla. Stat. Ann. §§ 83.40-83.73 (Supp. 1975-76). *See* Williams & Phillips, *Florida Residential Landlord and Tenant Act*, 1 Fla. St. U. L. Rev. 555 (1973). The Florida Act excluded the protection against retaliatory actions. This protection was subsequently provided by action of the State Attorney General under Florida's Deceptive and Unfair Trade Practices Act: Rules of Dept. of Legal Affairs, Rental Housing and Mobile Home Parks, ch. 2-11.07. Hawaii—Hawaii Rev. Stat. §§ 521-1 to 521-76 (Supp. 1974). The Hawaii Act was adopted prior to approval of the final URLTA model and therefore deviates substantially from URLTA. Rent abatement and rent withholding are excluded and retaliatory actions are based on the more limited protections afforded in § 2-407 of the Model Residential Landlord-Tenant Act. Kentucky—Ky. Rev. Stat. Ann. §§ 383-505 to 383-715 (Supp. 1974). *See* Comment, *Forcible Detainer in Kentucky Under the Uniform Residential Landlord and Tenant Act*, 63 Ky. L.J. 1046 (1975). Nebraska—Neb. Rev. Stat. §§ 76-1401 to 76-1449 (Cum. Supp. 1974). *See* Kalish, *The Nebraska Residential Landlord and Tenant Act*, 54 Neb. L. Rev. 603 (1975); Lonnquist & Healey, *A Prospectus on the Uniform Residential Landlord and Tenant Act in Nebraska*, 8 Creighton L. Rev. 336 (1975). New Mexico—N.M. Stat. Ann. § 70-7-1 to 70-7-51 (Supp. 1975). Ohio—Ohio Rev. Code Ann. §§ 5321.01 to 5321.19 (Page 1974). *See* Note, *The Ohio Landlord and Tenant Reform Act of 1974*, 25 Case W. Res. L. Rev. 876 (1975); Note, *Covenant of Habitability and the Ohio Landlord-Tenant Legislation*, 23 Clev. St. L. Rev. 539 (1974). Oregon—Ore Rev. Stat. §§ 91.700 to 91.865 (1974). *See* Robbins, *The New Oregon Landlord-Tenant Act and the Uniform Residential Landlord and Tenant Act—A Comparison*, 7 Clearinghouse Rev. 327 (1973). Virginia—Va. Code Ann. §§ 55-248.2 to 248.40 (Supp. 1975). Washington—Wash. Rev. Code Ann., §§ 59.18.010 to 59.18.900 (Supp. 1974). The Washington legislature reworded the act but retained most of the URLTA substance. *See* Stoebuck, *The Law Between Landlord and Tenant in Washington: Part I*, 49 Wash. L. Rev. 291 (1974); *Arizona and Washington*, *supra*.

of ten others.[7]

The initial 1971 draft of URLTA contained several basic fair treatment and decent housing protections including the warranty of habitability[8] and protection against retaliatory actions by landlords.[9] While this draft provided more satisfactory protection than that previously proposed as the ABA-ALI Model Residential Landlord-Tenant Act (MRLTA),[10] the National Tenant Organization (NTO) and other organized tenants' rights groups remained critical of parts of the draft. Provisions for just cause eviction and for protection from retaliation for tenant organizing were foremost among the additions demanded by these groups.

At subsequent public hearings, detailed statements from real estate and tenant groups were received[11] and URLTA tenant protections were subsequently strengthened. The most significant change was the addition of protection against landlord retaliation for tenant organizing or membership in a tenant union.[12] Other changes included a provision for injunctive relief for tenants whose landlords have breached URLTA-imposed obligations[13] and a provision forming a basis for granting specific performance of the warranty of habitability.[14] The maximum security deposit which could be required by landlords was reduced from two to one month's rent,[15] and

[7] California—A.B. 1202 (1973-74 Reg. Sess.); Connecticut—Com. B. 1808 (1973); Idaho—S.B. 1352 (1974) (tenant proposal) and S.B. 1391 (1974) (realtor's proposal); Illinois—H.B. 1345 (78th Gen. Ass. 1973); Indiana—H.B. 1042 (1975); North Carolina—H.B. 673 (1974); Pennsylvania—H.B. 1570, 1571 (1975); Rhode Island—73-S. 892 (1973); Vermont—S. 112 (1973); Wisconsin—A.B. 492 (1973).

[8] *See* pp. 7-9 *infra*.

[9] *See* pp. 13-17 *infra*.

[10] MRLTA § 2-203 provided for the warranty of habitability but remedies were limited to termination of the tenancy and minor repair and deduct. MRLTA omitted both the remedy of rent withholding and the defense of breach of warranty in an eviction action. These vital tenant remedies were included in initial drafts of the URLTA and in §§ 2.104 and 4.105 of the final version.

The MRLTA retaliatory action provision (§ 2-407) omits a protective period of presumption of retaliation and protection for tenant organizing, both of which are provided for in URLTA § 5.101.

[11] *See* J. Levi, *supra* note 5, at 3.

[12] URLTA § 5.101(a)(3).

[13] *Id.* § 4.101(b).

[14] *Id.* § 4.101(b). *See* pp. 26-30 *infra*.

[15] URLTA § 2.101(a). The period after termination of the tenancy within which a landlord is required to account for or return tenant security deposits was reduced from 30 days to 14 days. URLTA § 2.101(b).

tenants were afforded the remedy of rent abatement if essential services were not provided.[16]

Following the incorporation of these changes, the NTO and numerous state and local tenant organizations urged states to adopt URLTA.[17] This tenant approval has not been unqualified, however, and attempts have been made to amend the URLTA model in order to strengthen tenant protections and to tailor the Act to local requirements.[18].

A. Decent Housing Provisions

URLTA included provisions aimed at both fair treatment and decent housing. Reforms designed to promote decent housing provide an array of tools for tenants' use in rehabilitating and maintaining housing stock. To the already widely extant housing codes, URLTA adds the warranty of habitability and the remedy of "repair and deduct."

1. Housing Codes

A housing code is a legislative enactment containing minimum standards for human occupancy and establishing some form of legal obligation on the landlord to comply with these standards. Housing codes generally address space requirements, facilities, and other habitability-related characteristics as opposed to building codes, which address structural standards such as the specification of building materials. A jurisdiction's first recognition of the need for regulation of housing conditions and the landlord-tenant relationship has generally taken the form of a housing code. The first such provision in this country was the New York Tenement Act of 1867.[19]

By 1910, over one-fourth of the states had adopted housing codes, similar to the New York City Act of 1901, covering urban multifamily dwellings.[20] When the availability of federal urban renewal funds was linked to the existence of local housing codes in

[16] *Id.* § 4.104(a)(2).

[17] *See National Experience*, *supra* note 5.

[18] An early Ohio URLTA reform proposal included innovations such as mandatory collective bargaining, mortgagee liability, and protection against retaliation for tenant complaints. Blumberg, *The Ohio Struggle with the Uniform Residential Landlord and Tenant Act*, 7 CLEARINGHOUSE REV. 265 (1973). *See also* National Housing and Economic Development Law Project, Bulletin, Vol. III, No. 11 (Nov. 15, 1973) (proposed Pennsylvania landlord-tenant reform act).

[19] N.Y. Laws ch. 908, 90th Sess. Vol. II (1867).

[20] *See* E. Mood, *The Development, Objectives, and Adequacy of Current Housing Code Standards*, in HOUSING CODE STANDARDS: THREE CRITICAL STUDIES (Nat'l

1954,[21] adoption of codes in almost every urban area in the country was assured.[22]

However, the codes alone have done little to avert the problems of dilapidation and deterioration of the local housing stock. The failure has generally been one not of the content of the codes but rather of their enforcement.[23] One study revealed that 60 percent of the municipalities surveyed "did not require full compliance with the minimum standards of the housing code in the worst areas of the city even when the areas had not been scheduled for clearance and redevelopment."[24]

Many proposals have been made for more effective enforcement of housing codes[25] and for broader-based reforms, acknowledging

Comm'n on Urban Problems Research Rpt. No. 19, 1969) [hereinafter cited as HOUSING CODE STANDARDS].

[21] HUD Handbook, MPD 7100.1a *et seq.*, RHM 7204.1, promulgated pursuant to 42 U.S.C. § 1441 *et seq.* (1970), *repealed*, 42 U.S.C. § 5301 *et seq.* (Supp. IV, 1974).

[22] Certain provisions of the Federal Housing Act of 1954 and the amendments of the 1964 Housing Act required state housing codes as a prerequisite of a "workable program." *See* 42 U.S.C. § 1451 (1970). Under this impetus the number of housing codes nationwide rose from 56 to at least 4,900. 1 GRAD. LEGAL RESEARCH FOR HOUSING CODE VIOLATIONS 112 (Nat'l Comm'n on Urban Problems Research Rpt. No. 14, 1968) [hereinafter cited as LEGAL REMEDIES].

[23] *See* Gribetz & Grad, *Housing Code Enforcement: Sanction and Remedies*, 66 COLUM. L. REV. 1254 (1966); Note, *Enforcement of Municipal Housing Codes*, 78 HARV. L. REV. 801 (1965); Note, *Building Codes, Housing Codes and the Conservation of Chicago's Housing Supply*, 31 U. CHI. REV. 180 (1963); Note, *Administration and Enforcement of the Philadelphia Housing Code*, 106 U. PA. L. REV. 437 (1958). *See also* Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1082 (D.C. Cir. 1970), *cert. denied*, 400 U.S. 925 (1970); Samuelson v. Quinones, 119 N.J. Super. 338, 343, 291 A.2d 580, 583 (1972). *See generally* B. Lieberman, *Administrative Provisions of Housing Codes*, in HOUSING CODE STANDARDS, *supra* note 20, at 60, 61-69; B. LIEBERMAN, LOCAL ADMINISTRATION AND ENFORCEMENT OF HOUSING CODES: A SURVEY OF 39 CITIES (NAHRO Pub. No. N531, 1969).

[24] B. Lieberman, *Administrative Provisions of Housing Codes*, *supra* note 23, at 63.

[25] Foremost among these are the Federally Assisted Code Enforcement Program (FACE) and Certificate of Occupancy programs. FACE was created by the Housing and Urban Development Act of 1965, Pub. L. No. 89-117, 79 Stat. 451, which was replaced by the Housing and Community Development Act of 1974, 42 U.S.C. § 5301 *et seq.* (Supp. IV, 1974). The FACE program was designed to provide cities and individual homeowners with direct grants and loans to bring residential property into code compliance. It also provided funds for municipal code enforcement.

The Certificate of Occupancy programs are created by municipal ordinance and mandate inspection and certification of vacant units before they can be legally occupied and rerented. *See, e.g.*, City of East Orange, New Jersey, Ordinance No. 15 (1971); Washington, D.C., Zoning Regulations §§ 8104.1 *et seq.* (July 1958). The constitutionality of these Certificate of Occupancy ordinances appears to be questionable in light of the fourth amendment prohibition against unreasonable search and seizure. *See* Camara v. Municipal Court, 387 U.S. 523 (1967). *But see* Currier v. City

that housing codes alone have not been, and perhaps cannot be, successful in maintaining or upgrading urban housing.[26] However, even with their failings, housing codes do constitute a legislative statement of the community's minimum standards of health and safety in residential property. These codes form the basis for an implied warranty of habitability by imposing on landlords an obligation to maintain their property in a livable condition. Although URLTA does not itself contain a housing code, the duties of repair and maintenance it imposes on landlords incorporate the requirements of applicable local housing codes.[27]

2. *Warranty of Habitability*

The warranty of habitability, effective in some form in 28 states and the District of Columbia,[28] is a term of implied contract obligat-

of Pasadena, 48 Cal. App. 3d 810, 121 Cal. Rptr. 913 (1975), *cert. denied*, 44 U.S.L.W. 3331 (U.S. Dec. 1, 1975).

[26] *See* the Ackerman-Komesar debate: Ackerman, *More on Slum Housing and Redistribution Policy: A Reply to Professor Komesar*, 82 YALE L.J. 1194 (1973); Komesar, *Return to Slumville: A Critique of the Ackerman Analysis of Housing Code Enforcement and the Poor*, 82 YALE L.J. 1175 (1973); Ackerman, *Regulating Slum Housing Markets on Behalf of the Poor: Of Housing Codes, Housing Subsidies and Income Redistribution Policy*, 80 YALE L.J. 1093 (1971). In connection with this debate, see W. Hirsch, J. Hirsch & Margolis, *Regression Analysis of the Effects of Habitability Laws Upon Rent: An Empirical Observation on the Ackerman-Komesar Debate*, 63 CALIF. L. REV. 1098 (1975); Hartman, Kessler and LeGates, *Municipal Housing Code Enforcement and Low Income Tenants*, 40 AMER. INSTIT. OF PLANNERS J. 90 (1974).

[27] URLTA § 2.104(a)(1). Local housing codes are similarly referred to in other sections of the Act. *See id.* §§ 1.301(2), 2.104(b), 2.104(d)(2), and 3.101(1).

[28] Both legislatures and courts have responded to the modern landlord-tenant crisis by establishing warranties of habitability. The jurisdictions and their respective authority, legislative or judicial, are as follows: Alaska—ALASKA STAT. §§ 34.03.100, 34.03.160, 34.03.180 (1974); Arizona—ARIZ. REV. STAT. ANN. §§ 33-1324 and 33-1361 (1974); California—CAL. CIV. CODE §§ 1941, 1942 (West 1974) (warranty of habitability and repair and deduct remedy), and Green v. Superior Court, 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974) (common law warranty of habitability eviction defense complementary to statutory remedies); Connecticut—CONN. GEN. STAT. ANN. §§ 47-24 *et seq.*, (1960) and Todd v. May, 6 Conn. Cir. Ct. 731, 316 A.2d 793 (1973); Delaware—DEL. CODE ANN. tit. 25, § 5303 (1974); District of Columbia—Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1082 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970); Florida—FLA. STAT. ANN. §§ 83.51, 83.56 (1973); Hawaii—HAWAII REV. STAT. § 521-32 (Supp. 1974); Illinois—Jack Spring, Inc. v. Little, 50 Ill. 2d 351, 280 N.E.2d 208 (1972); Iowa—Mease v. Fox, 200 N.W.2d 791 (Iowa 1972); Kansas—Steele v. Latimer, 214 Kan. 329, 521 P.2d 304 (1974); Kentucky—KY. REV. STAT. ANN. §§ 383.595, 383.625 (Supp. 1974); Maine—ME. REV. STAT. ANN. tit. 14, § 6021 (Supp. 1974) (allows cancellation of lease); Maryland—MD. REAL PROP. CODE ANN. § 8-211 (Cum. Supp. 1975), superceded in their respective jurisdictions by Baltimore City Public Local Laws, § 9-9, 9-10, 9-14.1

ing residential landlords to supply housing units which are in substantial compliance with basic standards of habitability[29] expressed in local housing codes.[30] Breach of the warranty has been variously held

(eff. July 1, 1971), and Montgomery County code, Fair Landlord-Tenant Relations, ch. 93A (Nov. 21, 1972); Massachusetts—MASS. GEN. LAWS ANN. ch. 239, § 8A (Supp. 1974) (rent withholding and eviction defense available where unit is in violation of code, and tenant while not in arrears gave landlord written notice of violations and intent to withhold), and Boston Housing Authority v. Hemmingway, 293 N.E.2d 831 (Mass. 1973) (tenant failing to give statutorily required notice of code violations and intent to withhold rent is subject without defense to eviction for nonpayment; however, common law implied warranty of habitability is a defense to claim for rent); Michigan—MICH. COMP. LAWS ANN. § 554.139 (Supp. 1974), and Rome v. Walker, 38 Mich. App. 458, 196 N.W.2d 850 (1972); Minnesota—MINN. STAT. § 504.18 (1974), *applied in* Fritz v. Warthen, 298 Minn. 54, 213 N.W.2d 339 (1973); Missouri—King v. Moorehead, 495 S.W.2d 65 (1973); Nebraska—NEB. REV. STAT. §§ 76-1419, 76-1425 *et seq.* (Cum. Supp. 1974); New Hampshire—Kline v. Burns, 111 N.H. 87, 276 A.2d 248 (1971); New Jersey—Marini v. Ireland, 56 N.J. 130, 265 A.2d 526 (1970); New York—N.Y. REAL PROP. LAW § 235-b (1975), *as adopted in* ch. 597, [1975] N.Y. Acts 875; Ohio—OHIO REV. CODE ANN. §§ 5321.04, 5321.07 (Page Supp. 1974); Oregon—ORE. REV. STAT. §§ 91.770, 91.800-.815 (1974); Pennsylvania—Commonwealth v. Monumental Properties, Inc., 329 A.2d 812 (Pa. 1974); Virginia—VA. CODE ANN. §§ 55-248.13, 55-248.25 (Cum. Supp. 1975); Washington—WASH. REV. CODE ANN. § 59.18.060 (Supp. 1974), enacted after judicial implication of warranty of habitability in Foisy v. Wyman, 83 Wash. 2d 22, 515 P.2d 160 (1973); Wisconsin—Pines v. Perssion, 14 Wis. 2d 590, 111 N.W.2d 409 (1961). *But see* Posnanski v. Hood, 46 Wis. 2d 172, 174 N.W.2d 528 (1970). In addition, the Colorado Supreme Court has recently adopted the principle of mutuality of lease covenants in a case involving an explicit landlord repair warranty. Shanahan v. Collins, 539 P.2d 1201 (Colo. 1975). Certiorari has been granted in a case squarely raising the issue of a warranty of habitability. Blackwell v. Del Bosco, Colo. Ct. App. No. 74-286 (March 20, 1975), *cert. granted*, No. C-728 (Colo. Sup. Ct. July 7, 1975).

[29] Contract law and contractual remedies are increasingly used by courts in landlord-tenant cases. *See, e.g.*, Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1075-76 (D.C. Cir. 1970); Green v. Superior Court, 10 Cal. 3d 616, 624-30, 111 Cal. Rptr. 704, 708-12 (1974), and cases cited therein. The warranty of habitability developed in part by analogy to consumer cases. *See, e.g.*, Vandermark v. Ford Motor Co., 61 Cal. 2d 256, 37 Cal. Rptr. 896, 391 P.2d 168 (1964); Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A.2d 69 (1960). Creation of the warranty reverses the traditional common law doctrine of independent covenants under which the obligation to pay rent was independent of any landlord obligation to repair or maintain. The substituted doctrine of mutually dependent covenants is a traditional contract concept, while the independent covenant doctrine is based on property law concepts. *See* Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1082-83 (D.C. Cir. 1970). *See also* Note, *Landlord-Tenant Law—Dependency of Lease Covenants*, 2 FORD. URBAN. L.J. 433 (1974).

[30] Almost all state courts adopting the warranty of habitability have defined it in terms of applicable housing codes. *See e.g.*, Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1080-81 (D.C. Cir. 1970). At least one state court has impliedly chosen to rely upon judicial discretion in defining the content of the warranty rather than refer to codes. *See* Marini v. Ireland, 56 N.J. 130, 265 A.2d 526 (1970). In any event, code violations are always admissible evidence of breach of the warranty. *See, e.g.*, Berzito v. Gambino, 63 N.J. 460, 308 A.2d 17 (1973).

to give rise to an affirmative action by the tenant for damages,[31] a defense to an eviction action for nonpayment of rent,[32] or both.[33] Following the enactment of housing codes, the warranty of habitability has often been the first judicial or legislative recognition of tenants' rights.[34] Adoption of the warranty manifests a fundamental change in the state's view of the landlord-tenant relationship.

The basic warranty provision of URLTA obligates the landlord to "comply with the requirements of applicable housing codes materially affecting health and safety."[35] Landlords must maintain the unit at all times in a safe and habitable condition and provide appropriate and necessary services, such as water, heat, electricity, and garbage removal.[36] Tenant remedies for breach of the warranty provision include the right to terminate the tenancy for landlord breaches which materially affect health and safety.[37] Tenants may also recover actual damages caused by the breach or seek injunctive relief.[38] In addition, in an action by the landlord for rent or possession based on nonpayment of rent, tenants may counterclaim for damages arising from the landlord's breach.[39]

[31] *See, e.g.*, Steele v. Latimer, 214 Kan. 329, 521 P.2d 304 (1974); Mease v. Fox, 200 N.W.2d 791 (Iowa 1972) (counterclaim in suit for rent).

[32] *See, e.g.*, Jack Spring Inc. v. Little, 50 Ill. 2d 351, 280 N.E.2d 208 (1972).

[33] URLTA and most warranty of habitability statutes allow use of the warranty as the basis for an affirmative action or as a defense to eviction for nonpayment of rent. Successful use of warranty as a defense to an eviction is a good indicator that use in an affirmative action will be permitted. However, precedent allowing use as an affirmative action may not be as readily transferrable to use as a defense in summary eviction proceedings, as statutory provisions or rules of court may prohibit the assertion of defenses in a summary eviction court. *See* Green v. Superior Court, 10 Cal. 3d 616, 631-35, 111 Cal. Rptr. 704, 714-16, 517 P.2d 1168, 1178-80 (1974), which rejected the assertion that the warranty of habitability should be restricted to an affirmative action only. *But see* Lindsey v. Normet, 405 U.S. 56, 65-69 (1972) (due process not violated by disallowance of all affirmative defenses in summary eviction proceeding).

[34] Protection against retaliation is the other major remedy usually recognized at the initial stage of reform.

[35] URLTA § 2.104

[36] *Id.* § 2.104 Subsection (c) allows landlords and tenants of single family dwellings to agree to their own maintenance arrangements so long as these agreements are entered into in good faith. Subsection (d) allows similar agreements between landlords and tenants in multi-unit dwellings, subject to the following restrictions: (1) the agreement must be entered into in good faith and must be set forth in a separate writing; (2) the maintenance must not be necessary to achieve code compliance; (3) the rights of other tenants must not be affected; and (4) such an agreement may not be treated as a condition to performance of any part of the rental agreement.

[37] *Id.* § 4.101. Variable notice periods are specified in this section.

[38] *Id.* § 4.101(b).

[39] *Id.* § 4.105. This section also allows the court to require tenants to deposit unpaid and accruing rent into court pending determination of the case. However, the practice of rent escrow has not been favored by the courts as it discourages the exercise of remedies for breach of the warranty of habitability. *See* Dell v. Tsintolas Realty Co., 430 F.2d 474 (D.C. Cir. 1970); Cooks v. Fowler, 459 F.2d 1269 (D.C. Cir. 1971). *Contra*, Javins v. First Nat'l Realty Corp. 428 F.2d 1071, 1083 n.67 (D.C. Cir. 1970).

There are several competing methods for computing the amount of damages to which tenants might be entitled. These methods include the market value theory (difference between the market value of the premises in habitable condition and their market value in deteriorated condition),[40] the percentage diminution theory (reduction in rent based upon the extent to which use of the premises was lost),[41] and a tort-related theory (damages based on inconvenience and suffering).[42] Where "affirmative rent abatement" is not available, recovery under the warranty is limited to that amount accruing during the period of rent withholding by the tenant.[43]

Rent abatement is the judicial reduction of the tenant's periodic rental obligation. It may be prospective, reducing the tenant's future rental obligations in light of a continued substantial breach of the warranty, or retroactive, adjusting the tenant's obligations in periods past to match the landlord's warranty performance. A retroactive rent abatement may take the form of sanctioning the tenant's previous withholding of rent, or a portion thereof, or of allowing an affirmative action to recover rents paid in past periods in excess of the judicially abated rent for those periods. The first form of rent abatement has been granted as a remedial measure in successful warranty of habitability eviction defenses.[44]

The affirmative rent abatement recovery is analogous to a damage action for breach of contract.[45] Regardless of the theory of damages applied, rent abatement in connection with defects in the premises creates an economic incentive for the landlord to repair and maintain the unit. While repairs are underway or in the event that a

[40] This is currently the most prevalent method for valuation of damages. *See* Mease v. Fox, 200 N.W.2d 791, 797 (Iowa 1972); Boston Housing Authority v. Hemingway, 293 N.E.2d 831, 845 (Mass. 1973); Green v. Superior Court, 10 Cal. 3d 616, 638-39, 517 P.2d 1168, 1183, 111 Cal. Rptr. 704, 719 (1974). Expert testimony may be required to ascertain market value.

[41] This method is probably the easiest to apply because no expert testimony is required, the tenant's own testimony being sufficient. *See* Academy Spires, Inc. v. Brown, 111 N.J. Super. 477, 485-86, 268 A.2d 556, 561-62 (1970).

[42] This damage theory, although proposed in the literature, has not yet been adopted by any statute or published decision. *See* Moskowitz, *The Implied Warranty of Habitability: A New Doctrine Raising New Issues*, 62 CALIF. L. REV. 1444, 1464-73 (1974).

[43] When the warranty is raised as a defense in a summary eviction proceeding, the limited continuing equity jurisdiction of a summary court may preclude the issuance of a prospective order. *See, e.g.*, N.J. STAT. ANN. § 2A:18-59 (1952); N.J. RULES OF COURT 6:3-4 (West 1975).

[44] *See, e.g.*, Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970).

[45] *See* pp. 24-26 *infra*.

landlord declines to comply, tenants at least enjoy the benefit of reduced rent. Moreover, because the implied warranty of habitability legalizes collective rent withholding, it can provide a strong impetus for tenant organizing.[46]

The major limitation of the warranty of habitability, as generally applied, is its failure either to mandate repair of the premises by the landlord or to enable the tenant to finance such repairs. The economic sanction of prospective rent abatement may or may not induce the landlord to repair; most landlords will not repair where the capitalized cost of such repair is greater than the capitalized cost of continuing rent abatement. This shortcoming is especially acute because it means that the available money damages and savings from rent abatement will be insufficient to finance substantial repairs at the tenant's direction.

Furthermore, the notion that the tenant should finance repairs out of the damage award or rent abatement savings fails to recognize the essentially compensatory character of those awards. As payment for damages already incurred by the tenant, there is no reason why they should be expended on repairs that the landlord is obligated to make. To do so is to shift the obligation to repair from the landlord onto the tenant. These shortcomings prevent reliance upon the warranty of habitability alone to attain the goal of decent housing.

3. Repair and Deduct

The repair and deduct remedy allows a tenant to repair or have repaired minor defects impairing habitability and to finance that repair by deducting its cost from the next rent payment.[47] Thus, repair and deduct addresses the principal failing of the warranty of habitability and rent abatement by directly providing for landlord-financed repair of the premises. It has been adopted by statute or judicial decision in 20 states.[48]

[46] David & Callan, *Newark's Public Housing Rent Strike: The High-Rise Ghetto Goes to Court*, 7 CLEARINGHOUSE REV. 581 (1974). *See* Dortman v. Boozer, 414 F.2d 1168 (D.C. Cir. 1969).

[47] The tenant runs a calculated risk in exercising the right to repair and deduct. If the landlord sues for the portion of rent deducted, the tenant will have to justify the deduction and bear the risk that the defect will be adjudged insufficient to justify use of the remedy. *See* Academy Spires, Inc. v. Brown, 111 N.J. Super. 477, 482, 268 A.2d 556, 559 (1970), for a discussion of "vital facilities" versus "amenities." *See also* Marini v. Ireland, 56 N.J. 130, 146, 265 A.2d 526, 535 (1970), where the New Jersey Supreme Court required "adequate notice to the landlord of the faulty condition" and "a period of time adequate to accomplish such repair and replacements."

[48] The jurisdictions and their respective legislative or judicial authorities are as follows: Alaska—ALAS. STAT. § 34.03.180 (Cum. Supp. 1974); Arizona—ARIZ. REV. STAT. ANN. § 33-1363 (1974); California—CAL. CIV. CODE § 1941, 1942 (West 1954);

URLTA allows tenants to expend and deduct from periodic rent payments $100 or an amount equal to one-half the periodic rent, whichever is the greater, to repair defects in the unit arising out of the landlord's noncompliance with the housing code.[49]

Repair and deduct is a logical extension of the warranty of habitability. The warranty expresses the societal commitment to a standard of decent housing. Many serious defects worsen with time and early remedial repair and deduct will frequently limit the damages assessable to the landlord and the economic cost of achieving an acceptable housing standard. Thus, the remedy of repair and deduct can be justified both on the basis of the public policy of promoting economic efficiency and as a benefit to tenants.

As generally applied, repair and deduct has three serious limitations. First, the amount of any given deduction is usually restricted[50] and the frequency with which any one tenant can employ the remedy is also subject to limits.[51] These restrictions[52] effectively limit the remedy to relatively low cost repairs, since the tenant can neither

Colorado—Shanahan v. Collins, 539 P.2d 1261 (Colo. 1975); Delaware—DEL. CODE ANN. tit. 25, §§ 5306, 5307 (1974); Georgia—Doughe[illegible] v. Taylor & Norton Co., 5 Ga. App. 773, 63 S.E. 928 (1909). This protection may be waived by express agreement. Abrams v. Joel, 108 Ga. App. 662, 134 S.E.2d 480 (1963); Hawaii—HAWAII REV. STAT. § 521-64 (Supp. 1974); Illinois—Jack Spring, Inc. v. Little, 50 Ill. 2d 351, 280 N.E.2d 208 (1972); Kentucky—KY. REV. STAT. ANN. 383.635 (Supp. 1974); Louisiana—LA. CIV. CODE ANN. arts. 2693-94 (West 1975); Massachusetts—MASS. GEN. LAWS ANN. ch. 111, § 127L (Supp. 1975); Michigan—MICH. COMP. LAWS ANN. § 125.534 (Supp. 1975-76); Montana—MONT. REV. CODE ANN. §§ 42-201, 42-202 (Supp. 1974); Nebraska—NEB. REV. STAT. § 76-1427 (Cum. Supp. 1974) (limited to utilities or essential services); New Jersey—Marini v. Ireland, 56 N.J. 130, 146-47, 265 A.2d 526, 535 (1970) (remedy adopted on the theory of partial constructive eviction based on failure to maintain vital facilities); North Dakota—N.D. CENT. CODE § 47-16-12 and -13 (1960); Ohio—OHIO REV. CODE ANN. §§ 1923.061, 5321.07 (Page Supp. 1974); Oklahoma—OKLA. STAT. ANN. tit. 41, §§ 31, 32 (1951); Oregon—ORE. REV. STAT. § 91.805 (1974) (limited to repair of utilities or essential services only); South Dakota—S.D. COMPILED LAWS ANN. § 43-32-9 (1967); Virginia—VA. CODE ANN. § 32-64 (1973) (toilet facilities only); Washington—WASH. REV. CODE ANN. § 59-18-100 (Supp. 1974).

[49] URLTA § 4.103.

[50] *E.g.*, ARIZ. REV. STAT. ANN. § 33-1363 (1974) (limiting the deduction to one-half a month's rent or $150, whichever is greater); CAL. CIV. CODE § 1942 (West 1954) (limit of one month's rent); MASS. GEN. LAWS ANN. ch. 111, § 127 (Supp. 1975) (limit of two months' rent). *But see* Marini v. Ireland, 56 N.J. 130, 765 A.2d 526 (1970), which does not limit deductions under the common law repair and deduct.

[51] *E.g.*, CAL. CIV. CODE § 1942(a) (West Supp. 1975), which restricts use to once in a 12 month period. Similarly, Massachusetts restricts use to two months in 12 month period. MASS. GEN. LAWS ANN. ch. 111, § 127L (Supp. 1975).

[52] No such restrictions are specified in Louisiana, New Jersey, North Dakota, Oklahoma, or South Dakota.

deduct the total amount of a major repair at once nor finance it through deductions in successive months.

Second, some repair and deduct statutes and judicial decisions require that the tenant notify the landlord and grant him a reasonable time to make the repairs before taking unilateral action. Tenants unaware of the notice requirement may initiate repairs and later learn of the unavailability of a deduction from rent. There would seem to be no reason to require notice if the landlord knows or should know of the breach,[51] or if the tenant has a reasonable belief, based on past experience or other grounds, that the landlord will not repair. Moreover, there does not seem to be any reason to require the tenant to tolerate serious defects impairing habitability for any time period whatsoever. In these situations no interest is served by the imposition of a requirement of formal notice by the tenant.

Third, and most importantly, the tenant is forced to shoulder the risk that later judicial scrutiny will declare the repair and deduct remedy to have been improperly invoked because the defect is adjudged to have been insufficiently substantial, or because of lack of adequate notice. The tenant would then become liable for the entire month's rent in addition to the cost of repair. Such double liability may be especially disastrous for low income tenants, as failure to pay may bring eviction. The possibility of eviction resulting from a good faith error of judgment by the tenant unnecessarily inhibits utilization of the repair and deduct remedy.

B. Fair Treatment Provisions

1. Retaliatory Action

The problem of retaliation is inherent in any governmental scheme of regulation relying in part on the initiative of the parties. Actions by the tenant deemed by the landlord to be inimical to landlord interests may evoke a retaliatory response. The landlord's motive may be retributive or exemplary, designed to intimidate and prevent other tenants from taking similar actions. The result for the tenant is the same.[52] Protection of the tenant from retaliatory action

[51] *Cf.* Moskovitz, *supra* note 42, at 1462-63.

[52] *See* 2 National Housing and Economic Development Law Project, Handbook on Housing Law, ch. 3 (1970); Note, *Retaliatory Eviction as a Defense to Unlawful Detainer–Alternative Approaches?*, 22 Hastings L.J. 1365 (1971); Note, *Retaliatory Eviction: The Tenant's Right to Challenge the Landlord's Motive*, 21 Syracuse L. Rev. 986 (1970); Note, *Landlord and Tenant–Burden of Proof Required to Establish Defense of Retaliatory Eviction*, 1971 Wis. L. Rev. 939.

by the landlord is necessary to secure the free exercise of all other tenant rights, as well as to protect the organizing process through which these rights may be protected or expanded.

Retaliatory action may take the form of eviction, rent increases, utility shut-offs, or other forms of harassment. The URLTA protects tenants from retaliation in the form of increased rents, decreased services, or suits for possession.[53] This protection is extended only where the retaliatory action is in response to certain enumerated tenant activities, such as tenant organizing, tenant union membership,[54] or reporting code violations to government authorities[55] or to the landlord,[56] but does not address itself to nonrenewal of a lease.[57] The Act provides a one year presumption of retaliation after exercise by the tenant of any of these protected activities.[58] But URLTA denies protection from a retaliatory action for possession where the tenant or tenant's family, due to lack of reasonable care, is responsible for a violation of the building or housing code,[59] or where rent is in default.[60] In addition, the tenant may be forced to vacate the premises if the repairs necessary to bring the unit into compliance with the relevant habitability standard can only be done on an empty apartment.[61] At least 26 jurisdictions have recognized the general problem of retaliation and protect some types of tenant activities from some forms of retaliatory actions.[62] All of these jurisdictions protect ten-

[53] URLTA § 5.101(a).

[54] *Id.* § 5.101(a)(3).

[55] *Id.* § 5.101(a)(1).

[56] *Id.* § 5.101(a)(2).

[57] The presumption of renewability at the end of the lease term is the principal factor distinguishing security of tenure measures from prohibitions against retaliatory eviction. *See* p. 40 *infra*. Additionally, with the security of tenure the evicting landlord must always establish just cause. To utilize retaliatory eviction protections, on the other hand, it is the tenant who must show retaliatory motive, either directly or with the aid of presumptions.

[58] URLTA § 5.101(b).

[59] *Id.* § 5.101(c)(1).

[60] *Id.* § 5.101(c)(2).

[61] *Id.* § 5.101(c)(3).

[62] The jurisdictions and their relevant statutory or common law authorities are: 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), 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); Hawaii—Hawaii Rev. Stat. § 521-74 (Supp. 1974); Illinois—Ill. Ann. Stat. ch. 80, § 71 (Smith-Hurd 1966), Clore v. Fredman, 59 Ill. 2d 20, 319 N.E.2d 18 (1974); 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

ants who report code violations to state or local governments.[65] Reporting code violations or substantial defects to the landlord[66] and joining or promoting a tenants' union[67] are protected activities in a majority of the 26 jurisdictions. A majority also prohibit retaliatory rent increases and decreases in services[68] where the tenant activity would have been a valid defense to eviction. New Jersey goes even further and prevents a landlord from denying a lease renewal for a retaliatory purpose.[69]

The Court of Appeals of Washington held in 1969 that a retaliatory eviction defense was unavailable following landlord discovery that the tenant was informing other tenants of their legal rights concerning their tenancies.[70] Washington subsequently adopted the

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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, .28 (Supp. 1975-76); Nebraska—Neb. Rev. Stat. § 76-1439 (Cum. Supp. 1974); New Hampshire—N.H. Rev. Stat. Ann. § 540:13 (Supp. 1973); New Jersey—N.J. Stat. Ann. § 2A:42-10.10 (Supp. 1975-76), and F. & F. Newman, Inc. v. Hallock, 116 N.J. Super. 220, 281 A.2d 544 (1971); New York—N.Y. Unconsol. Laws §§ 8590, 8609 (McKinney, 1974); Ohio—Ohio Rev. Code Ann. § 5321.02 (Page Supp. 1974), Oregon—Ore. Rev. Stat. § 91-865 (1974); Oregon Laws of 1973, 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); 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).

[65] Many statutes condition retaliation as an eviction defense upon the tenant being current in rent. *See, e.g.*, Ariz. Rev. Stat. § 33-1381 (1974); Ore. Rev. Stat. § 91.865 (1974). *See also* Edwards v. Habib, 397 F.2d 687, 701 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969): "There can be no doubt that the slum dweller, even though his home be marred by housing code violations, will pause long before he complains of them if he fears eviction as a consequence."

[66] *See, e.g.*, Hawaii Rev. Stat., § 521-74(a)(1)(2) (Supp. 1974); Cal. Civ. Code, § 1942.5 (West Supp. 1975).

[67] *See e.g.*, Hosey v. Club Van Cortlandt, 299 F. Supp. 501, 504 (S.D.N.Y. 1969): "There can be no doubt of the right of a tenant to discuss the condition of his building with his co-tenants to encourage them to use legal means to remedy improper conditions, to hold meetings, and to inform public officials of the conditions. In short, a tenant can organize the other tenants of his building to improve living conditions." *See also* McQueen v. Drucker, 317 F. Supp. 1122, 1132, *aff'd*, 438 F.2d 781 (1st Cir. 1971).

[68] This is usually done by use of specific statutory language. *See, e.g.*, Ore. Rev. Stat. § 91.865(1) (1974): "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 . . ." Broader language prohibiting substantial alteration of the lease may be utilized toward the same end. *See, e.g.*, N.J. Stat. Ann. § 2A:42-10.10(d) (1975).

[69] N.J. Stat. Ann. § 2A:42-10.10(d) (1975).

[70] Motodax Donohoe, 1 Wash. App. 174, 459 P.2d 654 (1969).

URLTA, including the retaliatory eviction section. However, the uniform act provision does not extend protection to tenant organizing.[71] The Supreme Court of Hawaii recently rejected a retaliatory eviction defense based on the first amendment.[72] Finding no state action in a landlord's utilization of summary judicial processes to repossess against a holdover tenant, the court declined to find an abridgment of tenant rights of speech and association. A strong dissent argued for recognition of protections for tenant organizing and for the reporting of code violations.[73]

The shortcomings of present protections against retaliation are twofold. First, the coverage of protection is inadequate, both in terms of the tenant activities protected and the forms of landlord retaliation proscribed.[74] The greatest single defect is the omission of protection for tenant organizing, an omission repeated in URLTA. Several of the attempts at protection are incomplete in that they proscribe only some of the common forms of retaliation and harassment and presumably leave inventive and vindictive landlords to their own devices.

Second, the victimized tenant faces the difficult task of proving retaliatory intent or motive. A majority of the statutes attempt to resolve this problem by presuming retaliatory intent where specified landlord action follows protected tenant activity within a certain time period.[75] Whereas normally an eviction notice requires no statement of cause, this shift of the burden forces the landlord to present a valid case for eviction. It should be noted, however, that once the period of presumption has run out, the tenant is left to prove retaliatory intent unaided. Considering the difficulties inherent in such proof, the statutory protections may only have the effect of postponing the retaliation. In this regard no period of presumption can be entirely effective. Within the context of one year residential leases, the one year presumptive period can hardly be criticized as too short. Only under a just cause eviction statute[76] can the presumption be permanently reversed so as to provide long term security of tenure for

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[71] *See* note 59 *supra*.

[72] Aluli v. Trusdell, 508 P.2d 1217 (Hawaii 1973), *cert. denied*, 414 U.S. 1040 (1973).

[73] *Id.* at 1222-26.

[74] The Hawaii statute is subject to so many statutory exceptions as to render its operation cumbersome and its coverage incomplete. Hawaii Rev. Stat. § 521-74 (Supp. 1974).

[75] The presumption most often remains in force for a six month period. *See, e.g.*, Ore. Rev. Stat. § 91.865(2) (1974); Ariz. Rev. Stat. Ann. § 33-1381(B) (Spec. Pamphlet 1974).

[76] *See* pp. 40-44 *infra*.

tenants. Additionally, protection should be granted without proof of retaliatory intent where the disciplining action has the effect of creating a reasonable fear of retaliation on the part of other tenants."[77]

2. *Distress and Distraint*

Under the common law of property, the self-help measures of distress and distraint were available to landlords. Through the seizure of the personal property of a tenant (distress) or the locking of the tenant out of the premises and thereby gaining control over the tenant's property (distraint)[78] the landlord established a possessory lien on the tenant's property, securing payment of overdue rents.[79] In their pure common law form,[80] distress and distraint have not been widely accepted in American jurisdictions due to their obvious utility as tools of tenant abuse and the preferred creditor status they confer on a landlo[illegible][81]

Accordingly, some jurisdictions never recognized these remedies as part of their common law;[82] others have modified or abolished them by statute.[83] In several states, however, landlords can still seize tenant property under landlord lien statutes.[84] While these lien statutes somewhat alleviate the harsher aspects of the common law,[85] many of them nevertheless function extrajudicially without affording the tenant a prior hearing or court supervision.[86] Landlord

[77] *Cf.* Robinson v. Diamond Housing Corp., 463 F.2d 853 (D.C. Cir. 1972).

[78] For a detailed discussion of the common law remedies of distress and distraint, see Klim v. Jones, 315 F. Supp. 109, 118-21 (N.D. Cal. 1970). *See also* Rhynhart, *Distress*, 13 MD. L. REV. 185 (1953); Note, *The Landlord and the Tenant's Chattel Mortgagee in Pennsylvania*, 13 U. PITT. L. REV. 125 (1951).

[79] *See* Klim v. Jones, 315 F. Supp. 109, 118-21 (N.D. Cal 1970).

[80] Distress and distraint are the product of feudal land tenure, 2 AMERICAN LAW OF PROPERTY § 9.47 (A.J. Casner ed. 1952), and the long abandoned doctrine of an innkeeper's absolute liability. Klim v. Jones, 315 F. Supp. 109, 120 (N.D. Cal. 1970).

[81] *See* 2 AMERICAN LAW OF PROPERTY § 9.47 (A.J. Casner ed. 1952); 2 POWELL ON REAL PROPERTY ¶ 230[2] (P. Rohan ed. 1974).

[82] "The common law right to distrain for rent is violative of the conditions and wants of the people of this territory . . . and is not in force here." Smith v. Wheeler, 4 Okl. 138, 44 P. 203 (1896). *See also* Standish v. Moldawan, 37 A.2d 788 (N.H. 1944).

[83] *See, e.g.*, ARIZ. REV. STAT. § 33-1372 (Spec. Pamphlet 1974); CAL. PEN. CODE § 418 (West 1970); ILL. REV. STAT., ch 80, § 16 (1973); MASS. GEN. LAWS, ch. 186, § 15B (Supp. 1975). *See generally* Note, *Real Property: Distress for Rent in the United States*, 2 CORNELL L.Q. 357 (1971).

[84] *See, e.g.*, ALA. CODE, tit. 31 §§ 29-34 (1959); MISS. CODE ANN. § 89-7-51 (1972).

[85] *See* Note, *Real Property: Distress for Rent in the United States*, 2 CORNELL L.Q. 357 (1917).

[86] For a discussion of one state's statutorily modified right to distraint, see Note, *Pennsylvania Landlord and Tenant Act of 1951*, U. PITT. L. REV. 396 (1951). The statute discussed was declared unconstitutional in 1972 because it permitted the landlord to levy on tenant's property without prior notice and hearing. Gross v. Fox, 349 F. Supp. 1163 (E.D. Pa. 1972), *vacated and remanded on other grounds*, 496 F.2d 1153 (3d Cir. 1974). *See also* Note, Gross v. Fox: *Landlord's Distraint Unconstitutional in Pennsylvania*, 35 U. PITT. L. REV. 191 (1973).

[87] It has been stated that "[m]odern notions of due process leave no room for landlords to be judges in their own causes. Damage actions for trespass by the tenant after the fact do not provide a constitutional substitute for prior notice and hearing." Gross v. Fox, 349 F. Supp. 1164, 1167 (E.D. Pa. 1972), *vacated and remanded on other grounds*, 496 F.2d 1153 (3d Cir. 1974).

[88] The constitutional infirmities found in the statutory distress statutes are equally present and have been successfully attacked in statutes purporting to give the landlord a lien on the tenant's property. Whether the landlord must get a distress warrant, Holt v. Brown, 336 F. Supp. 2 (W.D. Ky. 1971), or the landlord may summarily seize and hold property under the authority of a "lien" law, Dielen v. Levine, 344 F. Supp. 823 (D. Neb. 1972), such actions are unconstitutional because they allow seizure without notice and a hearing. *See* Adams v. Joseph F. Sanson Investment Co., 376 F. Supp. 61 (D. Nev. 1974); MacQueen v. Lambert, 348 F. Supp. 1334 (M.D. Fla. 1972); State *ex rel.* Payne v. Walden, 190 S.E.2d 770 (W.Va. 1972).

[89] URLTA § 4.205.

[90] *Id.* § 4.107.

[91] Hall v. Garson, 430 F.2d 430, 440-41 (5th Cir. 1970), *quoted in* MacQueen v. Lambert, 348 F. Supp. 1334, 1337 (M.D. Fla. 1972).

[92] A security deposit is a device to assure the lessor the full benefit of his original agreement by requiring the tenant to pay an amount to the landlord to be held as security against the tenant's failure of payment or other breach of covenant in the lease. 2 POWELL ON REAL PROPERTY § 231 (2) (P. Rohan ed. 1974).

[93] The withholding of security deposits after termination of the lease may be a fruitful landlord strategy due to the inconvenience of bringing an action in small claims

lien statutes have been successfully challenged on constitutional grounds.[87] Such provisions not requiring notice and a hearing prior to the taking of tenants' property have been held to violate due process guarantees.[88]

The URLTA abolishes distraint for rent and renders landlord liens or security interests in the tenant's household goods unenforceable.[89] It allows the greater of three months' rent or treble damages plus attorney's fees, if the landlord unlawfully removes the tenant's possessions or excludes the tenant from the premises.[90] In effect, distress and distraint principles are rendered impotent. Indeed, the URLTA reform would do much to ameliorate the "deep personal hardship [which] can result from the seizure of . . . household goods."[91]

3. *Security Deposits*

While security deposits[92] may serve legitimate landlord interests, they are also readily abused.[93] They can present a major obstacle to low-income tenants' efforts to obtain decent, safe, and

sanitary housing.[94] In order equitably to protect the interests of both landlord and tenant, restrictions on the amount and use of security deposits are needed. Many states have responded by enacting security deposit legislation.[95]

The New Jersey security deposit statute[96] presents the most comprehensive regulatory scheme. First, it includes the basic requirement that deductions from the deposit be fairly made and reasonable in amount and that the surplus be returned to the tenant in a timely manner following termination of the tenancy.[97] All state statutes provide at least this much, and, indeed, the common law has traditionally recognized an equivalent duty.[98]

court. 2 NATIONAL HOUSING AND ECONOMIC DEVELOPMENT LAW PROJECT, HANDBOOK ON HOUSING LAW, *supra* note 54, at 70. In tight housing markets, landlords demand and receive increasingly larger deposits. *See* Note, *The Rental Security Deposit in California*, 22 HASTINGS L.J. 1373 (1971). Excessive deductions for damages and in some cases no return of deposit are also common. I.K. Flaum & E.C. Salzman, Urban Research Corp. Report: The Tenant's Rights Movement 22 (1969). For a discussion of security deposit problems, see Note, *The Residential Lease: Some Innovations for Improving the Landlord-Tenant Relationship*, 3 U.C. DAVIS L. REV. 31, 38-43 (1971) [hereinafter cited as *The Residential Lease*].

[94] *The Residential Lease*, *supra* note 93, at 38-43.

[95] The jurisdictions and their respective enactments are as follows: Alaska—ALASKA STAT. § 34.03.070 (1974); Arizona—ARIZ. REV. STAT. ANN. § 33-1321 (1974); California—CAL. CIV. CODE § 1950.15 (West Supp. 1975); Colorado—COLO. REV. STAT. ANN. § 38-12-101 *et seq.* (1973); Connecticut—CONN. GEN. STAT. REV. § 47-23(a) (Supp. Pamphlet 1975); Delaware—DEL. CODE ANN., tit. 25, § 5511 (Supp. 1974); District of Columbia—Housing Regs. of the District of Columbia, § 103, art. 290, D.C. Law 1-7, D.C. Register, at 291-92, § 2908 (July 17, 1975); Florida—FLA. STAT. ANN. § 83.49 (1973); Hawaii—HAWAII REV. STAT. § 521-44 (Supp. 1974); Illinois—ILL. REV. STAT. ch. 74, §§ 91-93 (1973); Iowa—IOWA CODE ANN. § 562.8 *et seq.* (1974); Kentucky—KY. REV. STAT. § 383.580 (1974); Louisiana—LA. REV. STAT. ANN. § 9:3251 (West 1972); Maryland—MD. ANN. CODE art. 53, §§ 41-43 (1957), *as amended*, Laws of Md., 1973, ch. 2 § 14; Massachusetts—MASS. GEN. LAWS ANN. ch. 186, § 15B (Supp. 1975); Michigan—MICH. COMP. LAWS. ANN. §§ 554.601-.616 (Supp. 1975-76); Minnesota—MINN. STAT. § 504.20 (Supp. 1975-76); Missouri—MO. ANN. STAT. § 456.040 (Vernon 1956); Montana—MONT. REV. CODES ANN. § 42-301-309 (Supp. 1974); New Jersey—N.J. STAT. ANN. § 46:8-19 (Supp. 1975-76); New York—N.Y. GEN. OBLIG. LAW. §§ 7-103, 7-105 (Supp. 1975-76); Ohio—OHIO REV. CODE ANN. § 5321.16 (Page Supp. 1974); Oklahoma—OKLA. STAT. ANN. tit. 41, § 43 (1973); Oregon—Ore. Laws of 1973, ch. 559, § 12; ORE. REV. STAT. § 91.760 (1974); Pennsylvania—PA. STAT. ANN. tit. 68, §§ 250.511a-.512 (Supp. 1975-76); Texas—TEX. REV. CIV. STAT. ANN. art. 5326e (Supp. 1974-75); Washington—WASH. REV. CODE ANN. § 59.18.270 (1973).

[96] N.J. STAT. ANN. 46:8-19 (Supp. 1975-76).

[97] *Id. See also* CAL. CIV. CODE § 1950.5 (West Supp. 1975), which provides only these minimal protections.

[98] At common law tenants apparently had the right to expect that deductions from the deposit would be made fairly and in a reasonable amount with the surplus refunded in a timely fashion. A tenant could sue in small claims court to effectuate these rights. 2 POWELL ON REAL PROPERTY § 231(2) (P. Rohan ed. 1974).

New Jersey has gone beyond this basic protection to include limitations on the amount of deposit,[99] notice as to location of the deposit,[100] a commingling ban,[101] payment of interest on the deposit,[102] written itemization of deductions,[103] double rent recovery plus costs for landlord noncompliance,[104] a time limitation on deposit refund after lease expiration[105] and a prohibition against tenant waiver of the security deposit protections.[106]

The URLTA reforms fall short of the New Jersey statute by not requiring interest on the deposit, notice of location, or a restriction on commingling. Like that statute, the Act requires itemization,[107] provides for double rent recovery,[108] and bars tenant waiver.[109] The URLTA, however, restricts the amount of deposit to one month's rent[110] and requires the landlord to return the deposit within 14 days, half the time required under the New Jersey provision.[111] But the absence of a commingling provision threatens to render the stricter URLTA provisions ineffective by exposing the tenant's security deposit to the landlord's creditors. Under URLTA, the landlord still has free use of the tenant's money and is not required to disclose his records. Thus, though URLTA includes security deposit regulations, it does not foreclose all possibility of abuse.

4. Utility Shut-Offs

Uninterrupted utility services are basic necessities essential to a tenant's use and enjoyment of property.[112] Termination of such services creates a direct and immediate threat to habitability, whether it

[99] N.J. STAT. ANN. § 46:8-21.2 (Supp. 1975-76).

[100] *Id.* § 46:8-19.

[101] *Id.*

[102] *Id.*

[103] *Id.* § 46:8-21.1.

[104] *Id.*

[105] *Id.*

[106] *Id.* § 46:8-24.

[107] URLTA § 2.101(b).

[108] *Id.* § 2.101(c).

[109] *Id.* § 1.303(a)(2).

[110] *Id.* § 2.101(a).

[111] *Id.* § 2.101(b).

[112] For a brief discussion of the effects of shut-offs on tenants, see Note, *The Shut Off of Utility Services for Nonpayment: A Plight of the Poor*, 46 WASH. L. REV. 745 (1971). Procedural ramifications of utility shut-offs are discussed in detail in Note, *Fourteenth Amendment Due Process in Termination of Utility Services for Non-Payment*, 86 HARV. L. REV. 1477 (1973).

is the result of utility company practices or landlord actions.[111] Both fourteenth amendment and statutory protections may be available to the aggrieved tenant.

While the Supreme Court has held that terminations by privately held utilities operating under state-issued certificates of public convenience do not constitute "state action" under the fourteenth amendment,[114] tenants serviced by municipal power systems still have access to due process and equal protection remedies.[115] Additionally, several states have enacted protections against unjust terminations in the form of criminal sanctions,[116] civil remedies with stated damages,[117] or injunctive relief against offending landlords.[118]

In addition, warranty of habitability actions are available against landlords where the lease agreement services package expressly or implicitly includes utilities.[119] The URLTA explicitly prohibits arbitrary landlord shut-offs of essential services.[120] Tenants may either procure reasonable alternative services during the period of deprivation and deduct the cost of such services from future rental payments, recover damages based on diminution of the fair rental value of the premises during the period of the noncompliance, or procure substitute housing at the landlord's expense.[121] In view of the impracticality of securing either alternative utility services or alternative housing, the damage action provides the only realistic protection. Given the

[111] "Furthermore, each unjust termination imposes certain hardship costs common to all terminations. Lack of utility services needed for heat, light, cooking, easy access to the outside world, and other uses will in many circumstances work severe hardship on a household, and may in many instances lead to 'secondary costs,' [sic] such as illness and 'resentment and demoralization,' which will have to be absorbed by society." 86 HARV. L. REV. at 1482 (footnotes omitted).

[114] Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).

[115] *See, e.g.*, Davis v. Weir, 328 F. Supp. 317, 321 (N.D. Ga. 1971) (city water department's termination of services and refusal to contract for services directly with tenant after landlord default was enjoined on equal protection grounds).

[116] *See, e.g.*, CONN. GEN. STAT. ANN. § 19-65 (1975); N.Y. REAL PROP. LAW § 235 (Supp. 1974).

[117] *See, e.g.*, CAL. CIV. CODE § 789.3 (West Supp. 1975) ($100 per day); MASS. GEN. LAWS, ch. 186, § 14 (Supp. 1975) (three months' rent or actual damages); ORE. LAWS OF 1973, ch. 559, § 22 (two months' rent or double damages); TEX. REV. CIV. STAT. ANN. art. 5236e, § 4 (Supp. 1974-75) (actual damages plus one month's rent).

[118] *See, e.g.*, Redding v. Wainwright, 1 CCH POV. L. REP. ¶ 2320.38 (1972) (indigent tenant granted temporary restraining order preventing landlord from terminating essential services); Robertson v. Taylor, [1968-1971 Transfer Binder] CCH POV. L. REP. ¶ 11,786 (1970) (state supreme court granted injunction restraining landlord from harassment and attempts at illegal eviction by termination of water, sewer, and electrical services).

[119] *See* pp. 7-11 *infra*.

[120] URLTA § 4.104.

[121] *Id.*

determination that most utility shut-offs will not be subject to due process requirements,[122] the URLTA deterrent to capricious shut-offs is a substantial protection from unjust terminations.

II. BEYOND THE URLTA—DECENT HOUSING

The URLTA reforms in the decent housing area tend to be limited in nature, clarifying obligations between landlords and their tenants and providing limited sums to be used in the rehabilitation of the rental unit. Still missing are reforms providing larger sums capable of actually effecting the total repair of the unit or the entire building.

Several mechanisms can be utilized to achieve total repair. Court appointment of a receiver for the property may be utilized to effectuate repairs.[123] Retroactive rent abatement, granting a rent reduction for breach of the warranty of habitability and allowing the tenant to recover past overpayments, transfers to tenants large sums of money, possibly enough to effectuate a transfer of title by sale or settlement. This transfer increases the tenants' financial capacity, allowing them to rehabilitate the present structure or to reenter the market to secure decent housing. Also, landlord security deposit acts requiring the landlord to make deposits with the city may be used to create funds for repair of emergency conditions in the landlord's buildings. The tenant-mortgagee negotiating strategy attempts to involve the mortgagee in the building's problems and to secure a temporary stay of mortgage payments. If successful, this negotiating strategy substantially increases the portion of rent flow that can be directed to repair of the building. Specific performance of the warranty of habitability is an equitable remedy compelling the landlord to commit greater funds to the rehabilitation of a building. By directly mandating repair rather than imposing an economic sanction for nonrepair, it may achieve decent housing where the legal remedy of rent reduction would be ineffective. Each of these proposed decent housing reforms builds on the foundation provided by housing codes and the warranty of habitability. These and other more effective remedies are essential to the repair and maintenance of residential housing generally.

[122] Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).

[123] *See generally Legal Remedies*, *supra* note 22; Gribetz & Grad, *supra* note 23; Gribetz, *New York City's Receivership Law*, 21 J. HOUSING 297 (1964); Note, *Receivership of Problem Buildings in New York City and Its Potential for Decent Housing of the Poor*, 9 COLUM. J. L. & SOC. PROB. 309 (1973).

A. Receivership

At least 13 jurisdictions have enacted statutes authorizing court appointment of a receiver to collect tenant rents from severely dilapidated buildings in order to effect repairs.[124] After completion of repairs and payment of expenses, control of the building is restored to the landlord. All receivership statutes allow local code enforcement agencies to bring an action for a receiver and some statutes permit tenants to do so as well.[125]

Two problems limit the effectiveness of this remedy. In many cases the rent flow is inadequate to meet repair costs. In addition,

[124] Connecticut—Conn. Gen. Stat. Ann. § 19-347b (1969); Delaware—Del. Code Ann. tit. 25, § 5901 *et seq.* (1953); Illinois—Ill. Rev. Stat. ch. 24 § 11-31-2 (1973); Indiana—Ind. Code § 18-5-5 *et seq.* (1971); Massachusetts—Mass. Gen. Laws Ann. ch. 111, § 127H *et seq.* (Supp. 1975); Michigan—Mich. Comp. Laws Ann. § 125.535 (Supp. 1975-76); Minnesota—Minn. Stat. Ann. § 566.29 (Supp. 1975-76); Missouri—Mo. Rev. Stat. § 441.570 (Supp. 1967); New Jersey—N.J. Stat. Ann. § 2A:42-85 *et seq.* (Supp. 1975-76), § 40:48-2.12(b) (Supp. 1965); New York—N.Y. Mult. Dwell. Law § 309(5) (McKinney Supp. 1974-75); N.Y. Real Prop. Actions Law § 769 *et seq.* (McKinney Supp. 1975-75); Ohio—Ohio Rev. Code Ann. § 5321.07 (Page Supp. 1971); Rhode Island—R.I. Gen. Laws Ann. §§ 45-24.2-11 (1971), 45-24.3-19 (Supp. 1974); Wisconsin—Wis. Stat. Ann. § 280.22 (Supp. 1975-76).

Receivership statutes have been upheld as a valid exercise of the police power. *In re* Department of Buildings of City of New York, 14 N.Y.2d 291, 293, 200 N.E.2d 432, 436 (1964), *noted in* 63 Mich. L. Rev. 1304 (1965); Community Renewal Foundations, Inc. v. Chicago Title & Trust Co., 44 Ill. 2d 284, 255 N.E.2d 908, 912 (1970).

The impact that receivership and other vigorous code enforcement measures may ultimately have upon the housing market is a much debated matter. For a famous theoretical debate, see Ackerman, *Regulating Slum Housing Markets on Behalf of the Poor: Of Housing Codes, Housing Subsidies and Income Redistribution Policy*, 80 Yale L.J. 1093 (1971); Komesar, *Return to Shaverville: A Critique of the Ackerman Analysis of Housing Code Enforcement and the Poor*, 82 Yale L.J. 1175 (1973); Ackerman, *More on Slum Housing and Redistribution Policy: A Reply to Professor Komesar*, 82 Yale L.J. 1194 (1973).

For a much-needed empirical study of the same questions, see W. Hirsch, J. Hirsch & Margolis, *Regression Analysis of the Effects of Habitability Laws Upon Rent: An Empirical Observation on the Ackerman-Komesar Debate*, 63 Calif. L. Rev. 1098 (1975). This study found the presence of receivership laws to be significantly associated with higher rents. General rent levels were not, however, significantly related to the availability of the remedies of repair and deduct and rent withholding. The lack of a significant correlation between rent levels and the availability of the latter two remedies may be due to non-use of the remedies. The authors were unable definitively to answer the more important and more difficult question of whether the rent increases possibly associated with habitability laws are offset by commensurate benefits accruing to tenants.

[125] *E.g.*, Mass. Gen. Laws Ann. ch. 111, § 127H *et. seq.* (Supp. 1975); Minn. Stat. Ann. § 566.29 (Supp. 1975-76); N.J. Stat. Ann. § 2A:42-85 *et seq.* (Supp. 1975-76); Wis. Stat. Ann. § 280.22 (Supp. 1975-76).

tenants often cannot participate significantly in the receivership process.

The problem of inadequate rent flow is twofold. First, the accumulation of enough money from rent to make necessary repairs may require a considerable period of time. New York City's ordinance attempts to overcome this through the use of a revolving fund for receivership repairs.[126] The cost of rehabilitation is advanced from the revolving fund and then gradually repaid by future rental income. Unfortunately, this does not overcome the second problem, that of inadequate rent flow. Financing still depends on the long run sufficiency of the building's future rents. Many buildings in receivership are in such bad condition that they simply cannot generate enough rent on the open market in any reasonable period of time to make needed repairs.[127]

The absence of tenant participation in the receivership process poses difficulties because the maintenance of a continuous rent flow and the efficient repair of the building depend upon tenant cooperation. The New Jersey receivership law makes efforts to involve tenants by permitting a single tenant to bring an action for a receivership and by providing that a tenant or tenant organization may be appointed as the receiver.[128]

B. Retroactive Rent Abatement

Retroactive rent abatement is an affirmative action for contract damages[129] based on breach of the continuing warranty of habitability and enabling the tenant to recover rents paid which could have been justifiably withheld but which were not. Several jurisdictions have developed the principle that a breach of the implied warranty of habitability "gives rise to the usual remedies for breach of contract"[130] by declaring the availability of retroactive rent abatement.[131]

[126] *See Legal Remedies*, *supra* note 22, at 44; Comment, *The New York City Housing Receivership and Community Management Programs*, 3 Fordham Urban L.J. 637 (1975) [hereinafter cited as *New York City Housing Receivership*].

[127] In at least one case the revolving loan fund became seriously depleted. *New York City Housing Receivership*, *supra* note 126, at 47.

[128] N.J. Stat. Ann. § 2A:42-28 (Supp. 1975-76).

[129] *See* note 29 *supra*.

[130] Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1073 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970).

[131] *See, e.g.*, Lemle v. Breeden, 51 Hawaii 426, 462 P.2d 470 (1969); Mease v. Fox, 200 N.W.2d 791 (Iowa 1972); McKenna v. Begin, 325 N.E.2d 587 (Mass. App. 1975); Kline v. Burns, 111 N.H. 87, 276 A.2d 248 (1971); Berzito v. Gambino, 63 N.J. 460, 308 A.2d 17 (1973); Glover v. Schultz, 62 Ohio Op. 2d 459, 289 N.E.2d 919 (Sylvania Mun. Ct. Ohio 1972); Pines v. Perssion, 14 Wis. 2d 590, 111 N.W.2d 409 (1961).

a remedy analogous to contract damages. The affirmative action for retroactive rent abatement is merely an extension of rent withholding[132] and the jurisdiction's measure of periodic damages should be equally applicable.[133] Damages accrue from the time of the initial breach of the warranty coupled with notice to or knowledge of the landlord of the defective condition[134] and continue during occupancy of the defective premises.[135] Consistent with contract doctrine, the more well-reasoned opinions have allowed the tenant to recoup the "benefit of his bargain" plus incidental and consequential damages incurred in securing "cover."[136]

The notice or knowledge limitation on damages appears to be a refinement of the warranty of habitability, conditioning the landlord's duties thereunder upon notice or knowledge of the defects. With the warranty thus conditioned, limitation of the damages to that period after notice or knowledge is in accordance with general contract principles. Such a reading of the warranty is consistent with the incompatibility of frequent landlord inspections and residential occupancy by the tenant. In any event, landlord knowledge of the defective conditions may be readily inferred from proof of their existence at the inception of the tenancy.[137]

The warranty of habitability imposes upon landlords the obligation to assure that the housing they provide substantially meets societal standards of safety and sanitation.[138] This duty and that of the tenant to pay rent are regarded as mutually dependent. The landlord's failure to comply with the warranty of habitability constitutes a failure or partial failure of consideration under the rental contract, giving rise to an action for damages.

Where a tenant does not withhold rent as a means of collecting damages but rather sues later on a theory of retroactive rent abatement, the question of waiver has been raised.[139] While landlords have asserted that continued payment of rent is a waiver by the tenant of rent abatement benefits,[140] it has been held that no such waiver effect can be inferred where a shortage of suitable alternative housing and the reasonable tenant fear of retaliation coerce such payments.[141] It is even clearer that continued payments due to ignorance of the

[132] *See* pp. 7-11 *supra*.

[133] *See* p. 10 *supra*.

[134] *See, e.g.*, McKenna v. Begin, 325 N.E.2d 587, 591-92 (Mass. App. 1975).

[135] *See, e.g.*, Berzito v. Gambino, 63 N.J. 460, 469, 308 A.2d 17, 22 (1973).

[136] *See, e.g.*, Mease v. Fox, 200 N.W.2d 791, 797 (Iowa 1972).

[137] *See, e.g., id.*; McKenna v. Begin, 325 N.E.2d 587, 592 (Mass. App. 1975).

[138] *See* pp. 7-8 *supra*.

[139] Berzito v. Gambino, 63 N.J. 460, 470, 308 A.2d 17, 22 (1973).

[140] *See, e.g., id.*; Mease v. Fox, 200 N.W.2d 791 (Iowa 1972).

[141] Berzito v. Gambino, 63 N.J. 460, 473, 308 A.2d 17, 24 (1973).

availability of remedies cannot be deemed a knowing and voluntary waiver of the right to retroactive rent abatement.

Consistent with other contract actions, suit on the lease need not be commenced while the tenant is in possession, but may also be initiated after the lease has expired.[142] Similarly, this suit should be subject to the lenient contract statutes of limitation.[143]

Although the primary purpose of retroactive rent abatement is remedial, its availability as a direct remedy may also have important strategic ramifications for the informed tenant. First, it obviates the need for risking retaliation by the landlord. Second, it provides the option of obtaining a lower rent rather than improved premises.[144] Third, allowance of an affirmative action enables the tenant to select the litigating forum and thus avoid the consequences of summary dispossession actions or other results of the landlord's choice of forum.

Thus retroactive rent abatement, like receivership, is a promising remedy. Yet the ultimate effectiveness of both may depend less on their actually being invoked by tenants to remedy existing substandard housing conditions than on their deterrent effects. The possibility of resort to these remedies by tenants may prevent landlords from allowing their premises to deteriorate and may provide additional incentives for the maintenance of an acceptable level of decent housing.

C. Specific Performance of the Warranty of Habitability

The traditional equitable remedy of specific performance should be regarded as a contract[145] remedy potentially[146] applicable to a

[142] The *Berzito* tenant initiated an action for retroactive rent abatement only after vacating the premises. 63 N.J. at 464, 308 A.2d at 19.

[143] *Compare* CAL. CIV. PRO. CODE § 337 (West Supp. 1975) (four years: written contract), *with* CAL. CIV. PRO. CODE § 340(3) (West Supp. 1975) (one year: various torts).

[144] Other remedies, such as receivership and specific performance of the warranty of habitability, may also effectuate repair of the premises. However, the cost of repair and the conditions of the housing market may be such as to require increased rents or removal of the unit from the housing stock. Retroactive rent abatement provides the tenant with the option of a reduced rent appropriate to the quality of the housing unit provided.

[145] *See* note 29 *supra*.

[146] It must be remembered throughout this discussion that the granting or withholding of specific performance is within the discretion of the court; a party is not "entitled" to such a remedy as a matter of right. *See* 4 J. POMEROY, EQUITY JURISPRUDENCE § 1404 (5th ed. 1941) and cases cited therein; 11 S. WILLISTON, LAW OF CONTRACTS § 1418A (3d ed. 1968) and cases cited therein.

breach of the warranty of habitability in a residential lease agreement.[147]

1. The Inadequacy of Remedies at Law

The availability of specific performance is ordinarily conditioned upon a showing of the inadequacy of legal remedies and on a determination of how much supervisory burden the order would place on the court.[148] The inadequacy of legal remedies may be based upon proof that damages are unascertainable and hence impractical, or upon proof that if ascertainable they will not fully compensate the injured party.[149] It is a well known presumption, however, that real property interests are unique and that mere legal remedies are therefore inadequate responses to breaches of contracts conveying such interests. Thus, specific performance is granted as a matter of course to enforce real property contracts.[150] This presumption is fully applicable to residential leases and should clearly be a sufficient basis for a finding of inadequacy of legal remedies.

The increasing emphasis on the analogy of residential leases to consumer contracts[151] does not negate the uniqueness of the real property interests made subject to the contract. If anything, the same increased complexity of the landlord-tenant relationship which has made feudal property concepts obsolete has made the rationale of the presumption of uniqueness the more compelling. The modern landlord-tenant contract provides for such a multitude of services and facilities that it would be unrealistic to place the burdens of maintenance and repair upon tenants to the degree required by feudal law. At the same time, that increased complexity has made each residential lease more unique and thus more deserving of specific performance. The assertion that the landlord-tenant relationship is fundamentally contractual in nature is not inconsistent with the assertion that any one such lease contract has special characteristics making it unique and non-fungible with others available on

[147] Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1082 n.61 (D.C. Cir. 1970); Boston Housing Authority v. Hemingway, 293 N.E. 2d 831, 844 (Mass. 1973). *See also* Knox Hill Tenant Council v. Washington, 448 F.2d 1045, 1057 (D.C. Cir. 1971); Le Clair v. Woodward, 30 Conn. Supp. 299, 316 A.2d 791, 792 (Conn. Cir. Ct. 1970); Steele v. Latimer, 214 Kan. 329, 336, 521 P.2d 304 (1974); Marbeth Realty Corp. v. Rosenshine, 67 Misc. 2d 325, 327, 323 N.Y.S.2d 363, 366 (N.Y. City Civ. Ct. 1973); 6 S. Williston, *supra* note 146, at § 892 and cases cited therein.

[148] J. Pomeroy, *supra* note 146, at § 1405b; 11 S. Williston, *supra* note 146, at § 1422A.

[149] *See generally* 4 J. Pomeroy, *supra* note 146, at §§ 1400-03; 11 S. Williston, *supra* note 146, at § 1418.

[150] 11 S. Williston, *supra* note 146, at § 1418A, and cases cited therein.

[151] *See* note 29 *supra*.

the market. The time-honored phrase, "land is different,"[152] remains valid.

Furthermore, an examination of available legal remedies reveals their inadequacy both as compensation for the tenant or as effectuating the social policy of ensuring an adequate stock of habitable housing. Court-sanctioned rent abatement through rent withholding[153] or repair and deduct[154] are two alternative legal remedies. The measure of damages in each appears sufficiently ascertainable to avoid the impracticability dilemma.[155] However, repair and deduct is subject to the basic deficiency that the cost of major repairs may exceed the amount awardable.[156] Rent withholding, on the other hand, is subject to the criticism that it does not ensure actual repair of the defective housing. Furthermore, in terms of tenant compensation, it is obviously inadequate to "make the tenant whole" in the many instances where the tenant has made rental payments despite the existence of defects justifying rent abatement. While retroactive rent abatement[157] meets this tenant compensation objection, it too is inadequate to effectuate the broader social policy of promoting habitable housing.

To the extent that a tenant must wait several months to accumulate sufficient funds for major repair, rent withholding and repair and deduct fail to further the decent housing policies.[158] Additionally, the tenant utilizing repair and deduct or rent withholding must bear the risk of an unfavorable adjudication[159] as well as the transaction

[152] As indicated in note 150 *supra*, the presumption of specific performance of contracts involving interests in land has much vitality even today. 11 S. Williston, *supra* note 146, at § 1418A. Thus, this argument should be stressed to the court. The remainder of this subsection provides arguments that reinforce, rather than replace, this central theme.

[153] *See* p. 10 *supra*.

[154] *See* pp. 11-13 *supra*.

[155] Although there is a question whether the exact drop in value is determinable, this appears to be no different from the situation presented in the traditional contract breach case, especially where the cost of repair can be ascertained. Green v. Superior Court, 10 Cal. 3d 616, 639, 111 Cal. Rptr. 704, 719, 517 P.2d 1168, 1183 (1974).

[156] *See, e.g.*, Cal. Civ. Code § 1942, *as amended* (West Supp. 1975), which limits repair and deduct remedies to one month's rent and limits its use to once in any 12-month period. Justice Tobriner of the California Supreme Court pointed out the many shortcomings of the California statute in Green v. Superior Court, 10 Cal.3d 616, 629-31, 111 Cal. Rptr. 704, 712-14, 517 P.2d 1168, 1176-78 (1974).

[157] *See* pp. 24-26 *supra*.

[158] The inadequacy could be cured if the state had a system of landlord security deposits to expedite the cost of more major repairs. *See* pp. 31-35 *infra*.

[159] Although many courts have moved toward the contract law view that lease terms are interdependent, thus not permitting eviction in cases where the tenant's rent was properly withheld due to the landlord's breach of the warranty of habitability, see p. 7 and note 28 *supra*, the traditional rules permitting eviction and even summary

costs of repair which are properly the responsibility of the landlord. Most fundamentally, however, reliance upon the tenant's utilization of a rent withholding or retroactive rent abatement award to make repairs in accordance with the society's interest in decent housing negates the compensatory character of such awards. The alternative legal remedies are inescapably inadequate in that they cannot simultaneously serve both the tenant compensation and the decent housing policies. To function as compensation for what the tenant has already suffered, the award must be cash the tenant can keep, not money he or she is ordered to sink into the building; but then the building does not get repaired. Conversely, conditioning the award on repair accomplishes that goal but in no sense compensates the tenant for the landlord's breach of warranty. Only specific performance can accomplish both on a major scale.[160]

2. Supervision

The extent to which any given decree of specific performance would place a burden of supervision on the court beyond its normal adjudicative function is a principal consideration in determining whether to grant the decree.[161] Equitable relief has been denied in several construction contract cases because of the supervisory role such relief would thrust upon the court.[162] However,

> t[h]e better view, and the one which increasingly is being followed in this country [respecting both construction and other contracts requiring extensive supervision] is that such contracts should be specifically enforced unless the difficulties of supervision outweigh the importance to the plaintiff.[163]

eviction in cases where the tenant fails to pay the rent would presumably apply where the tenant has wrongfully withheld the rent. *See, e.g.*, ORE. REV. STAT. §§ 105.105 to 105.160 (1974) (upheld in Lindsey v. Normet, 405 U.S. 56 (1972)).

[160] Repair and deduct directly and fairly expeditiously accomplishes the same end with respect to minor repairs. *See* p. 12 *supra*.

[161] *See* 4 J. POMEROY, *supra* note 146, at § 1405b; 11 S. WILLISTON, *supra* note 146, at §§ 1418 n.15, 1418A, and 1422A.

[162] *See, e.g.*, Pantages v. Grauman, 191 F. 317 (9th Cir. 1911); Northern Delaware Indus. Dev. Corp. v. E.W. Bliss Co., 245 A.2d 431 (Del. Ch. 1968) (specific performance denied in suit to force hiring of 300 additional workmen to complete modernizing of plaintiff's plant); Carlson v. Len Home Builders, Inc., 132 N.J. Eq. 38 26 A.2d 576 (N.J.Ch. 1942) (building contracts not to be specifically enforced). *See generally* 11 S. WILLISTON, *supra* note 146, at § 1422A. *But see* City Stores Co. v. Ammerman, 266 F. Supp. 766 (D.D.C.), *aff'd*, 394 F.2d 950 (D.C. Cir. 1968).

[163] City Stores Co. v. Ammerman, 266 F. Supp. 766, 776-77 (D.D.C. 1967). *See also* 11 S. WILLISTON, *supra* note 146, at § 1418A.

In the warranty of habitability context, this balancing of interests clearly favors the award of specific performance. First, where there is an administrative code enforcement agency, the court itself need not be as directly involved in monitoring compliance with its order to render the building habitable. Thus, the court would not be drawn away from its principal task of adjudication. Second, in most cases the repairs necessary to bring the housing up to standard would not involve the same continuity and longevity of supervision as might be entailed by the actual construction of a building. Third, the tenant's interest in safe and habitable housing is clearly of a higher level than are the subjects of dispute in most contract enforcement situations. Finally, it is clear that unlike the traditional controversy between private parties, warranty of habitability actions implicate serious questions of public policy into which public bodies, including courts, should be drawn not hesitantly but as a matter of course. It is not a waste of public judicial resources to effectuate the declared public legislative policy.

3. Summary

Utilization of the specific performance remedy in warranty of habitability suits can contribute to the equalization of bargaining power in the landlord-tenant relationship. Only a remedy directly accomplishing repair rather than merely taxing the landlord to compensate the tenant can serve both the private and the public policies behind the warranty of habitability.[164] Specific performance realizes the public policy of decent housing while simultaneously obviating the need for tenant compensation. The flexibility of the equitable remedy enables the court to adjust the interests of both landlord and tenant so as to minimize hardships.[165] It should be recognized, however, that this form of equitable relief remains discretionary with the court. Pragmatism thus dictates that alternative relief, such as rent abatement, be pleaded.[166]

D. Landlord Security Deposit Act

A landlord security deposit act (LSDA) is a statutory reform which functions as a counterpart to tenant security deposits. Tenants

[164] *See* pp. 28-29 *supra*.

[165] *See* W. DE FUNIAK, HANDBOOK OF MODERN EQUITY § 74 (2d ed. 1956). *See also* Gilson v. Gilha, 45 Tenn. App. 193, 321 S.W.2d 855 (1958) (specific performance will not be ordered where cost of repair of premises would work an undue hardship on landlord); H. MCCLINTOCK, HANDBOOK OF THE PRINCIPLES OF EQUITY § 22 (2d ed. 1948).

[166] It does not seem in any way inconsistent to allow a recovery of retroactive rent

have traditionally been required to deposit sums of money with their landlord to insure compliance with the rental agreement.[167] Under an LSDA landlords are required to deposit with the city a set sum per rental unit to insure compliance with their obligations. Municipalities have long had the authority to obtain injunctions requiring landlords to comply with housing codes and to repair housing defects.[168] In addition, many states have by statute authorized municipalities to make repairs with municipal funds and to collect the cost of repair from the landlord if the housing defect constituted a public nuisance.[169] The novel feature of a landlord security deposit act is not that it provides local government with the authority and mechanisms to repair deteriorated buildings but that it allows them to do so using funds placed on deposit by the offending landlord. Thus, the municipality is spared an expense that may, despite its possibly temporary nature, inhibit comprehensive code enforcement.

The second important feature of current landlord security deposit acts is that they are activated only in emergency situations presenting an immediate threat to tenant health or safety. Under such circumstances, repairs can be made without prior recourse to extended hearings and inspections.[170] The ordinance obligates the city, upon receipt of a tenant complaint, to make an immediate inspection to certify that a specified hazardous defect is present in the building and that the landlord has not initiated repairs. The statute authorizes the city, upon making this determination, to repair the defect with funds from the landlord's security deposit. Unlike other code enforcement proceedings, the entire process from initial notice

abatement for the period preceding compliance with a specific performance order.

[167] *See* pp. 18-19 *supra*.

[168] Municipalities have been able to secure injunctions to enforce housing codes for at least 70 years. Tenement House Dep't v. Moeschen, 179 N.Y. 325, 72 N.E. 231 (1904), *aff'd per curiam*, 203 U.S. 583 (1906).

[169] *See*, e.g., the following statutes, which allow some form of municipal repair and recoupment: Conn. Gen. Stat. Rev. § 19-344 (1975); Mass. Gen. Laws Ann. ch. 111, § 127B (1974); Utah Code Ann. § 10-8-52 (1973).

[170] Apartment House Council v. Mayor and Council of Ridgefield, 123 N.J. Super. 87, 301 A.2d 484 (Law Div. 1973), *aff'd per curiam*, 128 N.J. Super. 192, 319 A.2d 507 (App. Div. 1974). The existence of an emergency is necessary to satisfy constitutional due process standards. *See* Goss v. Lopez, 419 U.S. 565 (1975) (notice and hearing can follow rather than precede removal of a student from school if persons or property have been endangered); Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974) (extraordinary situation warranted postponement of notice and hearing without violation of due process); Fuentes v. Shevin, 407 U.S. 67 (1972) (only in an extraordinary situation not present here can a hearing be postponed); Bell v. Burson, 402 U.S. 535 (1971) (only in an emergency can an interest be terminated prior to notice and hearing); *cf.* Arnett v. Kennedy, 416 U.S. 134 (1974); Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974).

to completion of repairs may be accomplished in 96 hours.[171] Ridgefield, New Jersey, was the first city in the United States to adopt a landlord security deposit act,[172] and its ordinance has served as a model for other jurisdictions.[173] The Ridgefield LSDA covers all buildings with four or more rental units.[174] The landlords of such buildings are required to deposit $100 per unit up to 25 and a decreasing per unit amount for additional units, with a maximum deposit of $5,000 payable by any one landlord.[175] The landlord is paid interest on the money held by the city.[176] An individual landlord's account can only be used to repair the rental property of that landlord, although deposit money covering a number of units may be used to repair any specific unit.[177]

The Ridgefield LSDA ensures the repair of defects posing a threat to health or safety.[178] It does not cover minor housing code violations.[179] This limitation on applicability of the LSDA preserves the emergency nature of the remedy and thereby facilitates its immediate use.[180] Regardless of the severity of the emergency condition, however, the tenant must still provide the landlord with minimal

[171] *See* Ridgefield, N.J. Ordinance No. 930 (June 8, 1972) (landlord allowed 24 hours from notification to commence repairs, and an additional 72 hours to complete repairs, if practicable). *See generally* Blumberg & Robbins, *The Landlord Security Deposit Act*, 7 Clearinghouse Rev. 411 (1973).

[172] Ridgefield, N.J. Ordinance No. 930, *supra* note 171.

[173] *E.g.*, Fort Lee, N.J. Ordinance 73-15 (April 4, 1973); Lindenwold, N.J. Ordinance No. 389 (April 12, 1973); Wayne, N.J. Ordinance No. 55 (May 16, 1973). Legislation establishing a LSDA system was introduced in the Massachusetts Legislature. Mass. H.B. 2702 (1974).

[174] Ridgefield, N.J. Ordinance 930, *supra* note 171, § VI-C.

[175] *Id.* § III-A-D.

[176] Under the ordinance the interest earned is paid to the landlord. *Id.* § III-D. Sponsors of future LSDA's might desire to authorize the withholding of a portion of the interest to underwrite the cost of enforcement and administration of the act. *See* N.J. Stat. Ann. § 46:8-19 (1973), which allows landlords to retain one percent per annum of the tenant's security deposit to offset the cost of administration.

[177] Ridgefield, N.J. Ordinance No. 930, § V.

[178] The Ridgefield ordinance applies only to: "Any condition, dangerous or injurious to the health or safety of the occupants of a building, or occupants of neighboring buildings, which arises out of any of the following conditions:

"1. Lack of adequate ventilation or light.

"2. Lack of adequate and properly functioning sanitary facilities.

"3. Lack of adequate and healthful water supply.

"4. Structural, mechanical or electrical defects which increase the hazards of fire, accident or other calamity.

"5. [The failure to provide adequate heat during specified hours of the day and night of specified months of the year.]" *Id.* § VI-B.

[179] *E.g.*, the failure of a single electrical outlet or use of the wrong type or size of pipe would not trigger operation of the ordinance.

[180] *See* p. 31 *supra*.

notice and opportunity to repair.[181] The legislation establishes a Multiple Dwelling Emergency Commission to oversee compliance with the repair requirements.[182] If repairs have not been commenced during the 24 hour period following notice, the Commission is authorized to expend funds from the landlord's deposit to effect repairs.[183] The Mayor and City Council review determinations of the Commission. Appeals must be taken within ten days; the issues on appeal are limited to the existence of an emergency condition and the reasonableness of the amount expended to repair that condition.[184]

The New Jersey Superior Court, Appellate Division, has upheld the Ridgefield ordinance in the face of constitutional challenge.[185] The court first rejected the landlords' assertion that there is no statutory authority permitting the municipality to enact a LSDA, finding authorization in the general grant of municipal powers.[186] The landlords also claimed that the due process clause required a hearing prior to expending deposited funds. The court held that while due process generally required a hearing, where an emergency condition existed such hearing could be deferred, and where a public nuisance existed the Commission could dispense with the hearing.[187] The court also rejected claims that the regulation was invalid as an impermissible delegation[188] and an unreasonable burden on landlords.[189]

Landlord security deposit acts contain a number of valuable features promoting decent housing and fair treatment. The Ridgefield ordinance provides a ready fund of at least $400, and usually much more, which is immediately available to correct dangerous defects. The immediacy and ease with which enforcement takes place can make the statute a most effective tool of code enforcement. Additionally, because the offending landlord bears the cost of repairs, the entire program operates without expenditure of municipal funds. The city can also charge the cost of administration against the interest on the security deposits.[190]

[181] Ridgefield, N.J. Ordinance 930, *supra* note 171, at § V-C.

[182] *Id.* § I.

[183] *Id.* § V-D. If it is not reasonable for repairs to be completed in 72 hours, § V-D is inapplicable. *Id.* § V-F.

[184] *Id.* § IV-B, *as amended*, Ridgefield, N.J. Ordinance No. 947 (Nov. 21, 1972). The landlord's appeal must be heard within 30 days of filing and finally determined within 14 days of hearing. The landlord has a right of further appeal from the administrative determination to a state court of competent jurisdiction.

[185] Apartment House Council v. Mayor and Council of Ridgefield, 123 N.J. Super. 87, 301 A.2d 484 (Law Div. 1973), *aff'd per curiam* 128 N.J. Super. 192, 319 A.2d 507 (App. Div. 1974).

[186] *Id.* at 90-91, 301 A.2d at 485-86.

[187] *Id.* at 95-101, 301 A.2d at 488-91. *See generally* p. 25 *supra*.

[188] *Id.* at 101-02, 301 A.2d at 491-92.

[189] *Id.* at 102-03, 301 A.2d at 492-93.

[190] *See* note 176 *supra*.

In practice, landlord security deposit acts have had considerable prophylactic impact. Experience indicates that many landlords engage in maintenance programs designed to forestall resort to the act.[191] Further, undermaintenance is discouraged, leading to landlord repair of buildings while the structures are still in sound economic and physical condition.[192] Because of its simplicity in concept and application, the LSDA is easy both for tenants to use and cities to administer. The LSDA has not created any serious administrative problems nor engendered any appreciable expansion of the municipal bureaucracy during its first two years of use in Ridgefield.[193]

However, landlord security deposit acts have a number of implicit limitations. Since they rely on landlord cooperation and money to effect repairs, landlord security deposit acts cannot be expected to rehabilitate massively deteriorated buildings. No legislative or judicial reform is capable of compelling a landlord to invest more in a building than can ever be recouped. Under any program, when the

[191] The Ridgefield experience has been one of landlords making repairs on their own faced with the prospect of the city depleting the landlord's security to effect repairs. There is a general feeling among landlords that it is more economical to make repairs themselves than to allow the city to do it. According to Jules Capozzi, Commissioner of Health of Ridgefield: "As of this date, we have never had to use any of the funds deposited. As a matter of fact, the ordinance has acted as a deterrent insofar as the landlord realizes if he fails in his duty to maintain his property and provide basic and essential services, the security money is on hand and can be used to correct the existing problem.

"An example of such a situation, involving our largest multiple dwelling landlord, occurred recently in our municipality.

"We were informed by the Hackensack Water Co., who services our residents, that this landlord was in arrears on his payment and was in danger of having the services shut off if payment was not received within 24 hrs. This shutdown would have affected approximately 300 persons, leaving them without potable water supply and sanitary facilities. We contacted the owner requesting that he make proper payment to the water company, further stating that should he fail to do so we would withdraw the money from his security funds for the amount in question. Within approximately 20 minutes after our conversation with him, we received another call wherein he stated that through an error the overdue amount had not been paid when first billed, however he was at that moment dispatching a courier to the water company to bring the payment up to date. As you can see, the LSDA gave us the needed leverage to force payment without a struggle." Statement by Jules Capozzi, Commissioner of Health of the Borough of Ridgefield, Feb. 1975, on file with Nat'l Housing and Economic Devel. Law Project, Berkeley, California, and with the *Harvard Civil Rights-Civil Liberties Law Review*.

[192] The prevention of deterioration will result in fewer buildings becoming prospects for abandonment. However, the factors and motivations leading to abandonment have been shown to be exceedingly complex. *See* G. Sternlieb & R. Burchell, Residential Abandonment: The Tenement Landlord Revisited (1973); G. Sternlieb, The Tenement Landlord (1966).

[193] *See* note 191 *supra*.

danger concretely arises that code enforcement will induce the withdrawal of units from the market, a cost-benefit judgment must be made. While the act does not solve this fundamental dilemma, it does provide a practical means of enforcing codes in those instances where it has been decided by the municipality that the net condition of the housing stock, considering both quality and quantity, would be best served by enforcement.[194] Lastly, to be fully effective the ordinance must be accompanied by tenant protections against retaliatory action in general and retaliatory rent increases in particular.[195]

E. Tenant-Mortgagee Negotiating Strategy

Tenant-mortgagee negotiating is a method by which tenants can involve mortgagees in the rehabilitation of deteriorated residential buildings. The strategy is based upon the legal right of tenants pursuant to the warranty of habitability to withhold rent or to seek rent abatement against the landlord-mortgagor when serious housing defects exist.[196] Continued rent withholding or abatement decreases the rent flow available to the landlord, thus placing a financially marginal landlord in serious danger of defaulting on the mortgage payments.[197] Tenants who exercise their right to decent housing may thus be forcing foreclosure by the mortgagee. When foreclosure becomes a real possibility the mortgagee is compelled to become involved with the problems of the building, the tenants, and the landlord-mortgagor, often for the first time.[198]

[194] Present LSDA's do not allow the municipality discretion to deny repair on the ground that repair is economically unjustified.

[195] The three New Jersey municipalities with the LSDA have also adopted municipal rent controls. Under these municipal rent controls, the landlord may only "pass through" the cost of those repairs which amount to a capital improvement to the property. At a very minimum, a city without rent controls would need a strong retaliatory protection law to prevent landlords from passing repair costs on to tenants. *See* pp. 13-15 *see ra.*

[196] *See* pp. 7-11 *supra.*

[197] In the sense used here, a financially marginal landlord is one who relies on rent flow to meet fixed costs such as mortgage payments, taxes, and maintenance and does not have access to outside financial resources to meet those costs should they temporarily exceed rents and associated income.

[198] Facing faltering debt payments, the mortgagee may begin to review the circumstances leading to default and investigate marketability. The existence of a continuing rent strike and the viability of a strong tenants' union will be a factor in the mortgagee's evaluation of the financial status and market value of the building. Where there is little or no market for the deteriorated building and property values in the area have fallen, foreclosure will be unattractive. Moreover, if there is no immediate market for the building, the mortgagee faces the unappealing prospect of becoming the landlord of slum property already embroiled in tenant litigation.

Where it is against the interests of the mortgagee to foreclose, the landlord and mortgagee will together seek to restore the full rent flow of the building in order to enable the landlord to resume mortgage payments. Tenants can use their leverage in this situation to bargain with the mortgagee and landlord for cooperation in repair of the building.[199]

The tenant-mortgagee negotiating strategy had its first test in Orange, New Jersey, in 1970.[200] Tenants living in a severely dilapidated building were able to obtain approximately $5,000 toward repairs through negotiations with the mortgagees and the landlord. Faced with a long list of unrepaired code violations, the tenants organized to press for repair. After the landlord failed to make repairs the tenants initiated collective rent withholding and began paying their monthly rent into a bank escrow account. In August, 1970, following three months of rent withholding, the landlord filed eviction actions against all participating members of the association. The tenants filed an answer and a class action counterclaim for damages, declaratory judgment, and injunctive relief based on breach of the warranty of habitability and moved to join the four mortgagees as party defendants in the affirmative action. The tenant

[199] The tenants may wish to increase their leverage by filing an affirmative damage action against the landlord and joining the mortgagee on the theory of mortgagee liability. The cause of action against mortgagees is derived from the California Supreme Court opinion in Connor v. Great West. Sav. & Loan Ass'n, 69 Cal. 2d 850, 447 P.2d 609, 73 Cal. Rptr. 369 (1968), where the court held mortgagees liable to subsequent purchasers for damages arising out of structural defects in new construction on a theory of negligence based on the breach of their duty to exercise reasonable care to prevent such defective construction. *See also* Biakanja v. Irving, 49 Cal. 2d 647, 320 P.2d 16 (1958); Bradler v. Craig, 274 Cal. App. 2d 466, 79 Cal. Rptr. 401 (2d Dist. 1969); Comment, *The Expanding Scope of Enterprise Liability*, 69 COLUM. L. REV. 1084 (1969); Comment, *Torts-Negligence-Construction Financier Held To Have Duty to Protect Purchasers of Defective Homes Against Loss*, 44 N.Y.U. L. REV. 639 (1969); Comment, *New Liability in Construction Lending: Implications of* Connor v. Great Western Savings & Loan, 42 S. CAL. L. REV. 353 (1969); Comment, *Liability of the Institutional Lender for Structural Defects in New Housing*, 35 U. CHI. L. REV. 739 (1968).

Shortly after adoption by the California Supreme Court, this doctrine was limited by the state legislature. CAL. CIV. CODE § 3434 (West 1970). No other jurisdictions have recognized the theory of mortgagee liability. *But cf.* Morrocco v. Felton, 112 N.J. Super. 226, 270 A.2d 739 (Law Div. 1970), in which a New Jersey trial court held that, under the circumstances, the mortgagees were proper parties in an action for damages by tenants, but did not reach the issue of liability. At least one commentator has presented an argument for application of the *Connor* doctrine to tenants. *See* Note, *A New Tenant Remedy: Lender Liability for Structural Defects*, 3 U.C. DAVIS L. REV. 167 (1971).

[200] *See* note 205 *infra.*

motion was granted, along with a motion to consolidate and transfer the pending summary eviction actions and the affirmative action to the Superior Court.[201] At this point, the parties initiated serious negotiations.

Due to continued rent withholding, the landlord faced difficulty meeting mortgage payments. The mortgagees were aware of a limited market for purchase of the building due to its dilapidated condition, its poor location, and the presence of an aggressive tenants' association involved in multiple court actions. Both the landlord and the mortgagees bore the additional burden of defending the tenants' pending legal action against them. The tenants entered negotiations confident of obtaining a continuing rent abatement from the court but more interested in achieving needed repairs to their building.

After extensive negotiations, an agreement was reached among all parties which provided for the repair of the building, the resumption of full rent payments, and a limited mortgage moratorium.[202] In this way the full rent flow after taxes could be used to effect repair of the building. Pursuant to the agreement, the boiler was repaired, the plumbing was replaced or repaired, most walls and ceilings were replastered, and a comprehensive rodent and insect extermination program was completed.[203]

A negotiating strategy such as this should begin with a tenant request for a meeting with the landlord, the mortgagee, and their respective counsel, for the purpose of presenting an equitable solution to the problem at hand.[204] The following is an outline generalized from the New Jersey tenant proposal:[205]

> (1) Tenants will offer to resume payment of full rent on condition that rent be applied directly to tenant-designated repairs on the building owned by the landlord and mortgaged by the lender.[206] Tenants should be prepared to submit a list in order of priority of needed repairs along with their estimated cost. The tenants may even agree collectively to assume responsibility for rent collection on behalf of the landlord.
>
> (2) The mortgagee will declare a moratorium on mortgage payments.[207] Where the mortgage is old and the bulk of payments go toward principal, the tenants may agree to keep only the interest payments current. Where the interest represents a significant portion of the payment, it too will require at least partial suspension. The moratorium should last as long as it takes to accumulate a fund sufficient to effect the repairs designated by the tenants in the order of priority established by the tenants. The duration of the moratorium may be either a fixed period computed in advance based on the estimated repair costs or an indeterminate period pending completion of repairs. The mortgagee must also agree to extend the remaining term of the mortgage to encompass the full period of the moratorium. The cost of recasting the mortgage or refinancing the loan should be borne by the mortgagee.
>
> (3) The landlord must voluntarily agree to extension of the mortgage by the period of the moratorium and, if interest is to be kept current during the moratorium, to the payment of additional interest during the extension period.[208] The landlord must accept the responsibility of supervising all repair work and guaranteeing completion in a timely and competent manner. The tenants should reserve the right to monitor the progress of all repairs.[209]

The equity of the proposal is self-evident. The landlord retains title to the property, avoiding foreclosure and a possible deficiency judgment. In addition, the landlord's property will be extensively

[201] Morroco v. Felton, 112 N.J. Super. 226, 270 A.2d 739 (Law Div. 1970).

[202] At this point, the case was removed from the trial calendar, but the Superior Court retained continuing jurisdiction to oversee performance of the agreement.

[203] Repairs under the agreement continued for several months until disputes arose concerning the extent and nature of further repairs. When the tenants reinstituted rent withholding, the mortgage was foreclosed upon. Unable to find a buyer for the building, the mortgagee retained title and repairs were continued by the receiver in foreclosure until the building was sold six months later.

[204] It should not be difficult to get all parties to agree to a meeting, since at this point none of the parties will be in an enviable position. The tenants desire needed repairs, the landlord faces foreclosure, and the mortgagee faces economic loss and the prospect of becoming a slum landlord and a civil defendant.

[205] The building was located at 284, 288, and 292 North Day Street in Orange, New Jersey. Four mortgagees were joined as defendants. *See* Morroco v. Felton, 112 N.J. Super. 226, 229-30, 270 A.2d 739, 740 (Law Div. 1970).

[206] Tenants bear the cost of voluntarily relinquishing their right to rent abatement under the warranty of habitability and paying full rent for at least the period of the agreement. *See* pp. 7-13 *supra*. If full repairs are achieved, there will be no further basis for rent withholding. If repairs are not achieved, tenants can then exercise their rights under the warranty.

[207] This is not an excessive concession for a mortgagee already facing a continuing default in mortgage payments stemming from the tenants' rent withholding or abatement.

[208] The interest rate appliable to the extension period should be the same as the rate originally negotiated on the mortgage; however, some concession may be necessary to reflect current high rates of interest.

[209] Provision can be made for settlement of disputes as to the sufficiency of repair work by calling in code inspection agencies as final arbitrators.

repaired at no immediate personal cost. The repaired buildings will be enhanced security for the mortgagee's loan. Mortgage payments will be resumed on a continuing basis in the foreseeable future, and the necessity of foreclosure and concommitant risk of economic loss will be removed. Moreover, increased interest may be recouped and favorable community publicity gained for the mortgagee. The tenants, of course, benefit from the repairs by receiving the decent housing guaranteed by the implied warranty. Communications among the three principal parties will be improved, facilitating smoother operation of the building. Once repairs are completed and a maintenance program is established, negotiation can begin concerning future rent increases and term leases.

There are two major strengths to the tenant-mortgagee negotiating strategy. First, since the value of the landlord's property is increased by the procedure, the strategy has a realistic potential of receiving ad hoc landlord support. It is probably the only potentially effective tenant remedy that can make that claim. Second, the new source of funds may be sufficient to accomplish massive repair. The strategy is limited, however, in that it is viable only if foreclosure is extremely unattractive to the mortgagee. The mortgagee cannot be forced to participate in any moratorium program and may, depending on market conditions, be completely disinterested in entering negotiations. The strategy cannot be successful when it is not in the landlord's and the mortgagee's best interests to enter into good faith negotiations.

III. BEYOND URLTA—FAIR TREATMENT: SECURITY OF TENURE/JUST CAUSE EVICTION

Security of tenure/just cause eviction statutes guarantee tenants continued possession conditioned upon compliance with all legal obligations of the tenancy, with controlled exceptions, while simultaneously securing the landlord's ability to regain possession upon a showing of cause sufficient to justify the tenant's ouster. "Security of tenure" emphasizes the tenant's presumptive continued possession; "just cause eviction" emphasizes the landlord's right to repossession in certain circumstances. The terms are used interchangeably in this discussion.

Security of tenure statutes address the most egregious and disruptive form of unfair treatment—capricious or vindictive eviction. In an eviction action the landlord is asserting a right to repossess, often with minimal advance notice, a living unit previously placed in the rental market for the landlord's commercial benefit. The tenant is

primarily asserting the right to fair and adequate advance notice. But he is also asserting the right to continuity of basic living arrangements structured around sustained occupation of premises previously held out for such residential use. Where the landlord interest in repossession is deemed controlling, varying advance notice requirements accommodate the relative urgency of the landlord interest and the tenant interest in a fair and adequate opportunity to make other living arrangements.

Just cause eviction differs in two respects from a prohibition on retaliatory evictions.[210] First, in contrast to retaliatory eviction,[211] the landlord always bears the burden of proof of a valid cause under the just cause scheme. Second, and more importantly, just cause eviction requires the landlord to present justification not only for eviction during the term of a lease but also for refusal to renew a lease agreement.[212] Traditionally, landlords have had an absolute right[213] to deny renewal of a tenancy for a term and to end a tenancy at will upon notice.[214] The only legal means of effectuating a tenant preference for tenancies of greater duration was through the negotiation of a long term lease. Security of tenure/just cause eviction proposals seek to achieve an equitable resolution of the competing landlord and tenant interests where meaningful equivalence of bargaining power is lacking. Similarly, lack of tenant bargaining power mandates a provision barring waiver of tenant security of tenure rights.[215]

The comprehensiveness and significance of any "just cause" eviction scheme obviously depends in large measure upon the substantive definition of "just cause." Several options, varying in specificity according to the desired degree of reliance upon judicial elaboration, are available to the drafter. Since uncertainty as to their

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[210] *See* pp. 12-16 *supra*.

[211] A retaliatory eviction defense relies upon a showing of retaliatory motive. The tenant is often aided by presumptions in establishing that motive. *See* p. 14 *supra*. The tenant, however, still bears the burden of establishing the initial condition of the presumption, *e.g.*, organizing activity. Further, such statutory presumptions are effective only for a fixed and limited period of time. *See, e.g.*, URLTA § 5.101(b).

[212] In contrast, under a retaliatory eviction law, the landlord need only present a cause in rebuttal of the defense. Further, and more importantly, the protection against retaliatory eviction is said not to last indefinitely, but rather to "dissipate" should that purpose cease to exist. Edwards v. Habib, 397 F.2d 687, 702 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969).

[213] This formerly absolute right has already been limited by retaliatory eviction protections, which have been held applicable to termination of a month to month tenancy at will. *See* Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968).

[214] In most states month-to-month tenancies may be terminated upon 30 days' notice without cause. *See, e.g.*, CAL. CIV. CODE § 1946 (West 1975).

[215] *See, e.g.*, N.J. STAT. ANN. § 2A:18-61.4 (1974).

legal standing often deters tenants from enforcing their legal rights,[216] it is suggested that legislative enumeration of "just" and "unjust" cause be fairly extensive. Drafting decisions of this nature are not inconsequential; they may significantly influence the prospects of adoption as well as the ultimate substantive definition of "just cause" and the likelihood of the tenants' undertaking enforcement of their security of tenure rights.

Currently, security of tenure is guaranteed to private housing tenants only in the state of New Jersey[217] and in rent-controlled units in Massachusetts[218] and New York City.[219] Several states extend security of tenure to mobile home park tenants.[220] Additionally, due process[221] and HUD regulations[222] have been interpreted as establishing just cause eviction protections for occupants of public housing nationwide.

The New Jersey statute[223] is thus the only just cause eviction scheme independent of rent control and applicable to private housing tenants generally. All private residential rental units are covered by the act, with the exception of transient lodging and owner-occupied premises with no more than two rental units.[224] Ten "just causes" for eviction are identified. They are as follows:

> a. The person fails to pay rent due and owing under the lease whether the same be oral or written;
> b. The person has continued, after written notice to cease, to be so disorderly as to destroy the peace and quiet of the occupants or other tenants living in said house or neighborhood;
> c. The person has willfully or by reason of gross negligence caused or allowed destruction, damage or injury to the premises;
> d. The person has continued, after written notice to cease, to substantially violate or breach any of the landlord's rules and regulations governing said premises, provided such rules and regulations are reasonable and have been accepted in writing by the tenant or made a part of the lease;
> e. The person has continued, after written notice to cease, to substantially violate or breach any of the covenants or agreements contained in the lease for the premises where a right of re-entry is reserved to the landlord in the lease for a violation of such covenant or agreement, provided that such covenant or agreement is reasonable;
> f. The person has failed to pay rent after a valid notice to quit and notice of increase of said rent, provided the increase in rent is not unconscionable and complies with any and all other laws or municipal ordinances governing rent increases;
> g. The landlord or owner seeks to permanently board up or demolish the premises because he has been cited by local or state housing inspectors for substantial violations affecting the health and safety of tenants and it is economically unfeasible for the owner to eliminate the violations. In those cases where the tenant is being removed because of the existence of substantial violations of law affecting health and safety, no warrant for possession shall be issued until [the relocation assistance statutes have] been complied with;
> h. The owner seeks to retire permanently the building or the mobile home park from the rental housing market;
> i. The landlord or owner proposes, at the termination of a lease, reasonable changes of substance in the terms and conditions of the lease, including specifically any change in the term thereof, which the tenant, after written notice, refuses to accept;
> j. The person, after written notice to cease, has habitually failed to pay rent.[225]

The New Jersey enumeration of just causes appears both to accommodate all legitimate landlord interests in eviction and to bar most capricious or vindictive motives for eviction. The only just causes not relating to tenant conduct, and therefore creating a substantial risk of effective concealment of an illegal motive, require the removal of the entire structure from the rental housing market.[226] Of

[216] Individual tenants are less likely to seek judicial clarification or elaboration of the standard than are landlords with a multiple, continuing, and recurring interest in the regulation. Further, unnecessary reliance upon case law to elaborate the standards heightens the confusion and alienation that may inhibit tenant recourse to the courts and thus the reality of decent housing and fair treatment. For a discussion of the same theme in a slightly different context, see Rose & Scott, *"Street Talk" Summonses in Detroit's Landlord-Tenant Court: A Small Step Forward for Urban Tenants*, 52 J. Urb. L. 967 (1975).

[217] N.J. Stat. Ass. § 2A:18-61.1 (1952).

[218] Mass. Gen. Laws Ann. 40 App. § 1-9(a) 1970.

[219] New York City Local Law, No. 16-1969, § NY55-5.10(c)(9).

[220] *See, e.g.*, N.Y. Real Prop. Law 233 (McKinney Supp. 1974); Fla. Stat. Ann. § 83-69 (1973), *upheld in* Palm Beach Mobile Homes, Inc. v. Strong, 300 So.2d 881 (Fla. 1974).

[221] Thorp v. Housing Authority of Durham, 393 U.S. 268 (1969); Omaha v. United States Housing Authority, 468 F.2d 1 (8th Cir. 1972), *cert. denied*, 410 U.S. 927 (1973); Joy v. Daniels, 479 F.2d 1236 (4th Cir. 1973); Rudder v. United States, 226 F.2d 51 (D.C. Cir. 1955).

[222] *See, e.g.*, HUD Circular 7465.8-9 (Feb. 22, 1971).

[223] N.J. Stat. Ann. § 2A:18-611 (1974).

[224] *Id.*

[225] *Id.*

[226] *Id.* § 2A:18-61.1 (g),(h).

course, in addition to the establishment of a just cause for eviction, the landlord must also rebut any claim of impermissible retaliatory motive.[227]

Fair treatment may be advanced by procedural as well as substantive reforms. The New Jersey statute provides that no judgment may be entered for the landlord unless advance written notice has been given to the tenant. The notice period required varies according to the stated cause for eviction.[228] In accommodating the urgency of the landlord interest and the pervasive tenant interest in fair and adequate advance notice, the variable notice schedule accords the highest priorities to specific and immediate tenancy-related interests and lesser priorities to general business and personal interests. Thus, where "the [tenant] has willfully or by reason of gross negligence caused or allowed destruction, damage, or injury to the premises,"[229] the landlord is accorded speedy court access.[230] At the other extreme, where the landlord only asserts general business or personal reasons for dispossession, such as removal of the unit from the market, a longer advance notice is required.[231]

Although security of tenure and rent control buttress each other's effectiveness and may be enacted together,[232] security of tenure can exist as a progressive reform independent of rent control. Any security of tenure scheme which does not control vindictive rent increases is easily subverted.[233] However, vindictive rent increases can be controlled without the general regulation of rent levels associated with rent control by conditioning availability of the "just cause" of tenant nonpayment in the context of a recent rent increase upon the nondiscriminatory nature of the increase and upon the

[227] Silberg v. Lipscomb, 117 N.J. Super. 191, 285 A.2d 86 (Union County Ct. 1971). *See also* Note, *New Rights for New Jersey Tenants—"Good Cause" Eviction and "Reasonable" Rents*, 6 Rutgers—Camden L.J. 565, 584 (1975).

[228] N.J. Stat. Ann. § 2A:18-61.2 (1974).

[229] *Id.* § 2A:18-61.1(c).

[230] Only three days' notice need precede the institution of the action for possession. *Id.* § 2A:18-61.2.

[231] Where permanent removal of the unit is the alleged basis of the eviction action, minimum notice is six months. *Id.* § 2A:18-61.2(d).

[232] *See* notes 12-13 *supra*.

[233] To the extent that vindictive rent increases are tolerated, and that nonpayment of rent is allowed as a "just cause," landlords can readily circumvent the security of tenure provisions. All the landlord need do is initiate the eviction effort with a notice of drastically increased rent. The ensuing nonpayment by the victimized tenant will provide a "just cause" for eviction. Without protective controls, the landlord could, after eviction, lower the rental in order to market the unit. Rent controls effectively control this circumvention of security of tenure by regulating the rental. The aspect of rent control regulation which is an essential buttress to the effectiveness of just cause eviction is not regulation of rent levels but rather the requirement of uniformity of rental increases.

landlord's ability-in-fact to re-rent the unit at the higher level. The combination of these two conditions greatly increases the effectiveness of market controls, in that the landlord must be able to secure a general increase in rents for all units rather than for only that of the evicted tenant.

Since discrimination is highly probative of retaliatory motive, the first condition, nondiscrimination, is effectively established as a corollary of existing retaliatory eviction protections.[234] Two means might be utilized to enforce the second condition, the requirement of ability-in-fact to re-rent the premises at the increased rent. The presentation of a completed lease contract at the increased rent conditioned on the availability of the unit could be made a prerequisite of that particular "just cause." Alternatively, the evicted tenant could be allowed a generous damage action against a landlord securing eviction on false representation of ability-in-fact to re-rent the unit at the increased rent.

Security of tenure systems have several beneficial aspects. First, they eliminate capricious eviction, while retaliatory eviction protections generally reach only vindictive actions.[235] Second, they legislate an equitable resolution of landlord and tenant interests in duration of the tenancy where tenant bargaining power is so minimal as to preclude meaningful negotiation between the parties.[236] Third, securing the tenant's tenure enhances the tenant's bargaining power in regard to other issues. Where tenant demand for residential units exceeds their supply, landlords have an advantage which they have traditionally used to the detriment of both tenants and housing conditions in general.[237] The guarantee of tenure to the tenant compels landlords to deal directly with the needs and grievances of a tenant, fulfilling all obligations of the tenancy. Fourth, the prospect of long term tenure greatly increases the tenant's interest in maintenance of the unit.[238] This enhanced interest, a result of fair treatment of the tenant, promotes the public policy of decent housing and may well inure to the benefit of the landlord in the form of reduced maintenance costs. Widespread adoption of security of tenure systems would materially advance fair treatment reform.

[234] *See* pp. 13-17 *supra*.

[235] *See id.*

[236] *See* p. 4 *supra*.

[237] *See* Edwards v. Habib, 397 F.2d 687, 701 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969); Green v. Superior Court, 10 Cal.3d 616, 621-22, 517 P.2d 1168, 1173-74, 111 Cal. Rptr. 704, 709-10 (1974).

[238] L. Stevens, Security of Tenure (1973) (report for the Law Reform Comm'n of British Columbia).

EPILOGUE—TENANT ORGANIZING

The ultimate value and effect of tenant reforms can only be measured in terms of whether or not they are widely applied and utilized in the community. No legal reform can improve the quality of urban life if landlords and tenants are ignorant or misinformed. Landlords' lack of knowledge can result in costly and unnecessary delays in simple eviction actions. Tenants' ignorance leaves many of them prey to substandard living conditions and abusive treatment.

One of the most effective means of keeping tenants informed of their rights is the maintenance of an active tenant union.[239] As an advocate of tenants' rights the union is naturally a more thorough and helpful conduit of information than code enforcement agencies, courts, landlords, or news services. Also, collective tenant action may enhance the effectiveness of the remedies herein discussed.[240] Whereas one tenant withholding rent is vulnerable, an entire building participating in a rent strike makes retaliatory evictions obvious, unwieldy, and economically unfeasible. Collective withholding is multiplied tenant action and may substantially improve the actual living conditions in the building by stirring the landlord to reconsideration of maintenance policies and recognition of a meaningful tenant role in decisionmaking. Individual withholding, on the other hand, may well be treated as a mere inconvenience.

Furthermore, the legislative enactment of tenant reforms depends upon the concerted lobbying of tenant groups.[241] Achievement of tenant reforms through litigation requires tenant activity at many levels. Tenants must make their needs a priority with local legal services and portions of the private bar in order to generate sufficient interest and commitment of time and personnel to tenant problems. Additionally, active tenant organizations can help to instill a greater

[239] For a broad overview of tenant organizing and tenant unions with an emphasis on the role of attorneys, see NATIONAL HOUSING AND ECONOMIC DEVELOPMENT LAW PROJECT, HANDBOOK OF HOUSING LAW, ch.1 (2d ed. 1973) (distributed by the National Clearinghouse for Legal Services, Chicago, Ill.); Flaum & Salzman, The Tenants Rights Movement, The Urban Research Corp., Chicago, Ill., Sept. 1969; Bazarko, *Tenant Unions: Legal Rights of Members*, 18 CLEV.-MAR. L. REV. 358 (1969); Note, *Tenant Unions: Growth of a Vehicle for Change in Low Income Housing*, 3 U.C. DAVIS L. REV. 1 (1971); Note, *Tenant Unions: Their Law and Operation in the State and Nation*, 23 U. FLA. L. REV. 79 (1970); Note, *Tenant Unions: Collective Bargaining and the Low-Income Tenant*, 77 YALE L.J. 1368 (1968).

[240] *See*, Moskovitz & Honigsberg, *Tenant Union-Landlord Relations Act: A Proposal*, 58 GEO. L.J. 1013, 1031-43 (1970).

[241] Tenant organizations have, for example, played a significant role in the adoption of URLTA. *See Arizona and Washington*, *supra* note 6; *The National Experience*, *supra* note 5.

awareness of tenant needs in the local judiciary. In the courtroom itself, tenants can be supportive of other tenants by providing testimony and joining in litigation.[242]

Once reforms are established, tenant organizations have the vital function of disseminating information and assisting in enforcement of tenant protections.[243] Several groups have published handbooks[244] and newsletters[245] useful to tenants and tenant organizers.

The size of a tenant organization is not critical. They range from organizations based in single buildings to state-wide unions with half a million members.[246] They are effective to the extent that their common purpose of better housing and better treatment remains of paramount importance.

CONCLUSION

The URLTA and its component basic reforms as outlined in this Article represent a system of rights and obligations which will, for the first time, give tenants adequate legal protection in the housing marketplace. While the URLTA reforms constitute progressive steps

[242] For example, in New Jersey, the New Jersey Tenants Organization gave broad support and participated as *amicus curiae* in every major lawsuit involving tenant reforms. These included Berzito v. Gambino, 63 N.J. 460, 308 A.2d 17 (1973) (retroactive rent abatement); and Apartment House Council v. Mayor and Council of Ridgefield, 123 N.J. Super. 87, 301 A.2d 484 (Law Div. 1973), *aff'd per curiam*, 128 N.J. Super. 192, 319 A.2d 507 (App. Div. 1974) (landlord security deposit act).

[243] The role of tenant unions in the enforcement of tenant protections can be strengthened by the adoption of collective bargaining agreements between tenants' unions and landlords. *See* Moskovitz & Honigsberg, *Tenant Union-Landlord Relations Act: A Proposal*, 58 GEO. L.J. 1013, 1031-43 (1970).

[244] Numerous excellent tenants rights handbooks have been produced by tenant organizations, many of which can be used as a model for similar publication in other jurisdictions. *See, e.g.*, CAMBRIDGE TENANTS ORGANIZING COMMITTEE, LEGAL TACTICS FOR TENANTS (2d ed. 1973) (obtainable at 595 Massachusetts Avenue, Cambridge, Ma. 02139); METROPOLITAN COUNCIL ON HOUSING, ORGANIZING HANDBOOK—FOR IMMEDIATE REPAIRS AND SERVICES (Nov. 1966) (obtainable at 2 West 31st Street, Room 508, N.Y.C., N.Y. 10001); MINNESOTA TENANTS UNION, IF YOU PAY RENT, YOU'VE GOT RIGHTS TOO! (Sept. 1973) (obtainable at Box 8461 Lake Street Station, Minneapolis, Mn. 55408); THE RESIDENT ADVISORY BOARD OF PHILADELPHIA, THE PUBLIC HOUSING TENANTS RIGHTS HANDBOOK (1969) (obtainable at 121 North Broad Street, Philadelphia, Pa.).

[245] Among the leading tenant newsletters are: *Tenants Outlook*, published by NTO; *N.J.T.O. Newsletter*, published by the New Jersey Tenants Organizations; *Tenant*, published by New York's Metropolitan Council on Housing; and *Vox Populi*, published by the Washington State Low-Income Housing Coalition (LoHoCo).

[246] NTO has published and distributes a 1973 listing of local tenant groups and their activities entitled *Report on State Tenant Organizations*.

towards the dual goals of decent housing and fair treatment, they are insufficient fully to achieve those goals. Advanced reforms are herein suggested, reaching beyond the Uniform Act in an attempt to attain those goals. Specifically, in the field of decent housing reform, receivership, retroactive rent abatement, specific performance of the warranty of habitability, landlord security deposit legislation, and utilization of tenant-mortgagee negotiating are advocated. Security of tenure/just cause eviction is advanced as a major new fair treatment reform. While legal reform is advocated, it is recognized that the successful translation of that reform into an improved urban life is largely dependent upon active tenants' groups.

...DAY, JANUARY 21, 1981

THE WALL STREET

REAL ESTATE

Learned Investment...Model Law A Bust?...Energy vs. Aesthetics

UNIVERSITIES ARE MOVING INTO REAL ESTATE as an alternative to stocks and bonds, whose ups and downs are giving endowment managers fits. "It's a major decision, but not a hard one to make," says Harry Turner, associate director of finance at Stanford University. "The attractiveness of real estate is just too persuasive."

Stanford, with about $600 million in its endowments, had always shunned real estate, except for nearby property. But last year it began putting up to $40 million into outside transactions. Its most recent venture: a Sun Belt hotel and office-building complex for about $7 million.

While some other large schools, such as Columbia University and Yale University, also are investing directly in real estate, others are proceeding more cautiously. Washington University in St. Louis, for instance, has joined with an insurance company in making mortgage loans. The university puts up as much as 50% of the cash, and gets a small equity participation, while the insurance outfit handles the paperwork for a fee. Meanwhile, many smaller schools are hoping to join forces as a way to buy large properties and spread the risk.

Still, some universities want no part of it. "Real estate is too much of a fad right now," says an investment director at a Boston school. "It's overpriced and very illiquid. I'm afraid someone may get burned. And I don't want it to be me."

ATTEMPTS BY 16 STATES to help urban poor tenants by passing housing laws patterned after a model statute have been largely ineffective. That's the conclusion of a study by two attorneys with the American Bar Foundation.

The state laws are variations of the Uniform Residential Landlord and Tenant Act of 1972, a model law that basically requires landlords to comply with housing codes. "It has been touted as a way to maintain, if not upgrade, the quality of housing," says Samuel Jan Brakel, who studied the Oregon version of the law in Portland. His colleague, Donald McIntyre, looked at Cleveland.

The two men found that while middle-class renters took advantage of the legislation, the poor didn't. "Putting the burden on poor tenants to assert their rights doesn't change much," Mr. Brakel says. Judges don't help either, he adds. "It's a question of time and the impossibility of making a major case out of each one of these," Mr. Brakel says.

Mr. McIntyre believes that government agencies with authority to respond to complaints and to levy fines are better remedies. He says building inspectors also could be impartial experts in court. "As it is now," he says, "it's the landlord's word against the tenant's."

Another expert thinks the Brakel-McIntyre study omits an important point. John McCabe, legislative director for the National Conference of Commissioners on Uniform State Laws, a private, state-supported group that drafts model laws, says: "The law, just by being there, has curbed some bad practices of landlords."

OKLAHOMA
LEGISLATIVE COUNCIL

Division Of

LEGAL SERVICES

MEMORANDUM OF LAW

Re: Limitation on raising of rent, contrary to provisions of written lease.

Prepared by
Robert E. Goldfield
Staff Attorney
October 12, 1978

STATE LEGISLATIVE COUNCIL
Legal Services Division

Memorandum of Law

RE: Limitation on raising of rent, contrary to provisions of written lease.

The question of whether a landlord can raise the rent of a tenant contrary to the provisions of a written lease revolves around whether a lease between a landlord and tenant is of such a binding nature between the parties that the raising of the rent during the term of the lease would violate its terms.

In Phillips v. Maxey, 195 Okl. 418, 158 P.2d 344 (1945), the Oklahoma Supreme Court considered a case in which the tenant unilaterally attempted to cancel a written lease agreement by notifying the landlord that the premises were being surrendered as of a certain date. The court stated that:

> "A lease in writing constitutes a written contract and the lessee cannot surrender or be released from the terms without the consent of the lessor and it is absolutely essential to the termination of the term that both lessor and lessee agree to the surrender."

Since the court has accepted a rental lease as a written contract, such lease would then fall under the rule of law relating to contracts.

Section 1 of Title 15 of the Oklahoma Statutes defines the term contract as follows: "A contract is an agreement to do or not to do a certain thing".

As a lease is of a binding contractual nature, it then becomes imperative to see if such contractual obligations continue to exist as to a new owner of property upon the sale of such property by the previous owner.

Section 12 of Title 41 of the Oklahoma Statutes which follows provides some insight in this regard:

> "A conveyance of real estate, or of any interest therein, by landlord, shall be valid without the attornment of the tenant; but the payment of rent by the tenant to the grantor, at any time before notice of sale, given to said tenant, shall be good against the grantee."

The Oklahoma Supreme Court has reached the following decisions in interpreting this statute. In Whitham v. Lehmer, 22 Okl. 627, 98 P. 351 (1908), in a decision that involved cicumstances wherein a landlord had given three different leases on the same parcel of land and the land had subsequently been sold, the court in quoting from a similar Nebraska case stated:

> 'When a tenant is in the actual possession of real estate at the time it is sold by the landlord, the purchaser is chargeable with notice of the rights of the tenant."

And, in Sevy v. Stewart, 31 Okl. 589, 122 P. 544 (1912), which involves a case wherein a tenant had leased a certain building and first, prior to the sale of the building by the landlord to another person, the tenant vacated the premises and another person entered as a subtenant and thereby became a tenant at will and refused to pay the rents owed to the new landlord, the court decided that:

> "The tenants of a certain grantor, as a matter of law, by implication, as a general rule become the tenants of his grantee."

Thus, the court has ruled that even in such a situation whereby there is not a written lease, the court has decided that the tenant becomes the tenant of the grantee and owes the grantee the proper rents.

In conclusion, it would seem under present Oklahoma statutory and case law that a lease is a binding contract between a landlord and his tenant and the contractual obligation of the landlord to the tenant continues to flow to a new landlord upon the purchase of the land by another person.

LR-78-250 REG:bh 9/15/78

Speaker of the House of Representatives

President Pro Tempore of the Senate

STATE LEGISLATIVE COUNCIL
305 STATE CAPITOL
OKLAHOMA CITY 73105
405/521-3201

July 14, 1980

M E M O R A N D U M*

TO:

FROM: George Humphreys

SUBJECT: Rent Control

This memorandum is pursuant to your request for information regarding rent control legislation. Following is a brief history of rent control legislation in the United States, a summary of some of the major issues that might be considered in preparing rent control legislation and a survey of the current status of rent control.

History of Rent Control in the United States

Rent control legislation was first used in the United States during "emergency" periods in order to solve severe housing problems during the two world wars. According to Kathryn Lori Patrick, in "Rent Control: A Practical Guide for Tenant Organizations" which was published in the San Diego Law Review in August 1978 (a valuable source for the memorandum which is enclosed), "the states and cities adopting rent controls considered them temporary emergency measures that would be unconstitutional in other circumstances." In fact, the United States Supreme Court's 1921 decision in favor of rent control in Block v. Hirsh (256 U.S. 135, 1921) reasoned that " 'the regulation is put and justified only as a temporary measure.... A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change (Patrick, p. 1189).' " According to Patrick, most early rent control ordinances and legislation were drafted in light of the Block standard so that emergency or "boilerplate" provisions were attached.

The courts' view regarding rent control legislation has changed, according to Patrick, since the U. S. Supreme Court's 1934 ruling in Nebbia v. New York (291 U.S. 502, 1934) which "generally... upheld price control legislation regardless of whether an emergency

existed or whether the business was one affected with a public interest (Patrick, p. 1190). Courts generally view rent control legislation as within the scope of legislative jurisdiction, but some courts still appear to require some legislative statement of emergency (see Patrick's article for a full discussion of this issue).

During the past decade, the support from rent control has come from middle class citizens faced with rising housing costs and inflation who have been forced into tenant status. In many areas of the country, the housing industry has been unable to accommodate the increased demands for tenant dwellings allowing some landlords the opportunity to drive rents upward.

Issues in Rent Control Provisions

The Patrick article cited above provides an excellent framework in abstracting the key elements that might be included in a rent control bill. Included are the following concepts:

1. The "boilerplate" or emergency statement might be included in order to ensure that the courts will uphold the legislation and to relate the legislation to a legitimate legislative policy or finding.

2. The fair return on investment principle should be adhered to in preparing rent control legislation. According to Patrick, the courts will invalidate rent control provisions which are confiscatory or which do not allow adjustments within a reasonable period of time. Moreover, as a matter of policy it seems prudent to draft legisaltion that would not prevent landlords from providing improvements. Therefore, Patrick recommends that rent controls should include mechanisms by which landlords can raise rents as they improve the property.

3. Mandatory rent adjustment mechanisms, fixed to the consumer price index or according to a predetermined annual percentage increase, is suggested by Patrick. This is consistent with the just-and-reasonable-return doctrine.

4. Legislation should consider whether control should be exercised by the state or municipalities. In fact, several states have many municipalities which have enacted rent control ordinances. According to the National Rental Housing Council, there is a voluntary landlord-tenant committee in Norman which is considering a city rent control ordinance.

5. Exclusions of some tenant dwellings might be provided in legislation. Patrick suggests that new tenant dwelling units might be excluded from rent control.

6. Commissions could be included in rent control legislation with authority to hear protests from landlords and tenants on a case-by-case basis. Some provision for funding of such commissions might also be included in rent control legislation.

7. Enforcement provisions, including penalties for violators, could be included in rent control legislation. If commissions to hear protests are included, the commission could be empowered with the authority to pursue enforcement remedies provided that procedures are included to insure that due process and fair hearings are provided.

Current Status of Rent Control Legislation

Rent control legislation, at both the state and municipal levels, has been actively pursued in recent years. However, according to a survey published by the National Rental Housing Council on the spread of rent control, the number of states which have passed rent control laws is few. The enclosed survey is current as of May 15 1980 so that some states which have rent control legislation pending might pass rent controls.

Alaska, the District of Columbia, Florida and Maine currently have state rent control laws. Alaska passed an emergency rent control law in 1974 to allow municipalities to control rents during the construction of the Alaskan pipeline. The District of Columbia has had rent controls establishing a maximum percentage increase on tenant dwellings since 1973. Moreover, the District of Columbia has established a nine-member Housing Rent Commission appointed by the Commissioner of the District of Columbia with four members representing the interests of landlords and four members representing the interests of tenants. The Florida statutes prohibit rent control unless a housing emergency exists and then excludes "luxury apartments" above $250 per month. Maine has vague language which prohibits profiteering in rents and establishes a $1,000 fine for landlords who demand "an unreasonable or unjust rent or charge" based upon a fair return on the market value. Other states in which rent control legislation is either pending or has been defeated are: Arizona, Colorado, Connecticut (legislation restricting increases in rent to elderly citizens to the cost of living was defeated in 1979), Hawaii, Idaho, Illinois (a bill authorizing cities with a population exceeding 500,000 to establish Fair Rent Commissions died in committee during the 1979 session), Maryland, Massachusetts, New Jersey, Pennsylvania, Vermont and Washington. California, New Jersey and New York represent states where rent controls have been widely used by passage of municipal controls.

This memorandum should indicate that there is currently considerable effort to control increases on rental property. Should you have any

additional questions, please advise or contact the National Rental Housing Authority, 1800 M Street, N.W., Suite 285-N, Washington, D. C. 20036, (202) 659-3381.

GGH/p

Attachments

*This memorandum is not to be construed as a memorandum of law.

RESEARCH MEMORANDUM FILE 9-097

November 9, 1979

ILLINOIS ANTI-DISCRIMINATION LAWS

Summary

The 14th Amendment to the U.S. Constitution prohibited states from denying due process or equal protection of the law to any person. In addition to this federal constitutional guarantee and such federal legislation as the Civil Rights Act of 1964, Illinois has a number of statutes that address various aspects of discrimination. The Illinois Constitution, the Illinois Fair Employment Practices Act, the Illinois Equal Employment Opportunity Act, and others prohibit employers, employment agencies, and labor organizations from using age, sex, physical or mental handicap unrelated to ability, race, color, religion, national origin or ancestry as motives for hiring, firing, promoting, demoting, or imposing wage differences in the terms and conditions of employment. A variety of procedures, from conference and conciliation to judicial action, are provided for individuals in employment discrimination disputes.

The Illinois Constitution and a number of statutes also prohibit discrimination in other areas. The Constitution prohibits discrimination in housing and the statutes prohibit such activities as blockbusting and refusal to rent to families with children under the age of 14. The Fairness in Lending Act protects certain individuals from discriminatory practices by financial institutions, and the public accommodation laws provide that no person may be denied access to public accommodations because of race, religion, color, national ancestry, or physical or mental handicap. Discrimination in insurance and education are also prohibited.

Anita Williams

Anita Williams
Staff Attorney

AW:bg

Illinois Fair Housing Laws

The 1970 Illinois Constitution

The Illinois Constitution provides that all persons shall be free from discrimination on the basis of race, color, creed, national ancestry, sex[35] or physical or mental handicap[36] in the sale or rental of real property.

The Municipal Code of 1961[37]

The corporate authorities of any municipality may enact ordinances:

-- prescribing fair housing practices;

-- defining unfair housing practices;

-- establishing Fair Housing or Human Relations Commissions and standards for the operation of such Commissions;

-- prohibiting discrimination based on race, color, religion, sex, creed, ancestry, national origin or physical or mental handicap in the listing, sale, assignment, exchange, transfer, lease, rental or financing of real property for the purpose of residential occupancy; and

-- prescribing penalties for the violation of such ordinances.

In addition, the corporate authorities of any municipality may perform such acts and promulgate such regulations as are necessary and proper for the promotion of harmonious relations between racial and ethnic groups within the municipality, including but not limited to, the promotion and development of public education and information programs emphasizing the contribution of such groups to the historical and cultural development of the community and the nation, establishing vocational guidance and employment programs to assist members of minority racial and ethnic groups, establishment of programs to aid in locating housing for such minority groups, and assisting in the adjustment of such persons to living in urban environments.

Refusal to Lease to Families with Children[38]

Illinois law prohibits those who own apartments and their agents from refusing to lease housing accommodations to families with children under the age of 14. Any person who fails to comply with this Act is guilty of a petty offense and may be fined from $50 to $100 for each such offense.

Blockbusting[39]

Illinois law states that it is a Class A misdemeanor for any person or corporation to:

-- solicit for sale, lease, listing or purchase of any residential property on the grounds of loss of value due to present or prospective entry into the vicinity of the property involved of any person of any particular race, color, religion, national origin, ancestry, handicap or sex;

-- distribute or cause to be distributed, written material or statements designed to induce any owner of residential real estate to sell or lease his property because of any present or prospective changes in the race, color, religion or national origin or ancestry, of residents in the vicinity of the property involved;

-- intentionally create alarm among residents of any community by transmitting in any manner, including a telephone call whether or not conversation thereby ensues, with a design to induce any owner of residential real estate to sell or lease his property because of any present or prospective entry into the vicinity of the property involved of any person of a particular race, color, religion, national origin, ancestry, handicap or sex; and

-- solicit any owner of residential property to sell or list such residential property at any time after the person or corporation has notice that the owner does not desire to sell such residential property or does not desire to be solicited to sell or list for sale the residential property.

The Real Estate Brokers and Salesmen License Act[40]

The Department of Registration and Education may refuse to issue, suspend or revoke a real estate broker's or salesman's license for any one or any combination of the following causes:

-- soliciting for sale, lease, listing or purchase of any residential real estate due to present or prospective entry into the vicinity of the property of persons of a particular race, color, religion, sex, creed, physical or mental handicap or national origin;

-- distributing any written material or making any oral statement designed to induce any owner of real estate to sell or lease because of any present or prospective changes in the race, color, religion, sex, creed, physical or mental handicap or national origin of persons on any given street, block, neighborhood or community;

-- intentionally creating any alarm or fear among the residents of a community by transmitting in any manner, including telephone, any warnings or threats or other communications designed to induce owners to sell or lease real estate because of any present or prospective entry into the community of persons of a particular race, color, religion, sex, creed, physical or mental handicap or national origin;

-- entering into a listing agreement which prohibits the sale or rental of real estate to any person because of race, color, religion, sex, creed, physical or mental handicap or national origin;

-- acting or undertaking to act as a real estate broker or real estate salesman with respect to any property the disposition of which is prohibited to any person because of race, color, religion, sex, creed, physical or mental handicap or national origin;

-- making any misrepresentations concerning the race, color, religion, sex, creed, physical or mental handicap or national origin of the persons in a locality or any part thereof for the purpose of inducing or discouraging a listing for sale or rental or the sale or rental of any real estate;

-- refusing to sell or rent real estate because of race, color, religion, sex, creed, physical or mental handicap or national origin;

-- refusing to show listings or real estate because of race, color, religion, sex, creed, physical or mental handicap or national origin of any prospective purchaser, lessee or tenant, or because of the race, color, religion, sex, creed, physical or mental handicap or national origin of the residents in the area in which the property is located;

-- volunteering information on the race, color, religion, sex, creed, physical or mental handicap or national origin of the residents of the community;

-- publishing or circulating any written materials or oral statements or announcing a policy or using any form of application for the purchase, lease, rental or financing of real estate, or making any record or inquiry in connection with the prospective purchase, rental or lease of real estate which express any limitation or discrimination because of race, color, religion, sex, creed, physical or mental handicap, or national origin; or

-- making differential treatment against any person to his detriment because of race, color, religion, sex, creed, physical or mental handicap or national origin.

Blighted Area Redevelopment Act[41]

No deed or lease made by the Land Clearance Commission or any subsequent owner may contain a covenant running with the land or other provisions prohibiting the occupancy of the premises by any person because of race, creed, color, religion, handicap, national origin or sex.

Urban Community Conservation Act[42]

Same as the Blighted Area Redevelopment Act. The Act prohibits restrictive covenants.

The Housing Authorities Act[43]

Same as the Blighted Area Redevelopment Act. The Act prohibits restrictive covenants.

Illinois Housing Development Authority Act[44]

The Illinois Housing Development Authority is required to make all housing financed or otherwise assisted under this Act open to all persons regardless of race, national origin, religion, creed, color, handicap or sex, and to require that contractors and subcontractors engaged in the construction or rehabilitation of such housing provide equal opportunity for employment without discrimination as to race, national origin, religion, creed, color or sex.

Neighborhood Redevelopment Corporation Act[45]

No Neighborhood Redevelopment Corporation may refuse to sell shares, either common or preferred, or securities to any person on account of race, color, creed or national origin.

Illinois Public Accommodation Laws

Violation of Civil Rights[46]

A person commits a violation of civil rights when:

M C F H

March 7, 1983

Paul -

This ordinance will be in effect March 10, 1983.

The Palo Alto City Attorney is Diane Lee (415) 329-2171.

I look forward to your legislation.

— Marcia

ORDINANCE NO. _____

ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO ADDING CHAPTER 9.70 TO THE PALO ALTO MUNICIPAL CODE PROHIBITING DISCRIMINATION AGAINST FAMILIES WITH MINOR CHILDREN IN THE RENTAL OR LEASING OF CERTAIN RESIDENTIAL PROPERTY

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Chapter 9.70 is hereby added to the Palo Alto Municipal Code to read as follows:

"Chapter 9.70

Discrimination Against Families With Minor Children In Housing

Sections:

9.70.010 Findings and purpose. The City Council finds and declares that:

(a) Arbitrary discrimination against persons with minor children exists in the City of Palo Alto.

(b) The existence of such discrimination poses a substantial threat to the public health and welfare of a large segment of the community, namely, families with children.

(c) The overall effect of such discrimination is to encourage the flight of families from the City of Palo Alto, resulting in the decline of stable, intergenerational neighborhoods, the closure of schools, and the reduction of social and recreational services for children and their families.

(d) Such discrimination cuts across all racial, ethnic, and economic lines, but falls most heavily on minority and single-parent families with children.

(e) It is consistent with the Housing Element of the General Plan to promote and ensure open and free choice of housing without discrimination on the basis of age or family composition.

(f) Because housing is a fundamental necessity of life, it is against the public policy of the City of Palo Alto to discriminate in rental housing against persons based upon their age, parenthood, pregnancy, or the potential or actual tenancy of a minor child.

9.70.020 Definitions. For the purposes of this chapter, certain terms are defined as follows:

(a) "Senior adults" shall mean persons 62 years or age or older.

(b) "Housing accommodations" shall mean any residential rental unit consisting of one or more rooms in which cooking facilities are available.

(c) "Minor child" shall mean any natural person under the age of 18 years.

(d) "Person" shall mean any individual, firm, partnership, joint venture, association, corporation, estate, or trust.

9.70.030 Prohibited activities. It shall be unlawful for any person having a housing accommodation for rent or lease, or any authorized agent or employee of such person, to do or attempt to do any of the following:

(a) Refuse to rent or lease a housing accommodation, refuse to negotiate for the rental or lease of a housing accommodation, or otherwise deny to or withhold from any person or persons, a housing accommodation on the basis of age, parenthood, pregnancy, or the potential or actual tenancy of a minor child.

(b) Discriminate against any person in the terms, conditions, or privileges of the rental or lease of a housing accommodation, or in the provision of services, facilities or benefits, in connection therewith, on the basis of age, parenthood, pregnancy, or the potential or actual tenancy of a minor child. However, nothing herein shall preclude any person from imposing reasonable restrictions on the use of common areas, facilities, and services which are necessary to protect the health and safety of a tenant.

(c) Represent to any person on the basis of age, parenthood, pregnancy, or the potential or actual tenancy of a minor child that a housing accommodation is not available for inspection, rental, or lease when such housing accommodation is, in fact, available.

(d) Make, print, or publish, or cause to be made, printed, or published any notice, statement, sign, advertisement, application, or contract with regard to a housing accommodation offered by that person that indicates any preference, limitation, or discrimination with respect to age, parenthood, pregnancy, or the potential or actual tenancy of a minor child.

(e) Include in any rental agreement or lease for a housing accommodation, a clause or condition providing that as a condition of continued tenancy, the tenants shall remain childless or shall not bear children or otherwise not maintain a household with a person of a certain age.

(f) Refuse to rent after making a bona fide offer, or to refuse to negotiate for the rental of, or otherwise make unavailable or deny, housing accommodations to any person because of the potential tenancy of a minor child or children.

(g) Limit occupancies to fewer than two persons per bedroom, unless that number exceeds the maximum allowed under the superficial floor space requirements of the Uniform Housing Code. For those housing accommodations without any bedroom, no person shall be required to rent or lease to more than one person. In no case shall such occupancy limits apply to a newborn infant during the term of any lease in effect on the date of birth of such infant unless that limit implements the superficial floor space requirements of the Uniform Housing Code. All occupancies limitations shall be uniformly imposed and either conspicuously posted on the premises or contained in a written policy, rules or notice.

(h) Evict or otherwise demand surrender of a housing accommodation from any person because of age, parenthood, pregnancy or presence of a minor child.

(i) Charge additional rent for persons living in a housing accommodation on the basis of age, parenthood, pregnancy, or presence of a minor child.

9.70.040 Exemptions. Nothing contained in this chapter shall apply to or be construed:

(a) To affect a housing project or development where the owner has publically established and implemented a policy of renting exclusively to senior adults and their spouses. Deviance from or abandonment of that policy shall automatically terminate this exemption and subject the owner to all the provisions of this ordinance.

(b) To affect any state licensed nursing home, convalescent home, or community care facility.

(c) To apply to any housing accommodation occupied by the owner.

(d) To apply to any housing accommodation occupied by a tenant who subleases any portion of that accommodation to another tenant.

(e) To affect any area or tract of land where two or more mobile home lots are rented or leased or held out for rent or lease to accommodate mobile homes used for human habitation.

9.70.050 Requirements of financial obligations not prohibited. This ordinance shall not prohibit the person having the right to rent or lease the premises from requiring the same rent, deposits, fees or charges of prospective adult tenants with minor children as he or she may require of prospective adult tenants without children. However, no discrimination in the amount or manner of payment of said rent, deposits, fees or charges shall be permitted.

9.70.060 Penalties/remedies. (a) Criminal. Violations of this chapter shall constitute an infraction.

(b) Civil. Any person who violates the provisions of this chapter shall be liable to each

party injured by such violation for damages ~~up to $500~~, costs and reasonable attorneys fees. In addition, the court may award punitive damages.

(c) **Injunctive relief.** Any person who commits, or proposes to commit, an action in violation of this chapter may be enjoined therefrom by any court of competent jurisdiction.

Any action for injunctive relief under this ordinance may be brought by the city attorney, by any aggrieved person, by other law enforcement agencies, by the district attorney or by any person or entity which will fairly and adequately represent the interests of the protected class.

SECTION 2. The Council finds that none of the provisions of this ordinance will have a significant environmental impact.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. The Council hereby declares that it would have passed this chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

SECTION 4. This ordinance shall become effective upon the commencement of the thirty-first day after the date of its passage.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST: APPROVED:

_____ _____
City Clerk Mayor

APPROVED AS TO FORM:

_____
City Attorney

APPROVED:

_____
City Manager

_____
Director of Social and
Community Services

Alaska State Legislature

OFFICE OF THE MINORITY

House of Representatives

July 10, 1980

Suzanne,

Please find enclosed samples of legislation and list of references to resources groups working in the area of discrimination in housing.

Contents:

Articles

Frederickson, "Housing Discrimination: Laws Prohibiting Housing Discrimination on the Basis of Race, Color, or National Origin" (also parental status) (outline form).

Note, "Housing Discrimination Against Children: The Legal Status of a Growing Social Problem," 16 J. OF FAMILY L. 559 (1977-78). An excellent overview and case bibliography.

Travalio, "Suffer the Little Children -- But Not in My Neighborhood: A Constitutional View of Age-Restrictive Housing, 40 OHIO STATE L.J. 291 (1979).

Administration/Legislation (intended as examples of different approaches to the problem -- not necessarily for use as a model)

Berkeley, California

Los Angeles, California

Oakland, California

San Francisco, California

[continued]

Santa Monica, California

Cal. Senate Bill No. 440 (1979), defeated in 1980.

Kansas City, Missouri

Buffalo, New York (passed by City Council, vetoed by Mayor)

Seattle, Washington

California Attorney General Opinion, No. SO 75/6 (1975) and §51 of the California Civil Rights Act (Unruh Civil Rights Act) provide a broad yet detailed interpretation of discrimination laws and enforcement in California. (See Marina Point, Ltd. v. Wolfson, infra.)

Litigation

Marina Point, Ltd. v. Wolfson, 180 Cal. Rptr. 496, ___ P.2d ___ (Cal. Sup. Ct., 1982). Brief and opinion. Interpretation of the Unruh Civil Rights Act to prohibit discrimination against children in rental housing.

Mountlake Terrace Family Assoc. v. N.O.I., Inc., No. 78-2-04140-6 (Super. Ct., Snohomish Co., Wash. 1979). Opinion, memo, and complaint. Local anti-child discrimination ordinance prohibiting conversion of rental units to "adults only" housing upheld.

Robinson v. Green, No. C 203059 (Super. Ct., Los Angeles Co., Cal. 1977). Complaint and memo re injunctive relief and damages for an eviction based on discrimination against children.

People v. Papa, No. 714-007 (San Francisco Super. Ct., Cal. 1977). Memo re preemption of local discrimination ordinance by state law.

Cf. Bynes v. Toli, No. 74-2433 (N.Y.2d Cir., Feb. 6, 1975), holding that university can exclude children from married student housing.

See also:

"Note: Why Johnny Can't Rent -- An Examination of Laws Prohibiting Discrimination Against Families in Rental Housing," 94 HARV. L. REV. 1829 (1981).

(continued)

Ashford and Eston, The Extent and Effects of Discrimination Against Children in Rental Housing: A Study of Five California Cities (1979), available from the Fair Housing for Children Coalition, P.O. Box 5877, Santa Monica, CA 90405 (52 pp.).

Greene and Blake, "How Restrictive Rental Practices Affect Families with Children," HUD-PDR-592 (August 1980), available from the United States Government Printing Office, Washington, D.C. 20402.

Marans and Colten, Measuring Restrictive Rental Practices Affecting Families with Children: A National Survey, prepared for the Office of Policy Development and Research, HUD (July 1980). Available from the U.S. Printing Office, Washington, D.C. 20402 (HUD-PDR-603) (100 pp.).

O'Brien, "Apartment for Rent -- Children Not Allowed: The Illinois Children in Housing Statute--Its Viability and a Proposal for Its Comprehensive Amendment," 25 De PAUL L. REV. 64 (1975).

Resource Contacts:

Children's Defense Fund
~~1520 New Hampshire Avenue, N.W.~~ 122 C St NW
~~Washington, D.C. 20036~~ 20001
Tel: (202) 483-1470 628-8484
Carol R. Golubock

National Committee Against Discrimination in Housing, Inc.
1425 H Street, N.W.
Washington, D.C. 20005
Tel: (202) 783-8150
Ed L. Holmgren, Executive Director
Katherine Mailie, Staff Attorney

National Center for Youth Law
693 Mission Street, 6th Floor
San Francisco, CA 94105
Tel: (415) 543-3307

National Center for Youth Law
3701 Lindell Boulevard
P.O. Box 14200
St. Louis, MO 63178
David Lambert

[continued]

Fair Housing Coalition
P.O. Box 5877
Santa Monica, CA 90405
Tel: (213) 393-1093
Perla Eston, Dora Ashford

Fair Housing Council of Orange County
1525 East 17th Street, Suite E
Santa Ana, CA 92701
Tel: (714) 835-0160
Richard Friedman, Staff Attorney
Katherine R. Wolff, Staff Attorney

need for additional legal assistance, pursuant to the wholly new guidelines which are now judicially created by the majority.

Because I conclude that defendant is being fairly and generously treated by the trial court system, I would sustain its action and deny the peremptory writ.

MARINA POINT, LTD., Plaintiff and Respondent,

v.

Stephen WOLFSON et al., Defendants and Appellants.

L.A. 31199.

Supreme Court of California, In Bank.

Feb. 8, 1982.

Tenants appealed from a judgment of the Municipal Court, Los Angeles County, Harold I. Cherness, J., 158 Cal.Rptr. 669, upholding landlord's policy of excluding all families with minor children from apartment complex. The Supreme Court, Tobriner, J., assigned, held that: (1) protection against discrimination afforded by the Unruh Act applies to "all persons," and is not reserved for restricted categories of prohibited discrimination; (2) Unruh Act does not permit a business enterprise to exclude an entire class of individuals from access to the services of a business enterprise on the basis of a generalized prediction that the class, "as a whole," is more likely to commit misconduct than some other classes of public; and (3) nothing in the nature of an ordinary apartment complex is incompatible with the presence of families with children, and therefore landlord's "no children" policy could not be sustained as reasonable despite its violation of Unruh Act on the ground that the presence of children basically did not accord with the nature of the business enterprise and other facilities provided.

Reversed.

Richardson, J., dissented and filed opinion, in which Mosk, J., concurred.

1. Statutes ⇐223.5(4)

It is a well-established principle of statutory construction that when the legislature amends a statute without altering portions of the provision that have previously been judicially construed, the legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction; accordingly, reenacted portions of the statute are given the same construction they received before the amendment.

2. Civil Rights ⇐1

Protection against discrimination afforded by the Unruh Act applies to "all persons," and is not reserved for restricted categories of prohibited discrimination. West's Ann.Civ.Code § 51 et seq.

3. Civil Rights ⇐8

Unruh Act does not permit a business enterprise to exclude an entire class of individuals from access to the services of a business enterprise on the basis of a generalized prediction that the class, "as a whole," is more likely to commit misconduct than some other classes of public. West's Ann.Civ.Code § 51 et seq.

4. Civil Rights ⇐11.5

In light of public policy reflected by legislative enactments, age qualifications as to housing facility reserved for older citizens can operate as a reasonable and permissible means under the Unruh Act of establishing and preserving specialized facilities for those particularly in need of such services or environment. West's Ann.Civ. Code § 51 et seq.

5. Civil Rights ⇐11.5

Nothing in the nature of an ordinary apartment complex is incompatible with the presence of families with children, and therefore landlord's "no children" policy could not be sustained as reasonable despite

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West's Ann.Civ.Code

Eugene C. Gratz, M
son, Goller, Gillin &
Nobel, Los Angeles, J
leen Doyle and Mar
mento, for defendant

W. Kenneth Rice,
K. Gillespie, Los Ang
son, Eureka, Robert
chael E. Wine, West
Salmonsen, Santa M
der, Los Angeles, S
Berkeley, Carl K. O
San Francisco, R. Sh
David A. Garcia, St
Francisco, Beverly
Udell, Oakland, Eric
Sidney M. Wolinsky,
Friedman and Kath
amici curiae on beh
appellants.

Richard F. Hamli
plaintiff and respon

Dennis B. Kavan
amicus curiae on b
respondent.

TOBRINER, Just

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* Retired Associate J
sitting under assig

its violation of Unruh Act on the ground that the presence of children basically did not accord with the nature of the business enterprise and other facilities provided. West's Ann.Civ.Code § 51 et seq.

Eugene C. Gratz, Noble, Gratz & Wolfson, Goller, Gillin & Menes, Lawrence C. Nobel, Los Angeles, Josseline Charas, Kathleen Doyle and Martha Warriner, Sacramento, for defendants and appellants.

W. Kenneth Rice, Steven Belasco, Mary K. Gillespie, Los Angeles, Stephen R. Nielson, Eureka, Robert M. Myers, Venice, Michael E. Wine, West Covina, Eugene Roy Salmonsen, Santa Monica, Harry M. Snyder, Los Angeles, Susan Bartlett Foote, Berkeley, Carl K. Oshiro, Luana Martilla, San Francisco, R. Sharon Mosley, Berkeley, David A. Garcia, Steven C. Owyang, San Francisco, Beverly S. Tucker, Ruby S. Udell, Oakland, Eric W. Wright, Palo Alta, Sidney M. Wolinsky, San Francisco, Richard Friedman and Katherine Wolff, Encino, as amici curiae on behalf of defendants and appellants.

Richard F. Hamlin, Marina Del Rey, for plaintiff and respondent.

Dennis B. Kavanagh, San Francisco, as amicus curiae on behalf of plaintiff and respondent.

TOBRINER, Justice.*

In this case we must determine whether, under California law, an owner of an apartment complex may lawfully refuse to rent any of its apartments to a family solely because the family includes a minor child. In the landlord's action to eject the family, the municipal court, found, inter alia, that "[c]hildren are rowdier, noisier, more mischievous and more boisterous than adults," and upheld the landlord's policy of excluding all families with minor children. The tenants now appeal from the judgment in favor of the landlord, contending that the exclusionary policy violates their statutory rights under the Unruh Civil Rights Act (Civ.Code, § 51 et seq.) and the California Fair Housing Law (Health & Saf.Code, § 35700 et seq., now Gov.Code, § 12955) and, in addition, impermissibly infringes upon their state and federal constitutional rights of familial privacy (U.S.Const., 9th & 14th Amends., Cal.Const., art. I, § 1) and equal protection of the law. (U.S.Const., 14th Amend.; Cal.Const., art. I, § 7.)

For the reasons discussed below we have concluded that the landlord's broad, class-based exclusionary practice violates the Unruh Civil Rights Act (hereafter Unruh Act or act); in light of this conclusion, we have no occasion in this case to address any of the tenants' more sweeping and far-reaching constitutional contentions. As we shall explain, the municipal court, in finding the challenged practice compatible with the Unruh Act, proceeded from the erroneous premise that under that act "[n]ot every class ... is protected from exclusion," but rather that "[i]t is only such class ... that is protected as is set forth in the [s]tatutes or who come under the [s]tatutes by judicial determination." Finding that "[t]here is no decision to include children, parents with children, or families with children, as a protected class by the wording of the [s]tatutes themselves or by judicial determination," the court concluded that the challenged practice fell outside the scope of the act.

As we shall point out, the municipal court's approach conflicts with the interpretation of the Unruh Act unanimously adopted by this court a decade ago in *In re Cox* (1970) 3 Cal.3d 205, 90 Cal.Rptr. 24, 474 P.2d 992. In *Cox*, after reviewing the origin, legislative evolution and prior judicial decisions construing the Unruh Act and its predecessors, our court concluded that the "identification of particular bases of discrimination—color, race, religion, ancestry and national origin—[in the current version of the act] ... *is illustrative rather than restrictive.*" (Italics added.) (3 Cal.3d at p. 216, 90 Cal.Rptr. 24, 474 P.2d 992.) Al-

* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairperson of the Judicial Council.

though we recognized that in recent years the act had been invoked most often "by persons alleging discrimination on racial grounds," we emphasized that the act's "language and its history compel the conclusion that the Legislature intended to prohibit *all* arbitrary discrimination by business establishments." (Italics added.) (*Id.*) Thus, contrary to the municipal court's conclusion, the fact that the landlord's exclusionary policy in this case discriminated against children and families with children, rather than a specific racial or religious group or some other classification specifically involved in a prior judicial decision, does not place the exclusionary practice beyond the reach of the Unruh Act.

The landlord maintains, however, that even if the municipal court did err in its analysis of the Unruh Act, we should nevertheless affirm the trial court judgment on the grounds that the exclusionary policy at issue is "reasonable," not "arbitrary," and hence not violative of the Unruh Act. Relying, inter alia, upon the court's finding that "[c]hildren are rowdier, noisier, more mischievous and more boisterous than adults," the landlord claims that it may seek to achieve its legitimate interest in a quiet and peaceful residential atmosphere by excluding *all* minors from its housing accommodations, thus providing its adult tenants with a "child free" environment.

As we shall explain, however, the landlord's argument overlooks the individual nature of the statutory right of equal access to business establishments that is afforded "all persons" by the Unruh Act. Derived from the early common law right of equal access to the services of innkeepers or common carriers, the Unruh Act prohibits business establishments from withholding their services or goods from a broad class of individuals in order to "cleanse" their operations from the alleged characteristics of the members of an excluded class.

As our prior decisions teach, the Unruh Act preserves the traditional broad authority of owners and proprietors of business establishments to adopt reasonable rules regulating the conduct of patrons or tenants; it imposes no inhibitions on an owner's right to exclude any individual who violates such rules. Under the act, however, an individual who has committed no such misconduct cannot be excluded solely because he falls within a class of persons whom the owner believes is more likely to engage in misconduct than some other group. Whether the exclusionary policy rests on the alleged undesirable propensities of those of a particular race, nationality, occupation, political affiliation, or age, in this context the Unruh Act protects individuals from such arbitrary discrimination.

Accordingly, we conclude that the judgment in favor of the landlord should be reversed.

1. *The facts and proceedings below.*

Plaintiff Marina Point, Ltd. (hereafter landlord or Marina Point) is a privately owned apartment complex, which, at the time of trial, consisted of 846 separate apartment units. The apartment complex, located in Marina del Rey, an unincorporated area in the County of Los Angeles, stands on land owned, and leased by the county to Marina Point. The master lease between the county and Marina Point specifically forbids Marina Point from discriminating on the basis of race, religion or national ancestry, but contains no provision with respect to other forms of discrimination.

In January 1974, defendants Stephen and Lois Wolfson signed a one-year lease for an apartment in the Marina Point complex with occupancy to begin on February 1 of that year. Although the printed form lease that the Wolfsons then signed contained a clause which provided that no minors under the age of 18 could reside in the leased premises without the landlord's written permission, Marina Point acknowledges that at that time it followed a policy of renting its apartments to families with children as well as to families without children.

In October 1974, Marina Point altered its rental policy with the objective of ultimately excluding all children from the apartment complex. At that time, well over 60

families with children lived in apartments in the complex, and Marina Point decided that while it would allow the children already there to remain, it would not rent any apartments to new families with children or with pregnant women.

In February 1975, the Wolfsons renewed their lease for a one-year period; the form lease again contained the same clause with respect to children as had appeared in the initial lease. In September 1975, Lois Wolfson gave birth to a son, Adam, who thereafter resided with his parents in the family apartment in Marina Point. In February 1976, the Wolfsons renewed their lease for another year; although the lease again contained the identical clause as to written consent for children, the Wolfsons apparently did not specifically inform the landlord of Adam's presence, and the lease made no reference to him.

In the fall of 1976, the landlord's manager learned that the Wolfsons had a child living in the apartment; shortly thereafter, the landlord informed them that their lease, due to expire on January 31, 1977, would not be renewed, and that the sole reason for such nonrenewal was Adam's presence on the premises.

After some negotiation between the parties, Marina Point agreed to a three-month extension of the Wolfsons' lease; the new lease agreement, which again contained the same provision as to children, specified that the premises would be occupied by the Wolfsons and their son. Thereafter, upon the Wolfsons' request, the landlord agreed to an additional one-month extension of the lease to May 31, 1977.

When the Wolfsons failed to vacate the premises on May 31, the landlord commenced the present unlawful detainer action in municipal court. In their answer, the Wolfsons maintained that the landlord's policy of discriminating against families with children violated both statutory constitutional prescriptions, and, as such, did not provide a lawful basis for their eviction. The landlord acknowledges that if its exclusion of the Wolfsons does in fact contravene statutory or constitutional strictures, such illegality would indeed provide a valid defense to the unlawful detainer action. (See, e.g., *S. P. Growers Assn. v. Rodriguez* (1976) 17 Cal.3d 719, 724, 131 Cal.Rptr. 761, 552 P.2d 721; *Schweiger v. Superior Court* (1970) 3 Cal.3d 507, 90 Cal.Rptr. 729, 476 P.2d 97; *Abstract Investment Co. v. Hutchinson* (1962) 204 Cal.App.2d 242, 22 Cal. Rptr. 309.)

At trial, the landlord conceded that its nonrenewal of the Wolfsons' lease rested solely on its current general policy of refusing to rent any of its apartments to families with children, but the landlord denied that this policy violated any statutory or constitutional principle. In defense of its exclusionary policy, the landlord's apartment manager testified that the decision to bar families with children rested in part on a number of past instances in which young tenants had engaged in annoying or potentially dangerous activities, ranging from acts of arson to roller skating and batting practice in the hallways to the attempted solicitation of snacks from the landlord's office staff.

The manager did not indicate, however, what proportion of the tenant children engaged in such activities or what steps, short of the blanket exclusionary policy, the landlord had implemented to deal with the problem, such as promulgating general rules as to permissible and impermissible conduct or excluding from the complex those families whose children repeatedly committed disruptive or destructive acts. Moreover, the landlord introduced no evidence that the Wolfsons' child had ever engaged in any such activity and, indeed, two of the Wolfsons' immediate neighbors testified that Adam's presence was not annoying to them at all.

As an additional explanation for the exclusionary policy, the apartment manager testified that the Marina Point complex had no special facilities for children, such as playground equipment, and no suitable area for children to play. The manager conceded, however, that the facilities of the complex had remained unaltered since the landlord had implemented its "no children" poli-

cy. In addition, the evidence revealed that, even at the time of trial, seven children were still living in apartments in the Marina Point complex.

Finally, the landlord presented testimony of two expert witnesses who had been in the real estate business for many years. These witnesses testified that in their opinion children, as a class, generally cause more wear and tear on property than adults do, and that as a consequence, landlords who rent to families with children generally have higher maintenance costs than landlords who exclude children. The witnesses presented no statistical data in support of their conclusion, but simply testified on the basis of their general experience.

As already noted, two immediate neighbors of the Wolfsons, one living next door and one living overhead, testified on behalf of the Wolfsons that they had not been disturbed by Adam's presence in the apartment. In addition to these neighbors' testimony, the Wolfsons presented one expert witness, a professor of real estate finance at California State University at Fullerton, who testified that the basic profitability of operating an apartment complex does not generally vary with the type or age of its tenants. Finally, the Wolfsons introduced a number of recent studies by various groups documenting the extensive nature of the practice of discrimination against families with children in rental housing that currently exists throughout California. As these and more recent studies reveal, in many of the major metropolitan areas of the state, families with children are excluded from 60 to 80 percent of the available rental housing.[1]

At the conclusion of the trial, the municipal court ruled in favor of Marina Point, rejecting the Wolfsons' contention that the landlord's policy of excluding all families with children violated their statutory or constitutional rights. The court's formal findings of fact contain findings, inter alia, that the landlord's "exclusion of children ... proceeds from a reasonable economic motive to promote a quiet and peaceful environment free from noise and damage caused by children." Yet the court's memorandum opinion reveals that the court's *legal* conclusion that the practice in question did not violate any prohibited discrimination rested on the erroneous belief that the statutory proscription of discrimination applied only to a limited number of specifically designated "protected classes."[2] Because the municipal court could find "no

1. See, for example, Note, *Landlord Discrimination Against Children* (1978) 11 Loyola L.A.L. Rev. 609, 611–613; Ashford & Eston, The Extent and Effects of Discrimination Against Children in Rental Housing: A Study of Five California Cities (1979); City of Campbell, Survey of Rental Policies Relating to Families with Children (1979); City of Mountain View, Children in the Housing Market (1978).

Similar discrimination in rental housing against families with children apparently exists in many regions throughout the country. (See, e.g., Reid et al., Patterns of Discrimination Against Children in Rental Housing in the Metro-Atlanta Area (1979); Greene, Child Discrimination in Rental Housing: A Comparative Analysis of Apartment Policies in Dallas, Texas (1979); Travallo, *Suffer the Little Children—But Not in My Neighborhood: A Constitutional View of Age-Restrictive Housing* (1979) 40 Ohio St.L.J. 295, 296–297; O'Brien & Fitzgerald, *Apartment for Rent-Children Not Allowed* (1975) 25 DePaul L.Rev. 64, 74–86.)

2. The municipal court's memorandum opinion states in relevant part:

"The Unruh and Rumford Acts, taken collectively establish a classification of person[s] protected from discrimination in housing and business establishments. This classification includes persons discriminated against on the basis of race, religion, [national] origin, ancestry, sex and marital status. By judicial construction, this protection has been extended to homosexuals, long hairs, persons of unusual dress, persons of unusual political views, and unmarried couples living together. [Citation.]

"Not every class or person is protected. It is only such class or person that is protected as is set forth in the Statutes or who come under the Statutes by judicial determination. There is no decision to include children, parents with children, or families with children, as a protected class by the wording of the Statutes themselves, or by judicial determination. [¶] ... The Court finds that the California Statutes do not extend protection to persons in the class of defendants who are refused housing on the ground that they have a child ....

"[T]he Court ... is not indifferent to the plight of the defendants and other similarly situated persons as parents or families with children. The Court is satisfied that there is a problem of major importance; that there is difficulty in obtaining housing where one has a

decision to include children, parents with children, or families with children, as a protected class by the wording of the statutes themselves, or by judicial determination," the court concluded that the exclusionary practice challenged in this case fell beyond the reach of the state's existing anti-discrimination statutes. The court accordingly entered judgment in favor of the landlord, awarding it possession of the premises, $1,903.50 in damages, $3,000 in attorney fees and costs.[3]

The Wolfsons now appeal from the judgment, asserting that both the Unruh Act and the Fair Housing Law bar the landlord's admitted policy of discriminating against families with children. They additionally contend that the exclusion violates their rights to familial privacy and equal protection of the law guaranteed by the state and federal Constitutions. As noted above, because we conclude that the landlord's exclusionary policy violates the Unruh Act we need not, and do not, reach the Wolfsons' additional contentions.

2. *Contrary to the municipal court's conclusion, the antidiscrimination provisions of the Unruh Act are not confined only to a limited category of "protected classes" but rather protect "all persons" from any arbitrary discrimination by a business establishment.*

In evaluating the legality of the challenged exclusionary policy in this case, we must recognize at the outset that in California, unlike many other jurisdictions, the Legislature has sharply circumscribed an apartment owner's traditional discretion to accept and reject tenants on the basis of the landlord's own likes or dislikes. California has brought such landlords within the embrace of the broad statutory provisions of the Unruh Act, Civil Code section 51.[4] Emanating from and modeled upon traditional "public accommodations" legislation, the Unruh Act expanded the reach of such statutes from common carriers and places of public accommodation and recreation, e.g., railroads, hotels, restaurants, theaters and the like, to include "all business establishments of every kind whatsoever." (See generally Horowitz, *The 1959 California Equal Rights in "Business Establishments" Statute—A Problem in Statutory Application* (1960) 33 So.Cal.L.Rev. 260, 272–294.)

For nearly two decades the provisions of the Unruh Act, in light of its broad application to "all business establishments," have been held to apply with full force to the business of renting housing accommodations. (See, e.g., *Swann v. Burkett* (1962) 209 Cal.App.2d 685, 694–695, 26 Cal.Rptr. 286; *Abstract Investment Co. v. Hutchinson, supra*, 204 Cal.App.2d 242, 254–255, 22 Cal.Rptr. 309; 56 Ops.Cal.Atty.Gen. 546 (1973); cf. *Burks v. Poppy Construction Co.* (1962) 57 Cal.2d 463, 467–471, 20 Cal.Rptr. 609, 370 P.2d 313.) Indeed, in the case at

child. The judgment of the Court in no way is to be interpreted as 'Closing one's eyes to the problem.' However, the Court is restricted to a judicial determination as the law now exists under the provisions of the applicable statutes and case law. The Court finds that there is no case law or statute placing defendants in any protected class as parents of children."

3. After judgment was entered in favor of the landlord, the Wolfsons sought a stay of execution from the trial court pending appeal. The trial court issued a temporary stay for six months, and at the expiration of that period the Wolfsons vacated the premises. This vacation of the apartment does not render the appeal moot, however, in light of the outstanding judgment for damages, attorneys' fees and costs, as well as the general importance of the underlying issue. (See *Green v. Superior Court* (1974) 10 Cal.3d 616, 622, fn. 6, 111 Cal.Rptr. 704, 517 P.2d 1168.)

4. Section 51 presently provides: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges or services in all business establishments of every kind whatsoever.

"This section shall not be construed to confer any right or privilege on a person which is conditioned or limited by law or which is applicable alike to persons of every sex, color, race, religion, ancestry or national origin."

Unless otherwise noted, all statutory references are to the Civil Code.

bar, Marina Point apparently concedes that, like other business establishments that deal with the public, its freedom or authority to exclude "customers," i.e., prospective tenants, from the goods and services it offers, i.e., rental units, is limited by the provisions of the Unruh Act.[5]

The municipal court properly recognized that Marina Point, as a "business establishment," was generally subject to the Unruh Act. It concluded, however, that the act provided no protection to the Wolfsons because it found that the subjects, i.e., "victims," of the discriminatory practice in this case, described variously as "children" or "families with children" did not fall within what the court believed to be a limited set of "protected classes" shielded from discriminatory treatment by the act. As already noted, the court, in elaborating upon its understanding of the Unruh Act, stated in this regard: "Not every class is protected. It is only such class or person that is protected as is set forth in the Statutes or who come under the Statutes by judicial determination." Because discrimination against children or against families with children was not in explicit terms proscribed by the language of section 51 or by any prior judicial decision, the court determined that any such discrimination was beyond the scope of the act.

The municipal court's interpretation of the act directly conflicts with this court's interpretation of the Unruh Act a decade ago in *In re Cox, supra*, 3 Cal.3d 205, 90 Cal.Rptr. 24, 474 P.2d 992. In *Cox*, an individual who claimed that he had been excluded from a shopping center because a friend with whom he was talking "wore long hair and dressed in an unconventional manner" (3 Cal.3d at p. 210, 90 Cal.Rptr. 24, 474 P.2d 992), asserted that such exclusion was barred by the Unruh Act. Relying upon the fact that the act, by its terms, expressly referred only to discrimination on the basis of "race, color, religion, ancestry or national origin,"[6] the city argued in response that the act's proscriptions were limited to discrimination which was based on the specifically enumerated forbidden criteria, and did not encompass the alleged discrimination against "hippies" or their associates.

After reviewing the common law origin, the legislative history and the past judicial interpretations of the act and its statutory predecessors, our court unanimously concluded in *Cox* that the "identification of particular bases of discrimination—color, race, religion, ancestry, and national origin —. . . *is illustrative rather than restrictive.* [Citation.] Although the legislation has been invoked primarily by persons alleging discrimination on racial grounds, its language and its history compel the conclusion that the Legislature intended to prohibit *all arbitrary discrimination by business establishments.*" (Italics added.) (3 Cal.3d at p. 216, 90 Cal.Rptr. 24, 474 P.2d 992.)

In reaching this conclusion, we relied, inter alia, upon the fact that the Unruh Act had emanated from the venerable common law doctrine which "attached [to various 'public' or 'common' callings] 'certain obligations including—at various stages of doctrinal development—*the duty to serve* all customers on reasonable terms without discrimination . . .'" (italics added) (*id.*, at p. 212, 90 Cal.Rptr. 24, 474 P.2d 992), and upon the fact that prior judicial decisions con-

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5. The fact that the landlord in this case is also subject to the specific antidiscrimination provisions of the California Fair Housing Law in no way diminishes the applicability of the Unruh Act. Section 35743 of the Health and Safety Code (now Gov.Code, § 12993), (one of the provisions of the Fair Housing Law, explicitly provides in this regard: "Nothing contained in this part shall be construed to, in any manner or way, limit the application of Section 51 of the Civil Code." See also Health & Saf.Code, § 35740; *Burks v. Poppy Construction Co., supra*, 57 Cal.2d 463, 469–470, 20 Cal.Rptr. 609, 370 P.2d 313.)

6. Subsequent to our decision in *Cox*, the Legislature added "sex" to the bases of discrimination specifically listed in the statute. (Stats. 1974, ch. 1193, § 1, p. 2568.) The purpose and legislative history of the 1974 legislation is discussed below. (See *post*, p. 504 of 180 Cal. Rptr., p. —— of —— P.2d.) With the exception of this single addition, the current statute is identical to the provision as construed in *Cox*.

struing the predecessors of the Unruh Act had clearly held that the statutory protections were not limited to discrimination based on race, religion, or national origin but also barred, for example, the exclusion of homosexuals from a public bar or restaurant (*Stoumen v. Reilly* (1951) 37 Cal.2d 713, 716, 324 P.2d 969) or the exclusion of persons with the reputation of immoral character from a public race track. (*Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 227 P.2d 449.) Because we could find absolutely no evidence to suggest that the Legislature intended to contract the reach of the statutory protections when it enacted the expansive Unruh Act in 1959, we concluded that the act must properly be interpreted "to interdict all arbitrary discrimination by a business enterprise." (3 Cal.3d at p. 212, 90 Cal.Rptr. 24, 474 P.2d 992.)

Although the landlord in this case has not at any time questioned the continued vitality of this court's decision in *Cox*, an argument has been urged that this court's unanimous decision in *Cox* was wrongly decided and should at this late date be overruled. The argument rests upon the assertion that the second sentence of section 51 is inconsistent with the interpretation of the statute in *Cox*. The sentence in question states that "[t]his section shall not be construed to confer any right or privilege on a person which is conditioned or limited by law or which is applicable alike to persons of every sex, color, race, religion, ancestry or national origin."

Although it is asserted that the purport of this language is self-evident, its meaning from a literal standpoint could hardly be more obscure. Read literally, the sentence appears to provide that the right of equal access to business establishments conferred by section 51 is *not* applicable to persons of every sex, color, race, etc.; that meaning, of course, would completely contradict the fundamental anti-discrimination objective of the statute. Although it is not asserted that we should adopt this interpretation of the sentence, it is suggested that the sentence should be interpreted to exclude from the statute's purview any restriction on access to a business establishment, however arbitrary, that is "applicable alike to persons of every sex, color, race, religion, ancestry or national origin." Thus, under this proposed reading of the statute, for example, the total exclusion of homosexuals or members of the Republican Party from a public restaurant, a shoe store or an apartment complex would be entirely compatible with section 51.

As we pointed out in *Cox*, however, from before the beginning of the twentieth century California's public accommodation statutes have uniformly proscribed the exclusion of individuals on the basis of purely arbitrary classifications. (See Stats. 1897, ch. 108, §§ 1, 2, p. 137; Stats. 1905, ch. 413, §§ 1, 2, pp. 553–554; Stats. 1919, ch. 210, §§ 1, 2, pp. 309–310, Stats. 1923, ch. 235, §§ 1, 2, (p. 485.) The argument under discussion proposes that we interpret the confusing, and virtually incoherent, language of the second sentence of section 51 as evidencing a legislative retreat from California's well-established statutory policy prohibiting *all* arbitrary discrimination in places of public accommodation. As we observed in *Cox*, however, "'[w]ithout the most cogent and convincing evidence, a court will never attribute to the Legislature the intent to disregard or overturn a sound rule of public policy.' [Citation.]" (3 Cal.3d at p. 215, 90 Cal.Rptr. 24, 474 P.2d 992.)

Moreover, subsequent to our decision in *Cox* the Legislature effectively confirmed our interpretation of the act as barring all forms of arbitrary discrimination. In 1974, the Legislature amended section 51, reenacting the prior provisions of the statute and adding "sex" to the specifically enumerated bases of discrimination listed in the Unruh Act. In sending the bill to the Governor for his signature, the Chairman of the Select Committee on Housing and Urban Affairs explained: "The purpose of the bill is to bring it to the attention of the legal profession that the Unruh Act provides a remedy for arbitrary discrimination against women (or men) in public accommodations which are business enterprises. This bill does not bring such discrimination under

the Unruh Act because that Act has been interpreted as making *all* arbitrary discrimination illegal, on whatever basis. The listing of possible bases of discrimination has no legal effect, but is merely illustrative." (Original emphasis.) The chairman attached to his letter a copy of a legislative counsel opinion, discussing our decision in *Cox* and confirming the chairman's view of the legislation.

[1] It is a well-established principle of statutory construction that when the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction. Accordingly, reenacted portions of the statute are given the same construction they received before the amendment. (See, e.g., *In re Gladys R.* (1970) 1 Cal.3d 855, 868–869, 83 Cal.Rptr. 671, 464 P.2d 127; *Brailsford v. Blue* (1962) 57 Cal.2d 335, 339, 19 Cal.Rptr. 485, 369 P.2d 13; *Richfield Oil Corp. v. Public Util. Com.* (1960) 54 Cal.2d 419, 430, 6 Cal.Rptr. 528, 354 P.2d 4; *Buckley v. Chadwick* (1955) 45 Cal.2d 183, 200, 288 P.2d 12; cf. *Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal.3d 650, 659, 147 Cal.Rptr. 359, 580 P.2d 1155. See generally 1A Sutherland, Statutory Construction (4th ed.) § 22.33, pp. 191–192.)

In light of the legislative history noted above, this principle of construction particularly applies to the instant case for here we need not simply presume that the Legislature knew of this court's interpretation of section 51 in *Cox* at the time of the 1974 amendment; the legislative documents establish beyond question that the Legislature was well aware of *Cox*'s construction of section 51. Had the Legislature disagreed with the *Cox* interpretation, or had it desired to constrict the reach of section 51 in a manner incompatible with *Cox*, it presumably would have altered the preexisting language of the statute so to indicate. (See, e.g., *Estate of McDill* (1975) 14 Cal.3d 831, 840, 122 Cal.Rptr. 754, 537 P.2d 874.) Instead, the Legislature reenacted the previously-construed language verbatim, simply adding an explicit reference to sex discrimination to highlight the statute's application in that area. Under the numerous authorities cited above, this action represents a legislative endorsement of *Cox*'s interpretation of section 51.[7]

7. In arguing that the Unruh Act does not apply to discrimination by the landlords against families with children, Marina Point relies on the fact that in recent years a number of bills addressed to the issue of housing discrimination against children have been introduced in the Legislature but have not been enacted. (See Sen. Bill No. 359 (1977–1978 Reg.Sess.); Sen. Bill No. 440 (1979–1980 Reg.Sess).) California courts have frequently noted, however, the very limited guidance that can generally be drawn from the fact that the Legislature has not enacted a particular proposed amendment to an existing statutory scheme. (See, e.g., *Gay Law Students Assn. v. Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 480, fn. 13, 156 Cal.Rptr. 14, 595 P.2d 592.) As the Court of Appeal explained in *Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41, 58, 69 Cal.Rptr. 480: "The unpassed bills of later legislative sessions evoke conflicting inferences. Some legislators might propose them to replace an existing prohibition; others to clarify an existing permission. A third group of legislators might oppose them to preserve an existing prohibition, and a fourth because there was no need to clarify an existing permission. The light shed by such unadopted proposals is too dim to pierce statutory obscurities. As evidence of legislative intent they have little value. [Citations.]"

In view of the legislative history of the 1974 amendment discussed above, the observations of the *Sacramento Newspaper Guild* court appear particularly apt. As we have seen, in 1974 the Legislature noted that section 51 applied to all arbitrary discrimination and that "[t]he listing of possible bases of discrimination has no legal effect, but is merely illustrative." Thus, the nonenactment of the bills in question might well reflect a determination that there is no need to clarify the existing prohibition. Moreover, each of the bills in question contained a variety of provisions which would have excepted certain designated housing facilities from the bill's ban on discrimination against families with children; thus, nonpassage might also be attributable to disagreement with the scope of such exceptions, rather than with the general prohibition on discrimination against children.

In addition, we note that although the Legislature has recently enacted specific provisions authorizing "adult only" restrictions in mobile home parks (see Civ.Code, §§ 798.76, 799.5,

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[2] Indeed, in recent years, a spate of decisions by the appellate courts and the opinions of the Attorney General have explicitly concluded, in a variety of contexts, that the Unruh Act covers a wide range of discriminatory practices. Thus, for example, the decisions and opinions have established the act's application to exclusionary policies directed against (1) students (59 Ops.Cal.Atty.Gen. 70 (1976)), (2) welfare recipients (59 Ops.Cal.Atty.Gen. 223 (1976)), (3) those of a particular occupation or marital status (58 Ops.Cal.Atty.Gen. 608, 613 (1975)), or (4) those who associate with blacks. (*Winchell v. English* (1976) 62 Cal. App.3d 125, 128–130, 133 Cal.Rptr. 20.) Unlike the municipal court decision at issue here, these numerous decisions properly recognize that the protection against discrimination afforded by the Unruh Act applies to "all persons," and is not reserved for restricted categories of prohibited discrimination. Accordingly, the municipal court's decision in this case unquestionably proceeded from a fundamental misinterpretation of the Unruh Act.

3. *The landlord's blanket exclusion of all families with minor children is not permissible under the Unruh Act even if children "as a class" are "noisier, rowdier, more mischievous and more boisterous" than adults.*

The landlord maintains, however, that even if the municipal court erred in concluding that the Unruh Act did not apply because children or families with children were not a "protected class" under the act, the judgment in its favor should nonetheless be affirmed. It asserts that the trial court's findings of fact demonstrate that its policy of excluding all families with children from its apartment complex is "reasonable" and not "arbitrary" and, as such, is not barred by the Unruh Act.

In this regard, the landlord correctly points out that in *Cox* we explained that while the Unruh Act prohibits a business establishment from engaging in any form of arbitrary discrimination, the act does not absolutely preclude such an establishment from excluding a patron in all circumstances. As we stated in *Cox*: "In holding that the Civil Rights Act forbids a business establishment generally open to the public from arbitrarily excluding a prospective customer, we do not imply that the establishment may never insist that a patron leave the premises. Clearly, an entrepreneur need not tolerate customers who damage property, injure others or otherwise disrupt his business. A business establishment may, of course, promulgate reasonable deportment regulations that are rationally related to the services performed and the facilities provided. [Citation.]" (3 Cal.3d at p. 217, 90 Cal.Rptr. 24, 474 P.2d 992.)

The landlord contends that the exclusionary policy at issue here falls within the category of permissible regulations to which *Cox* adverted. Marina Point acknowledges that its blanket policy of excluding all families with children cannot properly be characterized as a "deportment regulation" since it does not focus on the conduct of the individuals or families who are actually excluded by the rule. (Cf. *Hales v. Ojai Valley Inn and Country Club* (1977) 73 Cal. App.3d 25, 28–29, 140 Cal.Rptr. 555 (restaurant rule requiring men to wear ties).) The landlord contends, however, that in light of the trial court's factual finding that "[c]hildren are rowdier, noisier, more mischievous and more boisterous than adults," its exclusion of all children bears a rational relation to its legitimate interest in preserving an appropriate environment.

In support of its contention, the landlord relies heavily upon the case of *Flowers v. John Burnham & Co.* (1971) 21 Cal.App.3d 700, 98 Cal.Rptr. 6[illegible]. In *Flowers*, the plaintiff tenants, who had been evicted from their apartment, alleged that their landlord had violated the Unruh Act by adopting a policy of excluding all families

enacted Stats. 1978, ch. 1031, § 4, pp. 3183, 3185 (discussed at p. 509 fn. 11, of 180 Cal. Rptr., p. —— n.11 of —— P.2d, post), the Legislature has not adopted any comparable provision sanctioning such restrictions in apartment complexes or in rental housing generally.

with male children over the age of five. The trial court sustained the landlord's demurrer to the complaint and, on appeal, the Court of Appeal, in a very brief, two-and-one-half page opinion, affirmed the trial court judgment. Although recognizing that under *Cox* the Unruh Act barred all arbitrary discrimination by such a landlord, the court upheld the landlord's policy of excluding families on the basis of their children's sex and age. Disposing of the tenant's contention in two, rather conclusory sentences, the court stated: "Because the independence, mischievousness, boisterousness and rowdyism of children vary by age and sex, Burnham, as landlord, seeks to limit the children in its apartments to girls of all ages and boys under 5. Regulating tenants' ages and sex to that extent is not unreasonable or arbitrary." (21 Cal.App.3d at p. 703, 98 Cal.Rptr. 644.)[8]

Although the *Flowers* court's reasoning, such as it is, does support the present landlord's position, we believe that both the landlord's contention and the *Flowers* decision rest on a fundamental misconception of the *Cox* decision and, more basically, of the *individual* nature of the statutory right afforded "all persons" by section 51. As already noted, in *Cox* we explained that the provisions of section 51 derive from the common law doctrine which imposed upon certain enterprises affected with a public interest "'the duty to serve *all* customers on reasonable terms without discrimination.'" (Italics added.) (3 Cal.3d at p. 212, 90 Cal.Rptr. 24, 474 P.2d 992.) Under this common law principle, each member of the public, as an individual, possessed the right to obtain the services of such enterprises. (See, e.g., *Willis v. McMahan* (1891) 89 Cal. 156, 157–158, 26 P. 649; see generally Beale on Innkeepers and Hotels (1906) pp. 42–50, 68–69.)

The rights afforded by the Unruh Act similarly are enjoyed by all persons, as individuals. As an early decision construing a predecessor of section 51 declared: "The purpose [of the statutes] is to compel a recognition of the equality of citizens in the right to the peculiar service offered by [the] agencies [covered by the acts]." (*Piluso v. Spencer* (1918) 36 Cal.App. 416, 419, 172 P. 412. See also *Greenberg v. Western Turf Assn.* (1903) 140 Cal. 357, 362, 73 P. 1050 ("The defendant is conducting a place of amusement. There is held out to the public under the guaranty of the statute the right to admission to this place of amusement and to the enjoyment of the pleasure which it affords. This is the right which the plaintiff had secured to him by the law, in common with all other inhabitants of the state...."); *Perrine v. Paulos* (1950) 100 Cal.App.2d 655, 657, 224 P.2d 41.)

[3] As we recognized in *Cox*, of course, an individual may forfeit his statutory right of access to the services of a business enterprise if he conducts himself improperly or disrupts the operations of the enterprise. But, contrary to the contention of Marina Point and the suggestion of the *Flowers* case, the Unruh Act does not permit a business enterprise to exclude an *entire class* of individuals on the basis of a generalized prediction that the class "as a whole" is more likely to commit misconduct than some other class of the public.

This proposition is clearly demonstrated by our prior decisions in *Orloff v. Los Angeles Turf Club, supra*, and *Stoumen v. Reilly, supra*. Undoubtedly the class of persons with "reputations as to immoral character" was more likely than the general population to engage in illegal activities which a public race track legitimately would seek to prevent. *Orloff* clearly held, however, that an individual could not be excluded from the race track on the basis of such classification, but rather had a right to be judged on the basis of his own conduct. Similarly, although it may have been thought true—

8. In *Ritchey v. Villa Nueva Condominium Assn.* (1978) 81 Cal.App.3d 688, 146 Cal.Rptr. 605, the Court of Appeal cited this passage from *Flowers* in rejecting a condominium owner's challenge to the validity of an association's by-law which limited the occupancy of a portion of a condominium project to persons 18 years of age or older. In *Ritchey*, however, the plaintiff did not raise any claim under the Unruh Act at all, and consequently the Court of Appeal in that case did not address the question presented in the instant proceeding.

at least under the mores of that time—that homosexuals as a class were more likely than heterosexuals to engage in the kind of "immoral conduct" that would justify expulsion from a public restaurant or bar (see, e.g., *Vallerga v. Dept. Alcoholic Bev. Control* (1959) 53 Cal.2d 313, 319–320, 1 Cal.Rptr. 494, 347 P.2d 909), in *Stoumen* we held that any such class generalization did not afford a proper basis for exclusion of all homosexuals; instead, we emphasized that "[m]embers of the public ... have a right to patronize a public restaurant and bar so long as they are acting properly and are not committing illegal or immorals acts...." (37 Cal.2d 713, 716, 324 P.2d 969.)

Indeed, the basic rights guaranteed by section 51 would be drastically undermined if, as the landlord contends, a business enterprise could exclude from its premises or services entire classes of the public simply because the owner of the enterprise had some reason to believe that the class, taken as a whole, might present greater problems than other groups. Under such an approach, for example, members of entire occupations or avocations, e.g., sailors or motorcyclists, might find themselves excluded as a class from some places of public accommodation simply because the proprietors could show that, as a statistical matter, members of their occupation or avocation were more likely than others to be involved in a disturbance. (See, e.g., *Atwater v. Sawyer* (1884) 76 Me. 539 [49 Am.Rep. 634] (innkeeper's exclusion of all members of the militia, because of disorderly conduct of other militiamen, held impermissible).) Similarly, members of a particular nationality or ethnic group might be excluded from an apartment complex simply because the landlord had found from his experience that members of that nationality or ethnic group were more likely to play loud music or to damage the landlord's property than tenants of other backgrounds.

As these examples demonstrate, the exclusion of individuals from places of public accomodation or other business enterprises covered by the Unruh Act on the basis of class or group affiliation basically conflicts with the individual nature of the right afforded by the act of access to such enterprises. As the United States Supreme Court observed in reaching a similar conclusion with respect to the antidiscrimination provisions of Title VII of the federal Civil Rights Act of 1964 in *Los Angeles Dept. of Water & Power v. Manhart* (1978) 435 U.S. 702, 708, 98 S.Ct. 1370, 1375, 55 L.Ed.2d 657: "The statute's focus on the individual ... precludes treatment of individuals as simply components of a racial, religious, sexual or national class. If height is required for a job, a tall woman may not be refused employment merely because, on the average, women are too short. *Even a true generalization about the class is an insufficient reason for disqualifying an individual to whom the generalization does not apply.*" (Italics added.)

As *Cox* makes clear, of course, under the Unruh Act exclusion on the basis of a group classification is as improper when applied to "children" or "families with children" as it is when applied to occupational, racial, religious or other broad "status" classifications. Indeed, if we were to accept the landlord's contention that a blanket exclusion of children or families with children from rental housing can be justified because children as a class are noisier, rowdier and more boisterous than adults, it would logically follow that children could uniformly be excluded from virtually all business enterprises or places of public accommodation since, like apartment complexes, most businesses can claim a legitimate interest in eliminating excessively noisy, rowdy or boisterous conduct.

As our decisions in *Cox*, *Orloff* and *Stoumen* teach, although entrepreneurs unquestionably possess broad authority to protect their enterprises from improper and disruptive behavior, under the Unruh Act entrepreneurs must generally exercise this legitimate interest directly by excluding those persons who are in fact disruptive. Entrepreneurs cannot pursue a broad status-based exclusionary policy that operates to deprive innocent individuals of the services

of the business enterprise to which section 51 grants "all persons" access.[9]

4. *Neither the nature of the business enterprise nor the nature of the facilities justifies the blanket exclusion of all families with children from the Marina Point apartment complex.*

Finally, the landlord argues that even if the potential misbehavior of children as a class does not justify its exclusionary practice under the Unruh Act, its "no children" policy may nonetheless be sustained as reasonable on the ground that the presence of children basically does not accord with the nature of its business enterprise and of the facilities provided. In this regard, the landlord attempts to analogize its contemplated "adults only" apartment complex to such businesses as bars, adult book stores and theaters, or senior citizen convalescent homes or housing facilities which routinely exclude children from their premises or services.

In our view, the suggested analogy clearly fails. Stated simply, nothing in the nature of an ordinary apartment complex is incompatible with the presence of families with children. Indeed, as the record in this case indicates, prior to its decision to exclude children in 1974, the landlord freely rented its apartments to families with children and, even at the time of trial, several families with children continued to reside in the complex.

Unlike the exclusion of children from bars or adult book stores or movie theaters, the Marina Point complex's exclusionary policy cannot, of course, be defended by reference to any statutorily sanctioned restriction on the activities of children. (Cf., e.g., Bus. & Prof.Code, § 25658 (furnishing alcoholic beverages to person under 21); Pen.Code, § 313.1 (distributing "harmful matter" to a minor).)

Moreover, the exclusionary practice at issue in this case is also clearly distinguishable from the age-limited admission policies of retirement communities or housing complexes reserved for older citizens. Such facilities are designed for the elderly and in many instances have particular appurtances and exceptional arrangements for their specified purposes. The special housing needs of the elderly in contemporary American society have been extensively chronicled,[10] and both the state and federal

9. Although the case of *Newby v. Alto Riviera Apartments* (1976) 60 Cal.App.3d 288, 131 Cal. Rptr. 547, involved a landlord's threatened eviction of a tenant on the basis of the tenant's own conduct and thus is clearly distinguishable from the instant matter, some language in the *Newby* opinion does conflict with the above analysis of the Unruh Act and must be disapproved. In *Newby*, the court stated: "Action by a landlord which does not restrict the right of a tenant to insure habitable living premises, and does not discriminate on the basis of race, sex, color, religion, ancestry, or national origin, is not actionable under the [Unruh Act] if it proceeds from a motive of rational self-interest, i.e., if it is 'rationally related to the facilities provided.'" (*Id.*, at p. 302, 131 Cal.Rptr. 547.)

This statement is surely overbroad since an entrepreneur may pursue many discriminatory practices "from a motive of rational self-interest," e.g., economic gain, which would unquestionably violate the Unruh Act. For example, an entrepreneur may find it economically advantageous to exclude all homosexuals, or alternatively all nonhomosexuals, from his restaurant or hotel, but such a "rational" economic motive would not, of course, validate the practice. (See *Stoumen v. Reilly*, *supra*, 37 Cal.2d 713, 324 P.2d 969.)

10. See, for example, 2 White House Conference on Aging, Toward a National Policy on Aging (1971) 29–36; President's Task Force on Aging, Toward a Brighter Future for the Elderly (1970) 38–40; Hearings on Condominium Conversions and the Elderly before the California Assembly Committee on Aging (1978).

In *Taxpayers Ass'n of Weymouth Tp. v. Weymouth Tp.* (1976) 71 N.J. 249, 364 A.2d 1016, 1026–1028, the New Jersey Supreme Court, in a thoughtful and well-documented opinion, explained at some length the numerous factors underlying the special housing needs of the elderly. The Court stated: "In part the need of the elderly for specialized housing results from the fixed and limited incomes upon which many older persons are dependent.... [¶] In part, though, the needs for specialized housing transcends economic status and results from the particular physical and social problems of the elderly ... '... To the elderly, accidents in the home are a real danger. Falls, for example, are the leading cause of accidental death for those 65 and over.... [Housing p]lans should include more and wider

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governments have enacted specific "age-conscious" legislative measures addressed to this problem. (See, e.g., Health & Saf.Code, § 51230 (reserving proportion of state-financed low income housing for occupancy by elderly); 12 U.S.C. § 1701q (federal loan program for housing for elderly families); 42 U.S.C. § 1485 (same).)

[4] In light of the public policy reflected by these legislative enactments, age qualifications as to a housing facility reserved for older citizens can operate as a reasonable and permissible means under the Unruh Act of establishing and preserving specialized facilities for those particularly in need of such services or environment. (See, e.g., *Taxpayers Ass'n. of Weymouth Tp. v. Weymouth Tp., supra*, 71 N.J. 249, 364 A.2d 1016, 1026–1030; 58 Ops.Cal.Atty.Gen. 608, 613 (1975).)[11] Such a specialized institution designed to meet a social need differs fundamentally from the wholesale exclusion of children from an apartment complex otherwise open to the general public.[12]

[5] Marina Point cannot plausibly claim that its exclusionary policy serves any similarly compelling societal interest. It can hardly contend, for example, that the class of persons for whom Marina Point seeks to reserve its housing accommodation, i.e., single adults or families without children, are more in need of housing than the class of persons whom the landlord has excluded from its apartment complex; indeed, precisely the opposite is true. As the Legislature stated in 1979: "The Legislature finds and declares that the state's housing problems are substantial, complex and now of crisis proportions ... The Legislature finds and declares that the greatest need for housing is experienced by residents at the lower end of the economic scale. Many moderate and low income households *with children* cannot normally find decent, safe and suitable housing at prices they can af-

walkways with few stairs, an interior and exterior designed to permit easy social contact, provision for common rooms, short distances between buildings, easy refuse collection, light maintenance and well-lighted walkways and halls....'

"Though special social and psychological needs of the elderly are perhaps less obvious than their physical needs, they are no less real. The elderly are apt to be less mobile than younger persons. They may have lost friends and relatives of comparable age and background. As a result, readily accessible companionship becomes increasingly important to them. In addition, the fact that children may have moved away sometimes causes elderly persons to seek an age-homogeneous environment to replace broken family ties.... Such an environment also helps older citizens to adjust to the social and psychological effects of retirement .... In addition, age-homogeneous communities afford a sense of security to their residents and thereby reduce the fear of criminal victimization.... Finally, these communities facilitate social relations and increase opportunities for the peer contact which many older persons need and desire." (364 A.2d at pp. 1026–1028 [citations omitted].) (See also Teaff et al., *Impact of Age Integration on the Well-Being of Elderly Tenants in Public Housing* (1978) 33 J. Gerontology 126 (empirical study finding that elderly tenants "living in age-segregated environments ... participate more in organized activities within the housing environment, ... have higher morale, higher housing satisfaction, and greater mobility in their neighborhoods").)

11. In light of the housing special needs of older citizens, the New Jersey Supreme Court, in the *Weymouth* case quoted at length in footnote 10, upheld the validity of a municipal zoning ordinance setting aside a portion of land for use as a mobile home park for older citizens. In reaching its conclusion, the court observed: "The role which mobile home developments can play in satisfying the special needs of the State's senior citizens is evident. First, mobile homes provide a relatively inexpensive form of housing at a time when the demand for such housing is great and its availability is limited ... Second, mobile home developments afford the elderly the age-homogeneous environments which many older persons now seek and desire. Finally, the size of mobile homes is ideal for older persons with both physical and financial limitations...." (364 A.2d at p. 1029.)

These special features of mobile home parks, which correlate closely with the special needs of older citizens, may well explain the fact that mobile home parks constitute the only housing facilities in which the California Legislature has explicitly authorized "adult only" restrictions. (See Civ.Code §§ 798.76, 799.5.)

12. Thus, contrary to the suggestion of the dissent (dis. opn., *post*, pp. 510–511 of 180 Cal. Rptr., pp. ——— of ——— P.2d), this opinion does not bar age-limited admission policies of retirement communities or housing complexes reserved for older citizens.

ford...." (Italics added.) (Stats.1979, ch. 1043, §§ 1, 2, pp. 3643–44.) Thus, unlike the case of special housing for the elderly, the exclusionary policy at issue here exacerbates, rather than alleviates, the state's specialized housing needs.

Finally, apartment house living is by no stretch of the imagination the type of dangerous or hazardous activity as to which the exclusion of children might be defended on health or safety grounds. Although certain facilities offered by an apartment complex may possibly be withheld from children pursuant to such a safety rationale, a landlord cannot seize upon the availability of such incidental facilities as a justification for closing off all of its principal services, i.e., housing accommodations, to the broad class of families with children.[13] If the rule were otherwise, of course, a proprietor could easily circumvent the Unruh Act's prohibitions simply by adding some incidental facility which posed a special danger to an undesired class of potential patrons. The fundamental right of equal access to public business enterprises established by the Unruh Act cannot be so readily defeated.

5. *Conclusion.*

A society that sanctions wholesale discrimination against its children in obtaining housing engages in suspect activity. Even the most primitive society fosters the protection of its young; such a society would hardly discriminate against children in their need for shelter. Yet here the landlord would single out children as a class for exclusion from shelter although such discrimination against racial minorities or religious groups would be unquestionably illegal. Indeed, under the Unruh Act we have condemned *any* arbitrary discrimination against any class.

The argument is launched that children clearly may be excluded from certain kinds of housing, such as housing for the aged, housing for special classes or purposes, and therefore that the instant exclusion is justified. But we do not here adjudge such special purpose housing. We have before us a mammoth apartment complex consisting of 846 separate apartments which proposes to engage in wholesale discrimination against children. To permit such discrimination is to approve of widespread, and potentially universal, exclusion of children from housing. Neither statute nor interpretation of statute, however, sanctions the sacrifice of the well-being of children on the alter of a landlord's profit, or possibly some tenants' convenience.

The judgment is reversed.

BIRD, C. J., and NEWMAN, BROUSSARD and WHITE,** JJ., concur.

RICHARDSON, Justice, dissenting.

I respectfully dissent.

This case illustrates a truism: the answer to a legal question frequently depends upon how the question is phrased. If the issue

13. Although one argument urged in defense of the exclusion of families with children from Marina Point rests upon the presence of swimming pools on the premises, the landlord's own actions reveals the hollowness of the contention. The swimming pools were part of the apartment complex long before the landlord instituted its "adults only" program. If the pools were not incompatible with the presence of children during the period before the new program, the pools could hardly become prohibitively dangerous after the institution of that program.

Moreover, the landlord's ostensible concern for the safety of children has never led it to adopt the less restrictive practice of simply excluding children from the use of the pools. Instead, the evidence at trial established that the landlord has routinely permitted both the remaining resident children and children of guests to use its swimming facilities. Under these circumstances, the presence of the swimming pools cannot possibly justify the landlord's broad exclusionary policy.

Finally, we note that the asserted "special features" on which the dissent relies—swimming pools with no shallow ends, no playgrounds, ungated gangplanks to the ocean—are hardly the kind of amenities which would suggest that this apartment complex was intended solely for "our middle aged or older citizens" on whose behalf the dissent defends the complex's exclusionary policy. (See dis. opn. post, pp. 510–511 of 180 Cal.Rptr., pp. ——— of —— P.2d.)

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before us is, as framed by the majority (*ante*, p. 510 of 180 Cal.Rptr., p. —— of —— P.2d) should we approve "wholesale discrimination against children," or the "universal exclusion of children from housing" or sanction "the sacrifice of the well-being of children on the altar of a landlord's profit, or possibly some tenants' convenience," the answer is a thundering "no." We'll choose children over a landlord's profit and greed every time. If, however, the question is put a little differently, and we inquire—do our middle aged or older citizens, having worked long and hard, having raised their own children, having paid both their taxes and their dues to society retain a right to spend their remaining years in a relatively quiet, peaceful and tranquil environment of their own choice? The answer to such a question is, why not? There are two conflicting social policies present in this case, and a just society including its law courts should try to accommodate and serve them both.

The majority does not identify any constitutional violations here. Rather it bases its sweeping holding exclusively on the Unruh Civil Rights Act (Civ.Code, § 51). Section 51 provides as follows: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. [¶] This section shall not be construed to confer any right or privilege on a person which is conditioned or limited by law or which is applicable alike to persons of every sex, color, race, religion, ancestry, or national origin."

We closely examined this section in *In re Cox* (1970) 3 Cal.3d 205, 90 Cal.Rptr. 24, 474 P.2d 992, and held that its enumeration of prohibited forms of discrimination was "illustrative, rather than restrictive" (p. 212, 90 Cal.Rptr. 24, 474 P.2d 992) and not only incorporated those rights which were declared by this court to exist under former civil rights legislation dealing with places of "public accommodation and amusement" (see *Stoumen v. Reilly* (1951) 37 Cal.2d 713, 324 P.2d 969; *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 227 P.2d 449) but also extended those rights, in the words of the statute, to "all business establishments of every kind whatsoever." Thus, we concluded, the Unruh Act does more than prohibit the enumerated forms of discrimination in all business establishments. "[B]oth its history and its language disclose a clear and large design to interdict *all arbitrary discrimination* by a business enterprise." (3 Cal.3d, at p. 212, 90 Cal.Rptr. 24, 474 P.2d 992, italics added.) Having so held, we were very careful to explain that this ban, however comprehensive in scope, was not absolute in application. There was no violation of the Unruh Act, we noted, by the establishment and enforcement of "*reasonable regulations that are rationally related to the services performed and facilities provided.*" (*Ibid.*, italics added.)

It seems clear to me that Marina Point (1) is a "business establishment" within the meaning of, and therefore subject to, the Unruh Act (*Flowers v. John Burnham & Co.* (1971) 21 Cal.App.3d 700, 703, 98 Cal.Rptr. 644; *Swann v. Burkett* (1962) 209 Cal. App.2d 685, 694–695, 26 Cal.Rptr. 286; cf. *Abstract Investment Co. v. Hutchinson* (1962) 204 Cal.App.2d 242, 254–255, 22 Cal. Rptr. 309; see also 56 Ops.Cal.Atty.Gen. 546 (1973)), and (2) has not violated the Unruh Act if its rental policy was a "reasonable regulation[ ] ... rationally related to the services performed and facilities provided." (*Cox*, supra, at p. 212, 90 Cal.Rptr. 24, 474 P.2d 992.) Under the circumstances of this case, the trial court concluded that plaintiff's policy was reasonable. I agree with its conclusion.

The trial court made express findings of fact that the facilities at Marina Point are "designed for use by adults, not children, and pose dangers to children who are not accompanied by adults." It further expressly found that plaintiff Marina Point's "exclusion of children from the premises at issue herein is rationally related to the lack of facilities provided for children ...." These findings were amply supported by the record. The evidence before the trial

court established, in substance, that Marina Point was designed and constructed for the purpose of providing all-adult rental housing, and that as such its facilities were ill-adapted for use by children. There was unchallenged testimony that, among other things, neither of the two swimming pools of the facility has a shallow end; there are no playgrounds or any other facilities appropriate for recreational use by children; gangplanks leading from the facility directly to the adjoining ocean are not equipped with gates; and, in general, the use of existing facilities at Marina Point by children when playing results in substantial danger both to themselves and to adult residents alike.

The majority attempts to discount the force of these findings by observing that Marina Point, prior to the 1974 decision to accept no further tenants with children, freely rented to families having children. It is suggested, in short, that the adaptability of the premises to use by children is demonstrated by the fact that they have actually resided there. This proposition, its logical failings aside, must be considered in the light and context of the record which reflects that plaintiff became the owner of the complex in 1972, several years after it was built; that at that time, as a result of existing leases, there were children included among the tenants; and that in 1974, two years after acquiring the property and because of its experience during that period, plaintiff decided that no further leases to families with children would be entered into, but that families with children then in occupancy should be allowed to remain.

I do not agree with the majority's suggestion that one who purchases property which is constructed and designed for all-adult rental occupancy is thereafter for all time precluded under the Unruh Act from putting that property to its intended use because a prior owner had chosen to do otherwise. Here, plaintiff purchased property which was subject to outstanding leases and a then current rental policy which had previously permitted occupancy inconsistent with the design for the complex.

Our sole inquiry, under *Cox*, is to determine whether the landlord has acted reasonably—i.e., whether in initiating and enforcing its new policy, it has done so by regulations which are reasonable in light of the circumstances and "rationally related to the services performed and facilities provided." (*Cox*, supra, at p. 212, 90 Cal.Rptr. 24, 474 P.2d 992.) The trial court's conclusion that plaintiff's action met this standard is fully supported by the court's express findings of fact and substantial evidence in this record. (See *Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 63–64, 107 Cal.Rptr. 45, 507 P.2d 653.) It has long been our rule that our review "begins and ends with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact." (*Primm v. Primm* (1956) 46 Cal.2d 690, 693, 299 P.2d 231.)

Because the majority declines to reach defendants' constitutional arguments, I, accordingly, do not discuss them here other than to observe that the equal protection and due process principles relied upon by defendants place no restrictions upon purely *private* action, but affect only *state* action, which is not involved here. (*Garfinkle v. Superior Court* (1978) 21 Cal.3d 268, 281–282, 146 Cal.Rptr. 208, 578 P.2d 945; *Kruger v. Wells Fargo Bank* (1974) 11 Cal.3d 352, 366–367, 113 Cal.Rptr. 449, 521 P.2d 441; *Shelley v. Kraemer* (1948) 334 U.S. 1, 13, 68 S.Ct. 836, 842, 92 L.Ed. 1161; *Civil Rights Cases* (1883) 109 U.S. 3, 11–19, 3 S.Ct. 18, 21–27, 27 L.Ed. 835; see also *Gay Law Students Assn. v. Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 468, 493, 156 Cal.Rptr. 14, 595 P.2d 592.)

I fully share the majority's concern with the current need in this state for moderate and low income housing for families with children. We should impose no restriction on the power of either state or local government, through the proper exercise of their police powers, to enact measures calculated to insure that all families with children are able to secure adequate and affordable housing. In the matter before us, however, the majority simply disagrees with the ex-

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plicit fact findings of a trial court which listened to the witnesses, examined the evidence, and expressly found as a fact that the premises in question were planned and built for all-adult tenants and not for children. On the basis of these findings, there is nothing in the Unruh Act which prohibits limitations here imposed. It is not unreasonable that the rental policies of an apartment complex be tailored and fashioned to match its planned design and character. If the trial court had found as a fact that the premises were designed for *general* use a different legal conclusion would follow.

I would dismiss the appeal of plaintiff Marina Point from the order after judgment taxing costs, and would affirm the judgment.

MOSK, J., concurs.

CHAPTER III

RETALIATORY EVICTIONS

TABLE OF CONTENTS

CHAPTER III: RETALIATORY EVICTIONS

PART I: INTRODUCTION

This chapter deals with the situation where a landlord attempts to evict a tenant because the tenant reported housing code violations to the local Building Inspection Department.

First is an article by Moskovitz, "Retaliatory Eviction - The Law and the Facts," which first appeared in the Clearinghouse Review, May, 1969. This article discusses cases dealing with retaliatory evictions, suggests arguments to make in jurisdictions where there is presently no decision on this issue, and makes suggestions on how to go about proving the landlord's motive.

Second is an article which appeared in the July 15, 1972 issue of the Law Project Bulletin which reviews legislative developments to that date. The article also cites cases decided after the first article in this chapter was prepared. The constitutionality of the New Jersey statute was attacked and upheld in Troy Hills Village, Inc. v. Fischler, 121 N.J. Super. ___, ___ A.2d ___ (1973), and should be referred to to bring the first article up to date.

Third is a copy of a Complaint and Order to Show Cause and Temporary Restraining Order in the case of Rose v. Hewes Co., et al. This case was filed in response to a landlord's attempt to evict a tenant, in retaliation for the tenant's attempt to organize other tenants to complain about conditions in the building. The Complaint requests $811,000 damages and preliminary and permanent injunctions against the landlords to compel them to bring the building up to code. Based on this Complaint, a temporary restraining order was obtained preventing the landlords from bringing any eviction action against the tenant. Faced with the potential expenses involved in damages, repairing the building, and attorney's fees (and not enjoying the newspaper publicity) the landlords soon agreed to settle the case. Not only did they agree to let the plaintiff stay in his apartment, they also agreed to make most of the repairs he demanded, enact house rules to control the manager's conduct, to charge plaintiff only $1 a month rent until the repairs are made, and to pay him four years back rent ($1,525). A copy of the settlement agreement appears at the end of this Chapter.

Filing such a Complaint is an alternative response to the attempted retaliatory eviction, and it may be more effective than merely trying to defend the eviction action (which may also be done if the affirmative action fails).

A tenant becomes fed up with rats which are infesting his apartment and his landlord's failure to do anything about it. As this is a violation of local health laws, the tenant reports this matter to the local Health Department. The Health Department inspects the apartment to verify the violation and orders the landlord to get rid of the rats, informing the landlord that the tenant made the complaint.

The tenant has no written lease and only a month-to-month tenancy. Therefore, the landlord can give him a thirty day notice to quit without stating any reason. The landlord does this because he does not want troublemakers in his building and perhaps as a subtle warning to other tenants who might file similar complaints.

When the tenant refuses to move at the end of thirty days, the landlord brings an eviction action. In his answer, the tenant raises an affirmative defense that the landlord's primary motive for bringing the action is to retaliate against the tenant for filing the complaint with the local Health Department. Should this defense be allowed? If it is allowed, how can the tenant prove the landlord's motive?

This is the classical case of "retaliatory eviction." Another form in which it is likely to come up is where the landlord, instead of serving a thirty day notice to quit, serves a notice that unless the tenant leaves the rent will be substantially increased at the end of thirty days. The tenant stays on, refuses to pay the increase in rent, and then the landlord brings an eviction action for the tenant's refusal to pay this extra rent.

Legal Services attorneys throughout the country face some variant of this problem or the prospect of it, daily. Their clients live in substandard housing, where landlords know of health code and housing code violations, but refuse to do anything about it. Tenants are afraid to report violations and ask for help from city agencies in enforcing these codes because if they do they may be evicted or the rent will be raised. Because of low vacancy rates, they have no place else to go. Therefore, unless such retaliatory evictions can be stopped, the violations will continue and the municipal code enforcement system, which depends largely upon complaints, is effectively stymied.

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This article will discuss the problem of retaliatory eviction, including recent developments in the law regarding this defense and some problems of proof.

Most states have no specific legislation prohibiting retaliatory evictions, and such evictions will have to be challenged on constitutional and common law and statutory interpretation grounds. Several of these grounds were advanced before the United States Court of Appeals for the District of Columbia Circuit in Edwards v. Habib, 397 F.2d 687 (1968), in which the Court allowed the defense of retaliatory eviction. The opinion is quite extensive, the Court thoroughly discussing three grounds, deferring judgment on two of the theories while accepting the third. In raising a retaliatory eviction defense in a jurisdiction which has not considered this question before, attorneys should raise all three of these theories, using the Edwards analysis and the authorities cited there where appropriate.

The Court first considered the argument that to permit the eviction would interfere with the tenants' right under the First Amendment to petition the government for a redress of grievances. The required "state action" would be found in the use of the courts to enforce the eviction, just as the United States Supreme Court found that it would be improper state action for a court to enforce a private covenant restricting residential property to whites only in Shelley v. Kraemer, 334 U.S. 1 (1948).

This argument for invoking the retaliatory eviction doctrine had been accepted by the United States District Court for the Southern District of New York in an unreported decision in Tarver v. G. & C.

Construction Corp., No. 64 C 2945 (S.D.N.Y., Nov. 9, 1964). The Court in Edwards, however, did not accept this theory so quickly, recognizing the implication if Shelley were carried to its logical extreme. Nevertheless, impressed by the holdings in New York Times v. Sullivan, 376 U.S. 254 (1964), and Marsh v. State of Alabama, 326 U.S. 501 (1946), that state courts could not support private action unreasonably restricting free speech, the Court indicated an inclination to accept this theory. But, as will be seen below, the Court did not finally pass on this and instead accepted another theory.

The second argument advanced in Edwards was that no state action was necessary, because the right of a citizen to inform his government of a violation of law is constitutionally protected against private action as well as government action. This theory stems from the holding in In re Quarles and Butler, 158 U.S. 532, 536 (1895), that:

> The right of a citizen informing of a violation of law . . . does not depend upon any of the Amendments to the Constitution, but arises out of the creation and establishment by the Constitution itself of a national government, paramount and supreme within its sphere of action.

This is the theory which the law and motion judge in the trial court in Edwards had accepted, although the trial judge later rejected it and refused to allow evidence of a retaliatory motive. The District of Columbia Court of Appeals also rejected this argument, distinguishing Quarles on the ground that there Congress had enacted legislation (the Civil Rights Act) granting such rights. The Court of Appeals, however, held that the Civil Rights Act had provided remedies only, and the rights the Court in Quarles was discussing stemmed from the Constitution. Therefore, Quarles would seem to apply to the retaliatory eviction situation. Nevertheless, the Court also declined to make a holding on this theory, instead selecting the third argument.

The third argument, which the Court adopted, was that to permit retaliatory evictions would be contrary to the statutory intent behind the Housing Code and would be contrary to public policy. The Court held that:

> To permit retaliatory evictions . . . would clearly frustrate the effectiveness of the housing code as a means of up-grading the quality of housing in Washington . . . . In light of the appalling condition and shortage of housing in Washington, the expense of moving, the inequality of bargaining power between tenant and landlord, and the social and economic

> importance of procuring at least minimum standards in housing conditions, we do not hesitate to declare that retaliatory evictions cannot be tolerated. There can be no doubt that the slum dweller, even though his home be marred by housing code violations, will pause long before he complains of them if he fears eviction as a consequence. Hence, an eviction under the circumstance of this case would not only punish appellant for making a complaint which he had a constitutional right to make, a result which we would not impute to the will of Congress simply on the basis of an essentially procedural enactment, but also would stand as a warning to others that they dare not be so bold, a result which, from the authorization of the housing code, we think Congress affirmatively sought to avoid. 397 F.2d at 701.

This public policy argument was followed by a City Court in New York in Portnoy v. Hill, 294 N.Y.S.2d (1968), wherein the Court held that the case for allowing the defense of retaliation is much stronger in New York than in the District of Columbia, because New York statutes permit equitable defenses to be raised in eviction proceedings. Although the Court did not clearly indicate what type of equitable defense it considered retaliatory eviction to be, it apparently had in mind the "clean hands" doctrine

In Hosey v. Club Van Courtlandt; 29[illegible] F. Supp. 501 (S.D.N.Y. 1969), the United States District Court for the Southern District of New York was asked to enjoin a landlord from instituting a state court eviction proceeding, on the ground that the landlord's motives were retaliatory. Such an action would be unconstitutional and therefore in violation of the Civil Rights Act, 42 U.S.C. §1983. The Court adopted the first argument advanced in the Edwards case, following Tarver and held that for a state court to allow an eviction under such circumstances would violate the First and Fourteenth amendments. The Court next held that where state law clearly rejects the defense of retaliatory eviction, federal courts may enjoin the use of state courts for this purpose. In this case, however, the Court found that New York state courts are still unsettled on this point. Although the City Court in Portnoy v. Hill had allowed the defense, another lower court, in an unreported opinion, had rejected it. Lincoln Square Apartments v. Davis, No. L. & T. 80411-1968 (N.Y. City Civ. Ct., Dec. 3, 1968).

Thus, Hosey is very useful authority for two propositions: (1) a state court is required by the First and Fourteenth amendments to permit the defense of retaliatory eviction, and (2) if state law clearly precludes this defense, federal courts may be used to enjoin such evictions.

A Michigan Court has also followed the public policy argument adopted in Edwards, although this holding is no longer necessary in Michigan due to the new legislation described above. The case in which this doctrine was adopted was Watts v. Lyles, CCH Pov. L Rep., para. 9028 (No. 1049286, Mich. Cir. Ct. Commissioners Ct., Wayne County, Feb. 28, 1968).

Two recent cases, however, have specifically rejected Edwards, refusing to allow the defense of retaliatory eviction where there is no clear legislative authority for it. These cases arose in Maryland, Weinberg v. Scheper, CCH Pov. L. Rep., para. 9185 (No. 24453-68), and in Connecticut in LaChance v. Hoyt, CCH Pov. L. Rep., para. 9092 (No. CV. 14-685-35851, Conn. Cir. Ct., 14th Cir., Sep. 6, 1968).

Florida has followed Edwards, but has added an additional burden upon the tenant raising the defense of retaliatory eviction. In Wilkins v. Tebbetts, 216 So.2d 477 (Fla. Dist. Ct. App. 1968), the Court rejected a retaliatory eviction defense because the tenant had not alleged or proved any specific code violations. There the Court required the tenant to prove not only that the landlord's reason for the eviction was the fact that the tenant reported alleged code violations, but also that such violations in fact existed. While this should not usually be difficult to prove, the imposition of this burden on the tenant seems unnecessary in view of Edwards' rationale that the purpose of allowing the defense is to facilitate city enforcement by encouraging reporting of alleged violations.

To our knowledge, these are the only cases which have passed upon the defense of retaliatory eviction at the present time. Most jurisdictions have yet to decide this question. Attorneys raising the defense of retaliatory eviction in these jurisdictions for the first time should, of course, raise the arguments which were raised in Edwards and use the authorities cited in Edwards, as well as Edwards itself (and Tarver, Portnoy and Hosey). These attorneys should also search for cases in such jurisdictions holding that a normally unrestricted right to sever or refuse to renew a contractual relationship may be restricted where the reason for such severence or refusal is contrary to public policy, usually as expressed by some statute. Such cases tend to occur in labor law, but they may occasionally be found in other fields. It has been held in many states, for example, that where state law contains a general policy that employees shall have the right to organize, an employer may not terminate an employment at will because an employee joins a union. Glenn v. Clearman's Golden Cock, Inc. 192 Cal. App. 2d 793, 13 Cal. Rptr. 769 (1961); Sand v. Queen City Packing Co. 180 N.W.2d 448 (N.D. 1961); Cooper v. Nutley Sun Printing Co. 36 N.J. 189, 175 A.2d 639 (1961); Independent D.W. Union v. Milk D. & D. Emp. 30 N.J. 173, 152 A.2d 331,

336 (1959); Krystad v. Lau, 400 P.2d 72 (Wash. 1965); Annotation, 83 A.L.R.2d 532. See also Pettway v. American Cast Iron Pipe Co., (5th Cir., 1969) 37 Law Week 2695. Nor may an employer fire an employee from an employment at will because the employee refused to commit perjury. Petermann v. International Brotherhood of Teamsters 174 Cal. App. 2d 184, 344 P.2d 25 (1959). A land owner may not evict a sharecropper tenant because the tenant registered to vote or voted, United States v. Beaty 288 F.2d 653 (6th Cir. 1961); United States v. Bruce 353 F.2d 474 (5th Cir. 1965), or because a tenant-employee went on strike. Hotel and Restaurant Employees v. Boca Raton Club 73 So.2d 867, 871 (Fla. 1954). An insurance company may not cancel a dentist's malpractice insurance because he testified against another dentist in a malpractice case. L'Orange v. Medical Protective Co. 394 F.2d 57 (6th Cir. 1968).

It should be pointed out that, while in Edwards the "public policy" the Court sought to enforce was the policy towards municipal enforcement of housing codes, other "public policies" for allowing retaliatory eviction as a defense may be conceived. For example, most states have criminal statutes prohibiting the intimidation of witnesses, including prospective witnesses. See, e.g., Cal. Penal Code §136. As the tenant who reports a housing code violation is in effect offering to testify at a later criminal proceeding against a landlord, a retaliatory eviction would seem to be an act of intimidation against the tenant as a witness, and therefore should be barred by public policy. A further public policy might be found in the First Amendment to the United States Constitution, which encourages free speech and petitioning the government for a redress of grievances. This is not a constitutional argument, but an argument that public policy may be found in the Constitution. A similar argument was accepted in James v. Marin Ship Corp., 25 Cal 2d 721, 739-740, 155 P.2d 329 (1944). There, injunctions were granted against hiring discrimination against Negroes by private employers and admission discrimination by labor unions. The Court held that the Fourteenth Amendment established a public policy of the United States against racial discrimination.

Establishing the principle that a defense of retaliatory eviction may be permitted, however, is only the first step. The next step, which might be even more difficult, is proving your case. When the landlord brings what appears to be an ordinary eviction action, how do you prove his retaliatory motive? Landlords frequently terminate month-to-month tenancys on thirty day notices, and they usually have pretty justifiable reasons for doing so. The tenant will often have a history of paying his rent a few days late, being somewhat noisy sometimes, or perhaps there is overcrowding in violation of housing codes. Also, even if none of these factors are present, if you have no statements from the mouth of the landlord as to why he is evicting, how do you prove his motive?

There is, of course, very little case law directly on point, since at this point in time there are so few cases reported regarding retaliatory eviction. Nevertheless, we have some very helpful analogies from the labor law field. Under the National Labor Relations Act and many state laws, an employer may not fire or refuse to hire an employee because of his union activity. In cases arising under these laws, courts have discussed what types of evidence are persuasive in proving the employer's unlawful motive. These issues seem to be directly parallel to the proof problems in retaliatory evictions.

The first question to face is how strong a retaliatory motive you must prove. Must retaliation be the landlord's sole motive or may it be one of several motives? In the labor law cases, the courts have held that discrimination against union activity need not be the sole motive, but must be "a substantial or motivating reason." In National Labor Relations Board v. Whitin Machine Works, 204 F.2d 883, 885 (1st Cir. 1953), the Court held:

> In order to supply a basis for inferring discrimination it is necessary to show that one reason for the discharge is that the employee was engaged in protected activity. It need not be the only reason but it is sufficient if it is a substantial or motivating reason, despite the fact that other reasons may exist.

Similarly, in Sand v. Queen City Packing Company, 108 N.W.2d 448, 452 (N.D. 1961), the Court reversed a judgment for the employer, holding that a jury instruction requiring the employees to prove that the employer's "sole" motive for firing them was their union affiliation was improper. The Court held that the employees need only prove that their union affiliation was the "motivating or moving cause for the discharge."

This means, of course, that an employer may have had several very legitimate grounds for firing an employee, but if the employee's union affiliation was the "motivating" ground, the firing must be set aside. A.P. Green Fire Brick Co. v. N.L.R.B. 326 F.2d 910, 916 (8th Cir. 1964); N.L.R.B. v. Howe Scale Company 311 F.2d 502, 505 (7th Cir. 1963).

Likewise, then, evidence that the landlord has some justifiable reasons for evicting a tenant should not defeat a retaliatory eviction defense, if the evidence shows that retaliation was his "motivating" ground for bringing the action.

Second, what types of evidence should be introduced to show that the landlord's motive was retaliation?

In Hosey v. Club Van Courtlandt, 299 F.Supp. 501 (S.D.N.Y., 1969), the tenant had filed complaints with city officials and then held a meeting in his room with other tenants to consider making other complaints. The following day he was informed that his rent would be raised, and five days later he was told he would have to leave. The Court found that "the coincidence of the tenants' meeting and the landlord's threats to evict," together with the absence of threats to evict prior to the tenants' meeting, would probably furnish proof that "the overriding reason" for the threats of eviction was retaliation.

Another very instructive case is N.L.R.B. v Melrose Processing Co., 351 F.2d 693 (8th Cir. 1965). In that case, Miss Thielen had worked as a neck slitter in defendant's turkey processing plant. Even though she was "really good handling the knife" (although she had admitted engaging in some "horseplay" by throwing turkey parts at fellow employees), defendant had refused to hire her one season. The court affirmed the N.L.R.B.'s finding that defendant had refused to rehire the employee because of her union affiliation.

The Court stated that "the essential ingredients in this case are a knowledge on the part of the employer that the employee is engaged in union activity." 351 F.2d at 697. Similarly, in retaliatory eviction cases, it will have to be proved that the landlord knew that the tenant complained to the local enforcement agency before it can be proved that retaliation was the "motivating" ground for the eviction action.

In finding substantial evidence to support the N.L.R.B.'s finding, the Court relied on several items of evidence.

First, the Court held that evidence that no justifiable reason for the refusal to rehire existed was evidence of an improper motive.

> If one can show that every other alternative except the fact sought to be proved is not true, you indirectly prove that fact is true . . . . By showing that there was no other reasonable explanation for Miss Thielen not being rehired, her union activity stood out as the logical explanation of her employer's action. While this method is not infallible, it succeeds in providing circumstantial evidence to illuminate the issue. 351 F.2d at 698.

Second, when Miss Thielen had sought an explanation for not being rehired, the employer refused to give her a reason. The Court held that this refusal to tell was a circumstance which might alone be enough to support an inference that the refusal to rehire was discriminatory. 351 F.2d at 699, citing N.L.R.B. v. Plant City Steel Corp. 331 F.2d 511, 515 (5th Cir. 1964).

Third, although defendant contended that Miss Thielen was guilty of rule infractions, she had never been reprimanded or issued a warning, even though it was company policy to issue such warnings and reprimands. The Court held that this also furnished an inference that the refusal to rehire was discriminatory. 351 F.2d at 699.

Fourth, the Court also relied on evidence that employees guilty of far more serious rule infractions have not been treated so severly as Miss Thielen. 351 F.2d at 699; see also A.P. Green Fire Brick Corp. v. N.L.R.B. 326 F.2d 910, 916 (8th Cir. 1964).

In proving a retaliatory eviction case, similar evidence might be used. It might be shown that (1) the tenant always paid rent on time, behaved properly, etc., and therefore the landlord could have no reason for eviction other than retaliation; (2) when the tenant asked the landlord the reason for the thirty day notice, the landlord refused to answer or was evasive; (3) if the landlord contends that the tenant was sometimes late in paying the rent, or was sometimes noisy, it might be shown that the landlord had never complained about this to the tenant; (4) other tenants were late in paying rent for longer periods and more frequently than the defendant.

Because of space limitations, the above is only a summary of the problems and authorities involved in retaliatory evictions. However, the following law review articles deal with retaliatory eviction and may be helpful: "Leases and the Illegal Contract Theory - Judicial Reinforcement of the Housing Code," 56 Geo. L. J. 920, 933 (1968); "Retaliatory Eviction - Is California Lagging Behind?," 18 Hastings L. J. 709 (1967); Schoshinski, "Remedies of the Indigent Tenant: Proposal for Change," 54 Geo. L. J. 519 (1966); Note, "Retaliatory Evictions and the Reporting of Housing Code Violations in the District of Columbia," 36 Geo. Wash. L. Rev. 190 (1967); Note, "Landlord and Tenant - Retaliatory Evictions," 3 Harv. Civ. R. Civ. Lib. L. Rev. 193 (1967); "Housing for the Poor: Rights and Remedies," N.Y.U. Welfare Law Supp., No. 1 (1967); Tenants' Rights: Legal Tools for Better Housing, Report on National Conference on Legal Rights of Tenants, U.S. Government Printing Office (1967).

If you have a case in which you would like further help, please contact me at National Housing and Development Law Project, Earl Warren Legal Institute, Berkeley, California 94720 or telephone me at (415) 642-1811.

PART III: LEGISLATIVE ACCEPTANCE OF RETALIATORY EVICTION DOCTRINE

The defense of retaliatory eviction has been a pivotal point in the increasing number of enacted tenant's-right oriented legislation. In its consideration of the eviction of a tenant for withholding rent because of landlord's housing code violations, the court in Robinson v. Diamond Housing Corp., 463 F.2d 853, 863 (D.C. Cir. 1972) powerfully states:

> The widespread adoption of the rule by both courts and legislature, stands as convincing testimony to the pervasive feeling that retaliatory evictions are inconsistent with a sensible and humane housing policy. Indeed, some courts have thought the rule so fundamental as to reach constitutional magnitude. . . .

State and federal courts in California,[1] Florida [Bowles v. Blue Lake Development Corp., (S.D. Florida, 1971) C.C.H. Pov. L. Rptr. ¶2325.51], Massachusetts [McQueen v. Druker, 317 F. Supp 1122 (D. Mass. 1970)], New Jersey,[2] New York [Hosey v. Club Van Courtlandt, 299 F. Supp. 501 (S.D.N.Y. 1969)], 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 validated the defense. Legislators, as well as the courts, have responded to the crucial task of making cities more liveable by passing laws which safeguard the tenant's multi-faceted activities. While all the states with retaliatory eviction legislation prohibit reprisal against a tenant who lodges a good faith complaint about Housing Code violations to the proper authorities,[3] there is a growing recognition that other tenant-related rights must have similar protection. This concern has led to an inclusion in the statutes of guarantees against retaliation for such tenant conduct as requesting repairs, attempting to enforce lease or contractual provisions, using any lawful means (as in recourse to courts) given to the tenant under the U.S. or local laws and most importantly, organizing or joining

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[1] Schweiger v. Bonds, 3 Cal. 3d 507, 90 Cal. Rptr. 729 (1970); Aweeka v. Bonds, 20 Cal. App. 3d 281, 97 Cal. Rptr. 650 (1971).

[2] 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); Ed E. Newman Inc. v. Hallock, 116 N.J. Super. 220, 281 A.2d 544 (1971). These three specifically protect tenant organizing. Silberg v. Lipscomb, 117 N.J. Super. 491, 285 A.2d 86 (1971).

[3] Maryland--only if compalints of substantive nature.
Pennsylvania--merely in regard to rent withholding.

tenant unions. Fear of losing one's home is a sufficiently strong impediment to dampen tenants' desire to exercise their rights by seeking help through legal channels or from proper authorities. Without the correct play of checks and balances, the landlord can continue to exert hidden pressure to quiet the tenant from voicing his grievances.

The retaliatory eviction statutes, now in effect in fourteen states,[4] express the fecundity of legislators' minds in securing for the tenant a broadened sphere of legal activity. In addition to these statutes, Philadelphia, Seattle and the District of Columbia have enacted ordinances allowing the defense of retaliatory evictions.[5] The statutes vary with regard to the following: (1) What tenant acts are protected? (2) For what duration of time does the statute forbid a landlord's retaliation? (3) What forms of retaliation are prohibited? (4) Who has the burden of proof? (5) Does the statute provide for a rebuttable presumption? (6) In what instances is a landlord's retaliation not considered? and (7) Is an affirmative action authorized?

All the statutes prohibit retaliation for the tenant's complaints to housing code officials. [Supra, n. 3.] Only three statutes specifically protect complaints to landlords. [Connecticut, Delaware and Hawaii.] In light of the fact that complaints in the normal course of events would naturally be made to the landlord prior to housing code officials, it would not be unreasonable for courts to extend the protection to complaints to landlords by inference.

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[4] Cal. C.C. §1942.5
Conn. Gen. St. Ann., §42-540a (Supp. 1969).
Del. Ch. 25 §5917 (Supp. 1971).
Ha. Ch. 666 §43 (Supp. 1971).
Ill. Rev. St. Ch. 80, §71 (Supp. 1971).
Me. Rev. St. Tit. 14 §6001, 6002.
Md. Laws Ch. 687 §9-10 (Supp. 1971).
Mass. Comp. Laws Ann., Ch. 186 §18 (Supp. 1970).
Mich. Comp. Laws Ann., Ch. 600, §5646 (Am'd P.S. 1969).
Minn. Stat. Ch. 240 §566.03 (Supp. 1971).
N.J. Stat. Ann. 2A §42-10.10
N.Y. Uncont'd Laws, Tit. 23 §8590, 8609 (Supp. 1971).
Pa. St. Ann. Ch. 35, §1700-1 (Supp. 1971).
R.I. Gen. Laws Ann. §34-20-10 (1968).

[5] Philadelphia Fair Housing Ordinance; Seattle Municipal Code, 27.40.010; and D.C. Housing Regulations Code §2910.

Of particular note are the state statutes of five states and two ordinances[6] which secure tenant rights to organize or join a tenant organization to remedy housing conditions. Tenant organization is specifically mentioned in the acts of Maine, "tenant's membership in organization concerned with landlord-tenant relationship" and in Massachusetts, "for organizing or joining a tenant's union or similar organization." New Jersey preserves a broader privilege, "being an organizer of, member of, involved in any activities of any lawful organization." [1(d), 2(d).] Michigan and Rhode Island include tenant organization under the general phrases of "any other lawful acts arising out of a tenancy" [Michigan 4(d)] and "any other justified lawful act" [R.I.C.]. Tenant organizing also appears to be constitutionally protected absent language in a statute. [Hosey v. Club Van Courtlandt, 299 F. Supp. 501 (S.D.N.Y. 1969) and McQueen v. Druker, 317 F. Supp. 1122 (D. Mass. 1970).]

All statutes prohibit eviction. Seven states [California, Connecticut, Delaware, Hawaii, Maryland, Massachusetts and Minnesota] condemn decrease of services, and increase of rent in reprisal. Massachusetts and New Jersey forbid the landlord to change the conditions of the lease through "substantial alteration" of its terms. Illinois and New Jersey limit the landlord's right to refuse to renew the lease, if done in retaliation. New York prohibits the landlord from engaging in conduct which disturbs the tenant's right to quiet enjoyment. Michigan does not allow the landlord to increase the tenant's burden by adding to his prior obligations.

Seven states[7] set a progressive tone by not fixing a time limit during which the landlord is forbidden to retaliate. Conceivably, the landlord cannot act in a retaliatory manner the entire length of the landlord-tenant relationship. The defense thus gains in effectiveness and a more equally balanced relationship is achieved. Six states establish a six-month period. [Connecticut, Hawaii, Maine, Maryland, Massachusetts and Pennsylvania.] California has the shortest period of 60 days.

Another area of concern is that of evidence which is necessary for the tenant to successfully assert the defense. In all the statutes except California (which places the burden on the landlord by requiring him to state his reasons in the eviction notice), the initial burden of proof is on the tenant. However, of great importance are the

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[6]Philadelphia Fair Housing Ordinance protects tenant organizing. D.C. Housing Regulations Code §2910 protects tenant organizing.

[7]Illinois, Delaware, Michigan, Minnesota, New Jersey, New York, and Rhode Island. Philadelphia Fair Housing Ordinance sets no time limit. D.C. Housing Regulations Code §2910 also sets no time limit.

six states[8] which create a rebuttable presumption of retaliation for a period of time after the tenant has taken some protected action. Once the tenant establishes that a protected action occurred, the rebuttable presumption places the burden on the landlord to show that he had a reason other than retaliation. If the landlord established an independent cause, the burden of proving that retaliation is the true cause returns to the tenant.[9] Six states [California, Connecticut, Delaware, Hawaii, Maine and Michigan] allow the landlord to evict notwithstanding the presence of retaliation, if the following are found: use by the tenant of the premises for illegal purposes or in violation of the lease [Connecticut, Delaware and Hawaii]; landlord desires property for his own use [Connecticut, Delaware, Hawaii and Maryland]; the condition complained of was due to a willful act of the tenant or a person under his control [all except for California]; notice to terminate the periodic tenancy was given before the complaint was filed [Connecticut, Delaware and Hawaii]; the landlord contracted to sell the property [Delaware, Hawaii and Maryland]. Similar reasons, and an increase in taxes or the cost of maintenance or operation at least four months prior to the complaint [Connecticut, Delaware, Maryland] may be cause for the landlord to legally increase rent.

In four states the tenant is given the right to affirmative action if he establishes retaliation. The Delaware, Hawaii and Massachusetts statutes entitle the tenant to three months rent or to treble damages, whichever is greater, and to the cost of the suit. New Jersey affords the tenant damages and other equitable remedies. The movement of the legislation should be to include damages in all the statutes, because of the coercive force behind monetary and equitable penalties.

Those statutes which create rebuttable presumptions are moving the doctrine of retaliatory eviction on its first step down the inevitable path toward an objective of just cause to evict. This doctrine has received prior notice. Recently, California has stopped the eviction of tenants from mobilehome parks without cause. [California C.C. §789.5.] New York has for some time forbidden evictions without cause in its Rent Control legislation. [Emergency Housing Rent Control Law, N.Y. Uncont'd. Tit. 23, Ch. 3, §51 (Supp. 1971).] The Supreme Court upheld similar requirements in relation to public housing. [Thorpe v. Housing Authority, 386 U.S. 670 (1966).]

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[8]Delaware, Maine, Maryland, Massachusetts, Minnesota, New Jersey. Philadelphia Fair Housing Ordinance creates a rebuttable presumption which extends for one year.

[9]Minnesota shifts the burden to the landlord if the notice to quit is served within 90 days of tenant activity.

Other Developments

Legislators have not been alone in realizing the importance of the defense of retaliatory eviction. The NAHB has adopted a "Fair Practices Code for Occupancy" which contains important language on the defense of retaliatory eviction.

> An owner asserting the right to reject an occupant's election to renew the lease or occupancy for one or more of the above reasons, shall specify to the occupant in writing, his specific reasons therefore at least two months in advance. Retaliatory action shall not be used as a basis for denial of lease or continued occupancy.

[See also §5.101 on retaliatory eviction of the Uniform Landlord and Tenant Relationship Act (June 1972).]

PART IV: ROSE V. HEWES CO., ET AL.

A. Complaint for Damages and Injunction

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

STANFORD ROSE, Plaintiff, -vs- HEWES COMPANY, an unincorporated association, EUGENE L. FRIEND, ELLENORE FRIEND, BENJAMIN FRIEND, MOLLY FRIEND, PETER SOSNICK, MARVIN SOSNICK, EUGENE SOSNICK, HONOR RUSSELL, CITY OF BERKELEY, WILLIAM C. HANLEY, individually and as City Manager of City of Berkeley, and JOHN S. ATKINS, individually and as Director of Inspection Services of City of Berkeley, and DOES I through X, Defendants.	No. 393347 COMPLAINT FOR DAMAGES AND INJUNCTIONS

Comes now Plaintiff and alleges as follows:

FIRST CAUSE OF ACTION:

I

Plaintiff is, and was at all times herein mentioned, a resident of the County of Alameda and a taxpayer of the State of California, the County of Alameda, and the City of Berkeley.

II

Defendants EUGENE L. FRIEND, ELLENORE FRIEND, BENJAMIN FRIEND, MOLLY FRIEND, PETER SOSNICK, MARVIN SOSNICK, EUGENE SOSNICK, doing business as HEWES COMPANY, and DOES I through V, are owners of the premises located at 2108 Shattuck Avenue in the City of Berkeley, County of Alameda, State of California. Said Defendants are hereinafter referred to as "LANDLORDS." Said building is three stories high, the ground floor consisting of commercial establishments, the second floor containing eighteen apartments, and the third floor containing eight apartments.

III

The City of Berkeley is the governmental entity responsible for enforcing housing codes in the city of Berkeley. These codes include the State Housing Code, appearing at 8 Cal. Admin. Code §1700 et. seq and the Building, Electrical, Fire Prevention, Gas, Plumbing, and Housing Codes of the City of Berkeley. WILLIAM C. HANLEY is the City Manager of the City of Berkeley, and JOHN S. ATKINS is the Director of the Department of Inspection Services of the City of Berkeley. Both of said Defendants are responsible for enforcing said codes in the city of Berkeley. DOES VI through X are agents and employees of said Defendants.

IV

HONOR RUSSELL was at all times mentioned herein and is the agent of LANDLORDS and all acts alleged to have been committed by her were done within the scope of her authority. She is the caretaker of the premises and resides there.

V

The true names or capacities, whether individual, corporate, associate, or otherwise, of Defendants DOE I through DOE X, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff will seek leave to amend this complaint to show the true names and capacities of said DOES when the same have been ascertained. Plaintiff is informed and believes on such information and belief alleges that each of the Defendants named herein as DOES I through X are responsible for the acts complained of herein, and did or caused said acts to be done willfully and with knowledge thereof.

Plaintiff is informed and believes and on that ground alleges that at all times mentioned herein Defendant LANDLORDS were partners and were agents of each other and at all times were acting within the scope of such agency and employment.

VII

On or about September 1, 1965, Plaintiff took possession of Apartment 1 at 2108 Shattuck Avenue under an oral month-to-month agreement with LANDLORDS providing for a monthly rental of $35. Plaintiff was a student with a low income, and he could not afford to pay a higher rent. Plaintiff has resided there continuously to the present and has complied with all terms of such agreement and is paid up in his rent.

VIII

The Housing Code of the City of Berkeley, Ordinance No. 309-N.S., was enacted February 1, 1963. Section 1.2 provides as follows:

> The Council of the City of Berkeley does hereby find, determine, and declare that there exists and has existed for many years an appreciable number of residential buildings within the City of Berkeley which are undesirable for habitation because of structural deficiencies, inadequate maintenance and repair, lack of adequate sanitary, heating, lighting, and ventilation facilities, improper management or any combination of such factors; that such undesirable buildings adversely affect the public health and welfare, contribute to overcrowding, unsafe, and harmful living conditions, and discourage the appropriate use and development of property and hinder civic improvement.

Section 1.3 of said Code provides as follows:

> The purpose of this Code is to arrest, remedy, and prevent the decay and deterioration of residential buildings and to eliminate blighted neighborhoods and to provide minimum requirements for residential buildings for the protection of life, limb, health, property, safety, and welfare of the public and the occupants of residential buildings.

Section 1.4 provides, in part, that "The provisions of this Code are applicable to all existing or proposed residential buildings . . . ."

IX

At all times mentioned herein, Plaintiff's apartment has consisted of two small rooms. His sleeping room is 111 square feet and his study if 56 square feet. This is in violation of Section 3.4 of the Berkeley Housing Code, which requires that every dwelling unit have at least one habitable room with at least 120 square feet of superficial floor area.

X

Plaintiff's apartment in heated by a single gas heater provided by LANDLORDS. This heater is unvented, and therefore it emits poisonous fumes which are dangerous to health. Unvented gas heaters are prohibited by Section 4.8 of the Berkeley Housing Code.

XI

In violation of Section 5.1 of the Berkeley Housing Code, Plaintiff's apartment contains no kitchen.

XII

Also in violation of Section 5.1 of the Berkeley Housing Code, Plaintiff's apartment contains no toilet or washing facilities. In fact, on the entire second floor, where Plaintiff's apartment is located, there is only one usable toilet and shower for men and one for women. As there are eighteen apartments on the second floor and all are in violation of Section 5.1 because of lack of toilet or washing facilities, the one toilet available for men is not always available to Plaintiff when needed.

XIII

The building in which Plaintiff lives is a fire trap. There is no fire alarm, in violation of 8 Cal. Admin. Code §17851. The fire escape is a dangerous maze, which leads down a narrow dark staircase, partially blocked by a low ceiling, leaving one out on a first floor roof, with no direction as to how to find the fire escape ladder down from the roof. The exit from Plaintiff's apartment is too narrow, in violation of Section 7.1 of the Berkeley Housing Code. The front exit of the building must be reached by a flight of steep stairs which are very poorly lighted and create a hazard for anyone trying to get out of the building.

XIV

Plaintiff is informed and believes and thereby alleges that the Department of Inspection Services of the City of Berkeley inspected

LANDLORD'S building on March 16, 1967, and again on February 18, 1969. Plaintiff is informed and believes and thereby alleges that said Department noted many violations of the Berkeley Housing Code and of other codes in said building and has informed LANDLORDS of these violations, but LANDLORDS have failed and refused to correct such violations and Defendants CITY OF BERKELEY, WILLIAM C. HANLEY, and JOHN S. ATKINS have taken no action to compel LANDLORDS to obey the Codes.

XV

LANDLORDS had and have a legal duty upon renting their building to human beings for occupancy to put and maintain such premises in a condition suitable for occupancy, to inspect the premises to see that said condition was maintained, and to repair promptly and correct all conditions which rendered the premises unsafe, unhealthful, or otherwise untenantable.

XVI

LANDLORDS breached this duty owed to Plaintiff. LANDLORD's conduct in renting said apartment to Plaintiff in such a dangerous and unhealthful condition as elaborated above and in failing to correct said housing code violations so as to make the apartment fit for human habitation was unreasonable, illegal, and without privilege.

XVII

Said conduct of LANDLORDS was willful, knowing, and intentional and done with full knowledge of the facts and with full knowledge that said conduct would proximately cause severe harm and emotional and psychological distress and anguish to Plaintiff, as to any person of ordinary sensitivity.

XVIII

Said conduct of LANDLORDS was the actual and proximate cause of emotional and psychological distress to Plaintiff, because of the fear and discomfort of having to live in such dangerous and unhealthful conditions, all to his damage in the sum of $10,000.

XIX

Said conduct of LANDLORDS was malicious and oppressive. LANDLORDS have undertaken a deliberate policy of renting a building in an unhealthful and dangerous and illegal state to poor tenants without any intention of correcting said housing code violations. They have done so because in view of their wealth and power and Plaintiff's poverty and helplessness, LANDLORDS believed they might at will violate the laws of the State of California and the City of

Berkeley. Plaintiff is therefore entitled to [illegible] damages from each of said LANDLORDS in the sum of $100,000.

SECOND CAUSE OF ACTION:

I

Plaintiff repeats, realleges and incorporates herein Paragraphs I through XVI and XVIII through XIX of the First Cause of Action.

II

At all times mentioned herein, LANDLORDS recklessly and in wanton disregard of the possible consequences to Plaintiff failed to comply with their duties to repair said premises, knowing that said conduct would unreasonably expose Plaintiff to the damages alleged herein, in that the premises were thereby rendered dangerous, unhealthful, and unfit for human habitation.

THIRD CAUSE OF ACTION:

I

Plaintiff repeats, realleges and incorporates Paragraphs I through XVI and XVIII of the First Cause of Action.

II

At all times mentioned herein, LANDLORDS carelessly and negligently failed to comply with their duties to repair said premises, thereby rendering the premises dangerous, unhealthful, and unfit for human habitation.

FOURTH CAUSE OF ACTION:

I

Plaintiff repeats, realleges and incorporates Paragraphs I through XVI and XVIII through XIX of the First Cause of Action.

II

The conditions described hereinabove constitute a nuisance, within the meaning of 8 Cal. Admin. Code §§17014.1 and 17925 and §2.28 of the Berkeley Housing Code, depriving Plaintiff of reasonable, safe, healthy, and comfortable use of said premises.

III

LANDLORDS refuse to abate such nuisance.

FIFTH CAUSE OF ACTION:

I

Plaintiff repeats, realleges, and incorporates herein Paragraphs I through XVI and XVIII of the First Cause of Action.

II

By the lease between Plaintiff and LANDLORDS, LANDLORDS impliedly covenanted that Plaintiff should have quiet enjoyment of the leased premises during the term of the lease, LANDLORDS having a legal duty to repair and maintain the premises in a safe and healthful condition. Civil Code Section 1927.

III

In breach of said covenant, LANDLORDS have continuously failed and refused to repair said premises to correct the housing code violations previously described, and such failure to repair has rendered the premises unsuitable for occupancy.

SIXTH CAUSE OF ACTION:

I

Plaintiff repeats, realleges, and incorporates herein all Paragraphs of the First Cause of Action through Fifth Causes of Action.

II

LANDLORD's failure and refusal to correct said housing code violations is irreparably injuring Plaintiff, and he has no adequate remedy at law. Relief from the continuing failure of LANDLORDS to correct such violations would require a multiplicity of suits. The damages to be recovered in such suits would be very uncertain. For these reasons, LANDLORDS should be enjoined by this Court from failing to correct said violations.

SEVENTH CAUSE OF ACTION:

I

Plaintiff repeats, realleges and incorporates herein Paragraphs I through VII of the First Cause of Action.

II

Within the scope of her authority as LANDLORD's agent, HONOR RUSSELL has, during the past year, entered Plaintiff's apartment without his permission, such entries constituting trespass and invasion of privacy. On one occasion she removed Plaintiff's hot plate without his permission.

III

Such acts generally damaged Plaintiff in the sum of $1,000.

IV

Said acts were committed intentionally, deliberately, and maliciously, and therefore Plaintiff is entitled to exemplary and punitive damages from HONOR RUSSELL in the amount of $2,000.

EIGHTH CAUSE OF ACTION:

I

Plaintiff repeats, realleges, and incorporates herein all Paragraphs of the First Cause of Action and Paragraph II of the Seventh Cause of Action.

II

LANDLORDS have treated the other tenants at 2108 Shattuck in a similar manner. Their apartments are similarly in violation of the housing codes, and they have faced similar harassment by HONOR RUSSELL. After discussing these problems with his fellow tenants in the early part of May, 1969, Plaintiff spoke with LANDLORD PETER SOSNICK and explained to him the collective grievances of the tenants. PETER SOSNICK told Plaintiff that there was a need for a code of house rules, and he advised Plaintiff to draw up a petition itemizing the tenants' complaints and to submit such petition to LANDLORDS.

III

On or about May 19, 1969, Plaintiff submitted a petition to LANDLORDS requesting that the tenants' grievances be considered by LANDLORDS. Said petition was signed and agreed to by 24 out of approximately 27 tenants. A copy of said petition is attached to this complaint, labeled Exhibit A, and incorporated herein by reference.

IV

After the petition was submitted to LANDLORDS, LANDLORDS did not respond or contact the tenants. However, harassment of tenants by

HONOR RUSSELL subsided somewhat. When such harassment resumed in the early part of August, 1969, Plaintiff again contacted PETER SOSNICK and asked him what action was to be taken upon the petition. PETER SOSNICK advised Plaintiff that LANDLORDS had met and discussed the matter and had decided to take no action upon the petition, and if Plaintiff did not like this decision, he should move.

V

On or about August 14, 1969, Plaintiff was given a notice of termination of tenancy by LANDLORDS. Said notice required Plaintiff to vacate the premises on September 20, 1969. A copy of said notice is attached to this Complaint, labeled Exhibit B, and incorporated herein by reference.

VI

At the time said notice was served, Plaintiff had lived in his apartment for approximately four years. He was (and is) paid up in his rent, and had in no way violated any provision of his lease. Plaintiff is informed and believes, and thereby alleges, that no notice of eviction had been served on any tenant during the four years he has lived there.

VII

Said notice of termination of tenancy was served upon Plaintiff solely in retaliation for his efforts to organize the other tenants to petition LANDLORDS for a redress of grievances and to see that LANDLORDS comply with the housing codes of the State of California and the City of Berkeley. Plaintiff is also informed and believes, and thereby alleges, that LANDLORDS will attempt to evict Plaintiff in retaliation for Plaintiff's bringing this lawsuit against LANDLORDS.

VIII

LANDLORDS should be enjoined from filing any eviction action against Plaintiff without first showing good cause to this Court. Unless so enjoined, LANDLORDS will attempt to evict Plaintiff in retaliation for his attempts to exercise his rights under the First Amendment of the United States Constitution of freedom of assembly with his fellow tenants and to petition his government for a redress of grievances by filing this lawsuit. Also, unless so enjoined, LANDLORDS will deprive this Court of jurisdiction over Plaintiff's causes of action for injunctive relief by evicting Plaintiff, for then such causes of action would be moot. Plaintiff has no adequate remedy at law to prevent such eviction.

NINTH CAUSE OF ACTION:

I.

Plaintiff repeats, realleges and incorporates herein all Paragraphs of the First Cause of Action.

II

Defendants CITY OF BERKELEY, WILLIAM C. HANLEY, and JOHN S. ATKINS and DOES VI through X have abused their discretion by failing to diligently enforce the housing codes against LANDLORDS, and they will continue to do so unless enjoined by this Court from so failing. Plaintiff has no adequate remedy at law for relief from such failure.

TENTH CAUSE OF ACTION:

I

Plaintiff repeats, realleges and incorporates herein all Paragraphs of the First Cause of Action.

II

Plaintiff is informed and believes, and thereby alleges, that Defendants CITY OF BERKELEY, WILLIAM C. HANLEY, and JOHN S. ATKINS and DOES VI through X have conspired and continue to conspire with LANDLORDS to deprive Plaintiff of the benefits of the housing codes, which were enacted to protect tenants such as himself from unsafe and unhealthful living conditions, by failing to enforce the codes diligently. Unless enjoined from continuing this conspiracy, said Defendants will continue to so conspire, all to Plaintiff's harm. Plaintiff has no adequate remedy at law for relief from such conspiracy.

ELEVENTH CAUSE OF ACTION:

I

Plaintiff repeats, realleges, and incorporates herein all Paragraphs of the First Cause of Action and Paragraph II of the Tenth Cause of Action.

II

In furtherance of this conspiracy, Defendants CITY OF BERKELEY, WILLIAM C. HANLEY and JOHN S. ATKINS, and their agents and employees, DOES VI through X, have refused to allow Plaintiff's counsel to inspect its file on the property located at 2108 Shattuck Avenue, Berkeley, which file contains information concerning inspections of said property and numerous housing code violations. Such files are public records and

said Defendants' refusal to make them available to the general public is wholly without statutory authority. Nevertheless, through their agents, Defendants told Plaintiff's counsel that it was "office policy" not to show such files to anyone without the written consent of LANDLORDS.

III

Plaintiff needs the information withheld by said Defendants in order to properly pursue his rights to obtain the benefits of the housing codes. Plaintiff prays leave to amend this Complaint when he secures such information and is thereby able to more specifically allege what housing code violations exist on the property. Said Defendants' refusal to disclose such information is wholly without authority and is wholly illegal, but nevertheless they will continue to refuse to divulge such information until enjoined by this Court from refusing to do so.

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. On the First, Second and Fourth Causes of Action:
General damages of $10,000 jointly and severally against Defendants HEWES COMPANY, EUGENE L. FRIEND, ELLENORE FRIEND, BENJAMIN FRIEND, MOLLY FRIEND, PETER SOSNICK, MARVIN SOSNICK, and EUGENE SOSNICK, and punitive damages against each of said Defendants in the amount of $100,000;

2. On the Third and Fifth Causes of Action:
General damages of $10,000 jointly and severally against Defendants HEWES COMPANY, EUGENE L. FRIEND, ELLENORE FRIEND, BENJAMIN FRIEND, MOLLY FRIEND, PETER SOSNICK, MARVIN SOSNICK, and EUGENE SOSNICK;

3. On the Sixth Cause of Action:
For a preliminary and permanent injunction enjoining Defendants HEWES COMPANY, EUGENE L. FRIEND, ELLENORE FRIEND, BENJAMIN FRIEND, MOLLY FRIEND, PETER SOSNICK, MARVIN SOSNICK, and EUGENE SOSNICK, from failing to correct the housing code violations as described in the First Cause of Action;

4. On the Seventh Cause of Action:
General damages in the amount of $1,000 against Defendant HONOR RUSSELL and jointly and severally against Defendants HEWES COMPANY, EUGENE L. FRIEND, ELLENORE FRIEND, BENJAMIN FRIEND, MOLLY FRIEND, PETER SOSNICK MARVIN SOSNICK, and EUGENE SOSNICK and punitive damages in the amount of $2,000 against Defendant HONOR RUSSELL;

5. On the Eighth Cause of Action:
A temporary restraining order, preliminary injunction and permanent injunction forbidding Defendants HEWES COMPANY, EUGENE L. FRIEND, ELLENORE

FRIEND, BENJAMIN FRIEND, MOLLY FRIEND, PETER SOSNICK, MARVIN SOSNICK, and EUGENE SOSNICK from filing any eviction action against Plaintiff without first showing good cause to this Court;

6. On the Ninth Cause of Action:

For a preliminary and permanent injunction enjoining Defendants CITY OF BERKELEY, WILLIAM C. HANLEY, and JOHN S. ATKINS from failing to diligently enforce the housing codes against LANDLORDS;

7. On the Tenth Cause of Action:

For a preliminary and permanent injunction enjoining Defendants CITY OF BERKELEY, WILLIAM C. HANLEY, and JOHN S. ATKINS from conspiring with LANDLORDS to deprive Plaintiff of the benefits of the housing codes by failing to enforce them diligently;

8. On the Eleventh Cause of Action:

For a preliminary and permanent injunction enjoining Defendants CITY OF BERKELEY, WILLIAM C. HANLEY, and JOHN S. ATKINS and their agents and employees, from refusing to allow Plaintiff or his counsel or his authorized representative to inspect their file on the property located at 2108 Shattuck Avenue, Berkeley;

9. For costs of this action; and

10. For such other relief as the Court deems just.

Myron Moskovitz
Attorney for Plaintiff

September 12, 1969

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Elizabeth A. Truninger
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

STANFORD ROSE, Plaintiff,
-vs-
HEWES COMPANY, et. al. Defendants.

No. 393347
VERIFICATION OF COMPLAINT

I, the undersigned, say:

I am a party to the above-entitled matter; the foregoing document is true of my own knowledge, except as to the matters which are therein stated on my information and belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/12/69 at Berkeley, California.

Stanford C. Rose

B. Order to Show Cause

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

STANFORD C. ROSE, Plaintiff, -vs- HEWES COMPANY, et. al. Defendants./	No. 393347 ORDER TO SHOW CAUSE IN RE PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

On reading the verified complaint of Plaintiff on file in this action, and it appearing to the satisfaction of the Court that this is a proper case for granting an order to show cause and a temporary restraining order, and that unless the temporary restraining order prayed for in said complaint be granted, great and irreparable injury will result to Plaintiff before the matter can be heard on notice; and Plaintiff having filed a written undertaking in the sum of 35.00 dollars, conforming to the provisions of §529 of the Code of Civil Procedure, which undertaking is hereby approved by the Court;

Now, therefore, it is hereby ordered that the above-named Defendants, and each of them appear before this Court in Dept. 1 on 9-30-69 at the hour of 2:00 p.m. then and there to show cause, if they have any, why they, and

each of them, and their agents, servants, employees and representatives should not be enjoined and restrained during the pendancy of this action from engaging in, committing or performing, directly or indirectly, any and all of the following acts:
a) As to Defendants Hewes Company, Eugene L. Friend, Ellenore Friend, Benjamin Friend, Molly Friend, Peter Sosnick, Marvin Sosnick, and Eugene Sosnick: (1) From failing to correct the housing code violations described in the First Cause of Action and (2) from filing any eviction action against Plaintiff without first showing good cause to this Court;
b) As to Defendants City of Berkeley, William C. Hanley, and John S. Atkins: (1) from failing to diligently enforce the housing codes of the State of California and the City of Berkeley against LANDLORDS, as described in the First Cause of Action, (2) from conspiring with LANDLORDS, as described in the First Cause of Action, to deprive Plaintiff of the benefits of the housing codes of the State of California and the City of Berkeley by failing to enforce them diligently, and (3) from refusing to allow Plaintiff or his counsel or his authorized representative to inspect their file on the property located at 2108 Shattuck Avenue, Berkeley, California.

It is further ordered that pending the hearing and determination of said order to show cause, Defendants Hewes Company, Eugene L. Friend, Ellenore Friend, Benjamin Friend, Molly Friend, Peter Sosnick, Marvin Sosnick, and Eugene Sosnick, and each of them and their officers, agents, employees, representatives and all persons acting in concert or participating with them, shall be and they are hereby restrained and enjoined from filing any eviction action against Plaintiff from the premises at 2108 Shattuck Avenue, Berkeley, without first showing good cause to this Court.

September 16, 1969

Robert H. Kroninger
Judge of the Superior
Court of Alameda County

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

STANFORD ROSE, Plaintiff, -vs- HEWES COMPANY, et. al. Defendants.	No. 393347 MEMORANDUM OF POINTS AND AUTHORITIES SUPPORTING APPLICATION FOR TEMPORARY RESTRAINING ORDER

I

A temporary restraining order may be granted without notice to the opposite party where it appears by verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice. Code of Civil Procedure, Section 527, "Irreparable injury" means that species of damage, whether great or small, that ought not to be submitted on the one-hand, or inflicted on the other. Anderson v. Souza, 38 Cal. 2d. 825, 243 P. 2d 497.

II

It is unconstitutional state action for courts to be used to evict a tenant because of his attempts to organize other tenants to protest housing code violations. Hosey v. Club Van Courtlandt, 299 F. Supp. 501 (S.D.N.Y. 1969). See also Edwards v. Habib, 397 F. 2d 687 (D.C. Cir. 1968),

Portnoy v. Hill, 294 NYS 2d 278 (1968), and Moskovitz, "Retaliatory Evictions--The Law and the Facts", Clearinghouse Review, May 1969 at p. 4.

Respectfully submitted,

Myron Moskovitz
Attorney for Plaintiff

September 12, 1969

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

STANFORD ROSE, Plaintiff, -vs- HEWES COMPANY, et. al. Defendants.	No. 393347 UNDERTAKING ON TEMPORARY RESTRAINING ORDER

WHEREAS Plaintiff has filed his complaint in the above-entitled action, and has made application for a temporary restraining order against the above-named defendants enjoining and restraining them from the commission of certain acts as is more particularly set forth and described in said complaint and temporary restraining order;

And Whereas said Plaintiff desires to give an undertaking to the effect that he will pay to the parties enjoined such damages, not exceeding the amount specified in this undertaking, as such parties may sustain by reason of said temporary restraining order, if the Court finally decides that Plaintiff was not entitled thereto;

and prohibition thereof, Plaintiff will pay to said parties restrained such damages not exceeding the sum of $35.00 as such parties or any of them may sustain by reason of said temporary restraining order if the Court finally decides that Plaintiff was not entitled to said temporary restraining order.

E. Settlement Agreement

SETTLEMENT AGREEMENT

This settlement agreement is made this 15th day of October, 1969, for the purpose of settling action No. 393347 now pending in the Superior Court of the State of California for the County of Alameda, and all controversies between Stanford Rose, plaintiff therein, and all defendants therein, except that as to defendants City of Berkeley and employees of the City of Berkeley, individually and as such employees, the controversies to be hereby disposed of shall be limited to those in connection with the real property situated at the southwest corner of Shattuck Avenue and Addison Street in Berkeley and particularly the portion thereof commonly known as 2108 Shattuck Avenue (herein called "the property").

For the purposes of such settlement, the parties agree as follows:

1. The owners of the property agree to pay to plaintiff the sum of $1,525.00. In consideration therefor, plaintiff agrees to release all claims, demands, damages, actions and causes of action of every kind, known or unknown, as set forth in Exhibit A attached hereto and made a part hereof, and agrees that he and his attorneys shall duly execute said release.

2. Plaintiff may continue his present occupancy at 2108 Shattuck Avenue, Berkeley, until April 1, 1970 (when his tenancy shall terminate unless terminated prior thereto under paragraphs 3 and 4 following) on the same terms as other tenants similarly situated except that his rental shall be $1.00 per month, to be increased to $35.00 per month upon completion of the alterations or improvements listed in Exhibit B attached hereto.

In consideration therefor, plaintiff agrees to peaceably quit the premises and building on the termination of his tenancy and to accept said premises and building in its present condition and assume all risks thereof and therein, and except for claims for compensatory damages for actual bodily injury or property damage which he may hereafter sustain by reason of an event hereafter occurring (specifically excluding any claim for discomfort or mental, emotional or psychological distress or damage by reason of the condition of the building or his premises), plaintiff hereby waives (in addition to the release referred to in paragraph 1 above) all right to make any claim or demand in connection with his continued tenancy, of the kind alleged in his complaint in said action No. 393347 and all claims, demands, damages, actions and causes of action of every kind which may arise out of or in any way be connected with his said tenancy or the condition of the building or his premises.

3. The owners agree to make the improvements or alterations set forth in Exhibit B attached hereto and incorporated herein by reference within the time periods therein specified, provided however that if the owners determine that the cost of all improvements and alterations that are required, necessary or advisable in connection with the residential portion of the property (including those in Exhibit B) make the doing of such work economically unfeasible, the owners shall have the right to not do the work and to terminate residential occupancy of the building or to temporarily vacate the residential portions of the building to make extensive improvements or alterations. In such events, or if for any other reason the owners determine to terminate residential occupancy of the building, or if it becomes necessary to vacate the residential portions of the building, plaintiff agrees that his tenancy shall terminate at the time provided in the notice of termination given to him and other tenants similarly situated (such notice being that required by law).

4. It is further agreed that should improvements or alterations to be made by the owners (said improvements not necessarily being limited to those listed in Exhibit B) require the use of the premises now occupied by plaintiff, plaintiff will vacate said premises and move to other premises of at least the same gross area offered to him in the building, or, if he so prefers, will vacate the building entirely.

5. The above action shall be dismissed with prejudice against all defendants therein, and plaintiff and his attorneys agree (subject to the exception in paragraph 2) that they will not bring or encourage any other action or proceeding against defendants in connection with the property or any tenancy therein.

6. The house rules for the residential portion of the property set forth in Exhibit C attached hereto and incorporated herein by reference shall become operable immediately.

7. This agreement is a result of a compromise and shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of any of defendants, who continue to deny such liability and disclaim such responsibility.

8. The advice of legal counsel has been obtained by plaintiff prior to signing this settlement agreement.

STANFORD ROSE

HEWES CO.

By_____
For the owners of the property referred to above.

RELEASE

FOR CONSIDERATION, receipt of which is hereby acknowledged, the undersigned, for himself and his heirs, personal representatives, successors and assigns, hereby releases and forever discharges HEWES COMPANY, an unincorporated association, EUGENE L. FRIEND, ELLENORE FRIEND (also known as ELINOR FRIEND), BENJAMIN FRIEND, MOLLY FRIEND, PETER SOSNICK, MARVIN SOSNICK, EUGENE SOSNICK, HONOR RUSSELL, and all other owners of the property at 2108 Shattuck Avenue, Berkeley, who are not hereinabove named, and any and all other persons, firms, associations, or corporations, including, but not limited to, insurers who may be or become liable to the undersigned, of and from any and all claims, demands, damages, actions and causes of action of every kind, known or unknown, arising out of or in any way connected with the tenancy of the undersigned at 2108 Shattuck Avenue, Berkeley, or the condition of said property, including but not limited to the conditions referred to by the undersigned in the complaint in action No. 393347 in the Alameda County Superior Court; and the undersigned agrees that:

1. This release shall apply to all unknown or unanticipated results of the tenancy or conditions described above as well as those known and anticipated, and upon advice of legal counsel, the undersigned hereby waives all rights under California Civil Code, Section 1542, which Section has been fully explained.

2. This release is the result of a compromise and shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of the parties herein released, who continue to deny such liability and to disclaim such responsibility.

3. The advice of legal counsel has been obtained by the undersigned prior to signing this release, and the undersigned agrees that a dismissal with prejudice in favor of all the parties hereby released shall be entered by the attorneys for the undersigned in every and all actions now pending, which involve the tenancy, conditions or occurrence referred to above.

Dated: October 15, 1969.

STANFORD ROSE

STATE OF CALIFORNIA)
) SS.
COUNTY OF ALAMEDA)

and I hereby represent and declare that I have fully explained the foregoing release to the signing party, who in turn acknowledged to me an understanding of said release and the legal effect thereof; and the signature on the release was personally made by the person whose name it is.

Myron Moskovitz
Attorney for Plaintiff

1. As soon as reasonably possible, but not more than ninety (90) days from the date of this agreement, the owners agree that:

A. Heating approved by the City of Berkeley shall be provided for the premises occupied by plaintiff in the building.

B. Fire exiting approved by the City of Berkeley shall be provided for the building, and at least four (4) fire alarms (which may be of the pull type) shall be installed in the residential portions of the building.

C. Adequate lighting shall be provided and maintained from the front door of the building on Shattuck Avenue to plaintiff's premises in the building.

2. As soon as reasonably possible, but not more than one hundred twenty (120) days from the date of this agreement, the owners agree that:

A. An additional toilet and shower for men will be installed on the second floor of the building. Such shower may replace the existing bathtub on the second floor. When a toilet ceases to operate, it will be returned to working order as soon as reasonably possible, after being reported to the manager.

B. The north wall of plaintiff's premises shall be made thicker in order to better resist sound.

C. An operable washtub or sink for washing clothes will be installed and maintained on the second floor if reasonably practicable in view of the overall plans for the residential portions of the building.

EXHIBIT C

HOUSE RULES

For the residential portion of the Frances Shattuck Building, 2108 Shattuck Avenue, Berkeley, California.

1. No person shall enter any other person's premises without his express permission, except in case of an apparent emergency (examples: fire, gas leak, flooding) and except as necessary in connection with a program of improvements and alterations, in which case management will transmit whatever advance notice it has. When management has a justifiable reason for entering a tenant's premises, the tenant shall not unreasonably withhold such permission. (Example: routine repair work, showing the premises to a prospective new tenant.)

2. Tenants may decorate the interior of their premises in any legal manner, provided the decorations do not damage the premises and are removable without damage to the premises, and that no paint shall be applied (except to the tenant's own property) without management's approval. Tenants shall have control over the arrangement of furniture within their premises.

3. Tenants shall furnish the manager with the names and addresses of overnight guests who stay longer than two consecutive nights. Guests shall identify themselves as guests of a particular tenant if inquiry is made by management. Tenants agree to limit the frequency and number of overnight visitors so as not to overtax the facilities of the building, and in this respect consideration shall be had for the convenience of the permanent residents of the building.

4. All persons connected with the building (namely, tenants, guests, owners, and management) shall treat each other with consideration and courtesy, and respect one another's right of privacy.

5. If any tenant has a grievance concerning the building or its management and obtains no satisfaction of his grievance from the manager, he shall have the right to meet with one of the owners or a representative of the owners within five days after his request for such a meeting is communicated to one of the owners designated for such purpose. Such meeting shall be held at the building or at such other place as is mutually agreed upon.

6. No pets shall be kept in the building, except fish or birds. Pets belonging to daytime visitors shall be kept in the premises of the person being visited.

7. No children shall remain overnight in the building. Children who are daytime visitors shall remain within the premises of the person being visited.

premises nor use their premises in any [illegible]
hazardous purpose, nor permit any nuisance on their premises.

9. Tenants shall not transfer or sublet their premises without the express permission of the owners or management, and at the termination of their tenancy shall vacate their premises and leave them in good order.

10. In the event that community kitchens are installed in the building, tenants shall observe reasonable rules in connection with the use thereof.

11. The foregoing rules will not be changed without the consent of a majority of the tenants, and the owners. Nor shall any additional rules be put into effect without the consent of a majority of the tenants, unless such rules directly affect the physical condition of the building or involve direct and immediate expense to the owners. In the latter case, a majority of the tenants shall be consulted before the rule becomes effective, except that in an emergency situation, a new rule may be put into effect before such consultation but such consultation shall then take place as soon thereafter as reasonably possible. All new rules shall require the approval of the owners.

NATIONAL HOUSING LAW PROJECT
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RETALIATORY EVICTION PACKET

March 11, 1982

Contents:

List of states with laws against retaliation.

Chapter III, Handbook on Housing Law (1973). Overview and model pleadings.

Troy Hills Village, Inc. v. Fischler, et al., 121 N.J. Super. ___, ___ A.2d ___ (1973). Amicus brief. Excellent bibliography of cases and basic flow of argument.

Robinson v. Diamond Housing Corp., 150 U.S. App. 17, 463 F.2d 853 (D.C. Cir. 1972). The best brief ever written on this issue, but slightly out of date in citations.

S.P. Growers Association v. Rodriguez, 17 Cal.3d 719, 552 P.2d 721, 131 Cal. Rptr. 761 (1976). Opinion and article summarizing the case. Recognizes common law protection against retaliation where farmworker tenants are exercising statutory rights.

Windward Partners v. Santos, 59 Hawaii 104, 577 P.2d 326 (1978). Opinion. Retaliation held to be a defense to eviction where tenant exercises statutory rights.

Sims v. Century Kiest Apartments, 567 S.W.2d 526 (1978). Texas appellate opinion recognizing tenants' right to damages for retaliation by landlord motivated by tenant reporting code violations.

Barela v. Superior Court of Orange County, 178 Cal. Rptr. 618, ___ P.2d ___ (Cal. Sup. Ct., 1981). Tenant reporting landlord criminal activity is protected from landlord's retaliatory eviction attempt.

[continued]

Cal. Assembly Bill No. 3093 (enacted 1979) broadly defines "harassment" to include retaliation. Allows injunction, attorney's fees, etc.

See also:

Lead case, Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968), cert. denied, 393 U.S. 1016 (1969).

Background Paper 81-2

RENT CONTROL

RENT CONTROL

I

INTRODUCTION

WHY RENT CONTROL SHOULD END

- Because it is unchristian, un-American, and unconstitutional.
- Because it is against God and the Bible.
- Because it is atheist and Communist in origin.
- Because it is unfair, unjust, and discriminatory.
- Because it is arbitrary and unprincipled and unbusinesslike.
- Because it is dictatorial and tyrannical.
- Because it is basically and fundamentally wrong. It makes orphans out of tenants and slaves out of owners.
- Because it gives more money to the tenants to buy whiskey, to gamble, and to throw to the wind...*

Rent control often evokes strong visceral reactions, as the preceding passage attests. Rent control has been blamed for the fall of France, the fall of the democratic government of Austria, the decrease in the birth rate, and a good many other things. The praise or blame, hostility or applause predictably follow the economic self-interest and social philosophy of the individual. Debates over rent control carry both its proponents and its detractors into complex issues of economics, housing and taxation.

Though there may never be an ultimate resolution of these issues, rent control has existed in one form or another for centuries in scores of countries all over the world. Some sources suggest rent controls may have been used in ancient Rome about 150 B.C and documentation of its existence dates from the Middle Ages in Europe.**

In the United States, state and local rent controls were enacted on a limited basis around the time of World War I.

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*Statement by the Property Owners Council, Nashville, Tennessee, by Rep. Rich of Pa., 95 CONG. REC. A1469 (1949) quoted in Willis, A Short History of Rent Control Laws, 36 CORNELL L.Q. 54, 87-88 (1950).

**Ibid, pp. 87-88.

"Emergency" rent controls were also enacted during World War II and temporarily renewed by Congress until 1954. New York City, in contrast to the rest of the nation, has had continuous controls, except for the period between 1929 and 1942, since 1921. State and local controls have been in effect in New York since 1950.

The high levels of inflation, which began in the late 1960's and which are still very much with us today, led, in the early 1970's, to the introduction of rent controls in many areas of the United States. Most of these so-called second generation controls were in the megalopolis from Washington, D.C. to New England.

At the federal level, on August 15, 1971, President Nixon ordered a 90-day national freeze on wages and prices, including rents, pursuant to the powers granted him under the Economic Stabilization Act of 1970 (Public Law 91-379, 84 Stat. 799). This temporary freeze was replaced by a phase II economic stabilization program which permitted landlords (1) an annual increase equal to 2.5 percent of the base rent, (2) rent increases based on increases of state and local property taxes, (3) capital improvement increases, (4) base rent increases, and (5) hardship increases. Single family homes and units owned by landlords who owned not more than four rental units were exempt from these controls.

The termination of the phase II controls on January 12, 1973, resulted in the passage of more state and local rent controls. Today, according to the National Multihousing Council, seven states (New York, Maryland, Connecticut, Maine, Massachusetts, Louisiana and Arizona) and Washington, D.C. have statutes relating to rent control. It is said, however, that the statutes in Arizona and Louisiana are actually a means to preclude rent control in those states because they preempt rent control. Arizona's law (Arizona Revised Statutes 33-1329) says, in part:

> A. Notwithstanding any other provisons of law to the contrary the state legislature determines that the imposition of rent control on private residential housing units by cities, including charter cities, and towns is of statewide concern. Therefore, the power to control rents on private residential property is preempted by the state. Cities, including charter cities, or towns shall not have the power to control rents.
>
> B. The provisions of subsection A shall not apply to residential property which is owned, financed, insured or subsidized by any state agency, or by any city, including charter city, or town.

The National Multihousing Council also advises that over 250 communities throughout the country have rent control ordinances in effect. By one estimate, about one eighth of all U.S. rentals are under some kind of control.* Major cities with rent control ordinances include San Francisco, Los Angeles, New York and Boston. Other California communities having rent control include Berkeley, Beverly Hills, Campbell, Carson, Cotati, Davis, Hayward, Hawthorne, Hemet, Rialto, San Bernadino, San Jose, San Marcos, Santa Barbara County and Santa Monica. Several of those ordinances relate to mobile home parks.**

On June 30, 1980, the California voters rejected a rent related measure (Proposition 10) by a vote of 4,090,180 (64.6 percent) to 2,247,395 (35.4 percent). Those opposed to Proposition 10 argued that it would have "eliminated * * * renter * * * protections and made effective future protections impossible.***

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*Fowler, George. "The Bitter Fruit of Rent Control." Nations Business, (August 1978), p. 63.

**A comprehensive review of rent control in California is contained in a December 4, 1980, California Association of Realtors memorandum. Information on the status of rent control legislation and ordinances in other states can be found in "The Spread of Rent Control - Rent Control Activities Through August 15, 1980," prepared by the National Multihousing Council. Both of these documents are available for review in the research division library.

***The official title and summary of Proposition 10 prepared by the attorney general says:

RENT, INITIATIVE CONSTITUTIONAL AMENDMENT. Declares rent control to be a matter of local government concern. Provides that rent control shall be imposed only by vote of the people through enactment of local ordinances. Prohibits state-enacted rent control. Permits annual rent increases based on Consumer Price Index and additional increases based on other specified factors. Requires that rent control ordinance establish a commission to resolve grievances involving rent increases. Exempts specified types of rental units from rent control. Prohibits landlord retaliation for exercise of tenant's rights. Repeals existing rent control ordinances as of date of next election. Fiscal impact on state or local governments: No state fiscal effect. Minor increases in local election expenditures. Possible increase in local government costs to administer landlord/tenant grievances.

II

COMPONENTS OF RENT CONTROL LAWS

Opponents of rent control have successfully attacked local measures on the ground that the state's delegation of police power is insufficient to allow such local enactments. Under the common law rule of municipal corporations, the state possesses all police power relating to any municipal affair, subject only to the federal or state constitutions. Thus, before a locality can enact rent control, the state must sufficiently delegate its police power to the municipality.

Decisions dealing with local rent control indicate that three factors play a role in determining whether a court will find a sufficient delegation of police power: (1) the source of the police power; (2) the language used in the delegation of police power; and (3) the judicial attitude towards rent control.

The literature defines four sources of police power which exist as possible bases for valid local rent control: the city charter, constitutional home rule, legislative home rule, and specific enabling legislation. Most state statutes dealing with rent control contain enabling provisions for local governments to adopt ordinances. Other principal components of rent control legislation include sections covering:

Emergency

Most rent control statutes and ordinances usually include "boiler plate" declarations that say there is an emergency in housing availability and describing the nature of the emergency. Vacancy rates, the trend in rent increases versus increases in operating costs, the percentage of income required to obtain decent housing, and patterns of housing construction and finance are all used to demonstrate the existence of an emergency. The Department of Housing and Urban Development advises that overall vacancy rates at five percent or below, or three percent or less for lower cost rentals, represent critical levels.

Until recent years, almost all courts have viewed the declaration of an emergency as a prerequisite to rent control legislation's constitutionality. Recently, however, several courts have rejected the housing emergency doctrine

and have upheld rent control measures even in the absence of a proven emergency.*

In any event, an emergency, by definition, is not permanent. Rent control statutes commonly have an automatic expiration date or a date certain at which the law is to be reviewed or renewed.

Exemptions

Most measures exempt new construction from controls. This is done, of course, to encourage new construction so as to alleviate the emergency housing situation. HUD by regulation since 1975 has asserted its right to ignore rent controls on any rental units it insures or for which it provides rent subsidies. Units renting to tourists are usually excluded as is luxury housing in complexes with a small number of apartments. Exemptions have been upheld by the courts so long as the classifications are reasonable.

Base Rents and Rollback Provisions

Almost every rent control measure specifies a date which determines the base-period rent. Rent increases are later computed using this figure. Often, the legislation contains a rollback provision selecting a date prior to the enactment of rent controls to set initial rent levels.

Rollback provisions are contained for two reasons. First, the rent charged on a prior date theoretically approximates the rent that would be paid in an open market without the upward pressures leading to rent control. Second, by setting the prior date early enough, the legislation can avoid incorporating landlords' anticipatory, last-minute increases and freezing them into controlled rental levels.

Rent Adjustments

Most rent control laws provide for rent increases. Such increases are supposed to guarantee landlords adequate income to meet mortgage payments, maintenance, operating expenses, taxes and yield a fair return on investment. What constitutes a "fair" return on investment can be problematical.

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*See "Rent Control: A Practical Guide for Tenant Organizations" from the August 1978 San Diego Law Review.

Several alternative methods for rent adjustment are return on investment formulas, percentage increase with allowable pass-throughs, evaluation of individual cases by rent control boards, using the Consumer Price Index or a percentage thereof, and hardship rent adjustments.

Eviction Controls

Rent control measures often limit the permissible grounds for eviction and set procedures for local enforcement. It is suggested that eviction controls are a necessary adjunct, especially in times of housing shortages and rapidly increasing rents, if tenants are not to be intimidated if they complain about rent increases or inadequate upkeep.

Administration, Funding and Enforcement

Rent control measures usually provide for the administration of the controls. Rent adjustment can be placed with an administrator or with a review board. Rent control measures also include provisions for (1) funding the board, administrator and staff; (2) penalties and civil remedies; (3) notice and fair hearing for both landlords and tenants in compliance with minimum standards of due process; and (4) devices for preventing housing deterioration.

It should be noted that administration must be fair and responsive if a rent control law is to meet successfully a court challenge. Rollback provisions coupled with cumbersome adjustment procedures may render rent control legislation confiscatory and unconstitutional.*

III

Effects of Rent Control

Rent control studies, it has been observed, generally seem to support the point of view of those who finance or request them. In general, economists, representatives of financial institutions, landlords and other representatives of the business community oppose rent control and use economic and free market arguments to make their case against it. Often cited are articles or publications discussing the failure of rent control in other states.

*See Birkenfeld v. Berkeley, 550 p. 2d 1001 (1976), and City of Miami Beach v. Forte Towers, Inc., 305. So. 2d 764 (Fla. 1974).

The opponents arguments might be summarized, in part, by the following excerpt of an article written by Senator Thomas F. Eagleton for the September/October 1979 Journal of Property Management:

> Rent control is a prime example of what might be called "panacea politics." It is a quick fix, an instant solution, which its proponents promise will miraculously knock down rents and put up apartments overnight. In practice, of course, just the opposite has proven true. Rent control has produced debacles, not miracles.
>
> Controls have curbed free enterprise and clotted needed development in New York, Washington, D.C. and other cities. Instead of creating more housing, controls have led to slipshod maintenance. Instead of encouraging investment, controls have discouraged it. Instead of promoting preservation of buildings, controls have led to more buildings being boarded up and abandoned. As a result, tax bases have diminished. Neighborhoods have deteriorated. And, in the ultimate irony, rent control has severely wounded the persons whom controls are intended to help the most - senior citizens on fixed incomes, working families with small paychecks, students with part-time jobs. While in the short run, controls may appear to help these renters, in the long run, controls are a trap.

Proponents of rent control usually point out their problems in obtaining suitable housing, at rates they can afford, during times of skyrocketing housing and rental costs. They say that however strong the arguments that rent control is inimical to tenants in the long-term, the fact is that in the short-term it does help many people who are pinched by inflation. Its immediate effect is clear: It keeps rents down. No argument about the long-term can impress poor people (or indeed tenants as a whole) as much as this fact, because paying rent is a short-term problem: It happens every month.

A report done for the California Department of Housing and Community Development is often cited by those who express the opinion that "modern" rent controls do not produce the adverse effects claimed by opponents of rent control. The report says, in part:

> The major findings of this updated report are that no evidence of statistical significance can be found to support the contention that short-term moderate rent

control * * * has led to a reduction in conventionally-financed multi-family residential construction, a decline in maintenance, an erosion of the tax base, relative to non-controlled cities, or an increase in abandonments or demolitions. Those studies analyzed since the appearance of the 1976 report are characterized by data rendered suspect because of non-representative sampling and use of highly selective statistics.*

The following is a summary of certain of the arguments which have been advanced for and against rent control.

Arguments Against Rent Control

1. If economic conditions are such that some people cannot afford rents, the solution is society's burden, not the burden of only landlords. Assistance should be provided through federal or state subsidy programs such as that specified in 42 USCA 1437f, "Lower-income housing assistance."
2. Because rent controls limit income from rentals, they create an atmosphere unconducive to investment in new apartment construction. Rent controls tend to compound the problems. Lenders refuse to lend money for rental housing in rent control areas.
3. If landlords cannot cover both their costs and their profit requirements, they will cut costs. This results in deterioration and even abandonment of property.
4. Property values are related to income from the property. If income is restricted, property value lowers.
5. Rent controls do not work; they have not worked in New York or Massachusetts.**

*Gilderbloon, John. The Impact of Moderate Rent Control in the United States: A Review and Critique of Existing Literature, California Department of Housing and Community Development, (March 1978), p. 1.

**For a complete treatment of the history of rent control in New York and recommendations for changes to those controls see the Report of the New York State Temporary Commission on Rental Housing which is available in the research division library. This and other articles listed in the selected readings section of this report and available in the library contradict, to some extent, this criticism.

6. Rent controls are expensive to administer and the expense is borne by all taxpayers.
7. Rental housing is not particularly profitable. Controls make the situation intolerable.
8. A free market is the most effective way of dealing with the high rent increase problem.
9. Rent controls negatively affect the community tax base.
10. Private agreements, such as lease arrangements or contracts specifying the terms under which rents may be raised can alleviate the necessity for rent controls.
11. The state should encourage the development of new rental housing through grants, subsidies or tax incentives. Increasing the amount of available rental housing would assist the normal free market mechanism to favorably affect rent levels.
12. If the state would encourage the rapid design and construction of adequate sewer treatment facilities and water supply, this would alleviate the housing shortage which is hurting most citizens.

Arguments For Rent Control

1. Apartment vacancy rates in Nevada's larger communities are so low that mobility is restricted. Tenants must pay exorbitant rents or pay the expense of moving.
2. In times of severe housing shortages tenants have no choice but to pay the higher rates.
3. Rents have increased dramatically in recent years but the pay of low income persons has not kept pace with rents.
4. Rents have been raised far beyond the level necessary to cover increased costs to landlords.
5. Landlords exploit housing shortages.
6. Controls restore rents to a level fair to both tenants and landlords.
7. Housing supply is relatively unresponsive to changes in demand and this creates a situation ripe for exploitation. Rent control will curb excess rents.
8. Rent control is an expedient short-term response to a housing shortage. Telling an elderly person living on a fixed income who has just been told that he is getting a big rent increase that "competition will take care of the problem" offers little comfort or help.
9. Large rent increases are caused, in part, by the rapid turnover of ownership of rental housing and mobile home parks. Tenants should not be forced to pay the high profits of short-term speculators, many of whom are citizens of foreign countries and other states, who reap the benefit of Nevada's economy and then leave the state.

IV

RENT CONTROL IN NEVADA

There is no history of rent control in Nevada. There has never been a law that addresses the subject. Several bills, however, considered by the 1979 legislature dealt with the topic of mobile home park space rent review. A discussion of the 1979 legislature's activity pertaining to the mobile home park rent control issue is contained in the appendix of this background paper.

Given Nevada's legal and political traditions, there is little doubt that rent review or control would be enacted by local governments only through state enabling legislation. Nevada is not a home rule state. Neither the cities nor counties have any powers not granted in general laws or in city charters enacted by special laws. Any rent control, rent stabilization and probably even rent review, if it were not voluntary, would require enabling legislation. This was evidenced during the last session when the rent control issue was passed back and forth between the state and local governments like "a hot potato."

The final report of the legislative commission's subcommittee which studied the problems of owners and renters of mobile homes during the 1979-81 interim contains recommendations to increase the supply of mobile home spaces and thereby obviate the need for government intervention into the rent issue. These recommendations relate to financial and technical assistance for mobile homes and mobile home parks and zoning.

The report also notes the subcommittee's view that rent review or control should be addressed at the local level. Speaking to this matter, the subcommittee's report says, in part:

> * * * Based on testimony, space rents and mobile home space shortages vary greatly from community to community. It would be grossly improper for the state to impose a rent review measure on a community where such is not needed.*

*It is expected that a survey of Nevada's mobile home park landlords and tenants being performed by Clark County Community College at North Las Vegas, Nevada, will provide information about rent increases in mobile home parks. A report discussing this survey is expected to be completed during the early part of the 1981 legislative session.

Conversely, the state, the subcommittee feels, would be derelict in its responsibility for not providing for the welfare of its growing number of citizens that reside in mobile home parks by not allowing rent review or control of mobile home park space rents if such ever became necessary by virtue of an emergency or widespread rent gouging.

The subcommittee does not advocate rent control. It does, however, believe local governments should have the option to deal with emergencies. It therefore recommends:

> The governing body of any city or county be permitted to provide, by ordinance, for the review of increases or the setting of rents charged for mobile home lots or mobile homes and mobile home lots within mobile home parks in that city or county when the governing body of the city or county determines that an emergency exists with regard to the rental of those lots. An emergency exists where the governing body finds that the rate of vacancies in mobile home parks in the city or county is 5 percent or less. (BDR 10-22)

The subcommittee's report concludes that there will never be the need for mobile home space rent review if the 1981 legislature enacted its recommendation. The report says:

> It is the subcommittee's firm belief that local governments will make Herculean efforts to increase the number of mobile home spaces so that, as the mobile home park landlords have advised the subcommittee, competition will handle the rent increase problem.

Similar logic could be applied to other forms of rental housing.

V

SUGGESTED READING*

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Andrade, Steven R. and Robert F. Curran. "Toward a Definable Body of Legal Requisites for Rent Control." Legal Problems of Local Government, University of California, Davis Law Review, (Winter, 1977), 273-308.

"Apartments Wanted." Newsweek, (June 4, 1980), 71.

Baar, Kenneth K. "Rent Control in the 1970's: The Case of the New Jersey Tenants' Movement." The Hastings Law Journal, (January 1977), 631-683.

Blumberg, Richard E. and Others. "The Emergence of Second Generation Rent Controls." Clearing House Review, (August 1974) 240-249.

"Catching The New York Disease." Time, (April 30, 1979), 71.

Dolan, Mura. "Why the City is so ripe for rent control now." San Francisco Examiner, (May 29, 1979).

Dunne, Dennis D. "Statewide Program In California - provides coordinated section 81 support services for low-income, handicapped, disabled persons." Journal of Housing, (March 1978), 134-136.

Eagleton, Senator Thomas F. "Rent Control Curing The Symptoms, Not The Disease." Journal of Property Management, (September/October 1979), 237-246.

Fowler, George. "The Bitter Fruit of Rent Control." Nations Business, (August 1978), 63.

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*These and other publications pertaining to rent control are available for review in the research division's library. Also available are copies of relevant state statutes, local ordinances and court cases.

Howenstine, E. Jay. "European Experience With Rent Controls." Monthly Labor Review, (June 1977), 21-28.

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Morgenstern, Debra. "Renters in Revolt." McCalls, (October 1980).

Patrick, Kathryn Lori. "Rent Control: A Practical Guide For Tenant Organizations." San Diego Law Review, (Vol. 15, 1978), 1185-1209.

Penzer, Dr. Michael L. The Rent Control Issue in California. Federal Home Loan Bank of San Francisco, (July 1977).

"Rent and Eviction Regulations." Rent Control Division, Office of Rent and Housing Maintenance, New York City Department of Housing Preservation and Development. (September 1, 1977).

"Rent bills defy signs of a slow down." Business Week, (May 12, 1980), 30-31.

Rent Control: a non-solution. Department of Economics and Research, National Association of Realtors, (1977).

Rent Control: An Interim Report to the Assembly Committee on Housing and Community Development. California Assembly. September 15, 1975.

Rent Control Ordinances as of November 7, 1979. Division of Research and Policies Development, California Department of Housing and Community Development.

"Rent Control Status Report." December 4, 1980, memorandum from Pat Stitzenberger to Susan De Santis of the California Association of Realtors.

Rent Controls and the Financial Community. Economics and Research Division, National Association of Realtors, (June 1980).

Rent Regulation in Mobile Home Parks: Assembly Bill 2820 - 1978 (Wray). California Assembly Committee on Housing and Community Development. (November 1, 1978).

Report of the New York State Temporary Commission on Rental Housing. Vol. I and II. (March 1980).

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Selesnick, Herbert L. Rent Control - A Case For. Lexington Books, Toronto, (1976).

Spivack, Harvey. "Effecting a Rent Control Compromise: A Case Study." Journal of Property Management, (May/June 1980). 166-167.

Stagen, Thomas. "Rent Indexing: A Rent Control Alternative." Journal of Property Management, 302-303.

"The Spread of Rent Control - Rent Control Activities Through August 15, 1980." National Multi Housing Council.

VI

APPENDIX

Matters relating to mobile homes were a topic of major concern to the 1979 legislature. The Index and Tables to the 60th Session lists 33 measures which deal, at least in part, with either mobile homes or mobile home parks. Eleven of these measures (A.B. 426, A.B. 453, A.B. 769, A.B. 784, A.C.R. 3, S.B. 173, S.B. 204, S.B. 356, S.B. 455, S.B. 484, S.B. 550) became law.

The mobile home measures which generated the most controversy dealt with rent control and mobile home park landlord tenant rights and duties. These bills came in two groups. First, A.B. 100, A.B. 195, A.B. 390 and A.B. 525 were considered by the assembly committee on commerce. None of these measures, however, became law.

The bills provided different mechanisms for rent review. A.B. 100 called for review and rent level approval to be done by a certified public accountant. A.B. 195 created a seven member commission on mobile home parks to do the reviews and possibly set the level of rent. A.B. 390 provided for a five member board in Clark County to review rents. No rate setting provision, however, was contained in this bill. And, A.B. 525, which contained many other "tenant rights" provisions besides rent review, allowed any city or county to establish a five member board to review rent increases.

The following is a brief summary of certain of the provisions contained in these bills.

A.B. 100

1. A.B. 100 declared legislative intent for the need for mobile home park rent control.
2. It established a mechanism for boards of county commissioners to determine by resolution, mobile home park vacancy factors and provided for the exclusion, and termination of such exclusion, from the bill's provisions on account of vacancy factor findings by the boards.
3. It provided for increases in rent calculated on the difference between the consumer price index between a specified base index and current index.
4. It required (a) any proposed increase in rent to be approved by a certified public accountant who is not otherwise in the employ of the landlord and (b) the accountant's fees to be paid by the tenants of the park on a pro rata basis.
5. And, finally, A.B. 100 provided penalties for violations of its provisions.

A.B. 195

1. Declared legislative intent for the need for mobile home park rent control and created a seven member commission on mobile home parks, appointed by the governor for unspecified terms, and defined the board's organization, power and duties, and membership.
2. A.B. 195 exempted mobile home parks which are established by an employer solely for the use and occupancy of his employees.
3. It established a mechanism for boards of county commissioners to determine, by resolution, mobile home park vacancy factors and provided for the exclusion, and termination of such exclusion, from the bill's provisions on account of vacancy factor findings by the county commissioners.
4. It created the regulatory fund for mobile home parks to be paid for out of registration fees.
5. It provided for the annual registration, with the commission, of mobile home parks containing 75 or more mobile home lots, required that each applicant pay a fee of $1 for each mobile home lot contained in the park and permitted the landlord to recover the fees by charging each tenant an annual $1 fee for such purpose.
6. It permitted mobile home tenants to petition the commission to review increases in rent or service fees, or decreases in services, when the tenants have received written notice advising them of any increase in rent or service fee in any calendar year which is in excess of the net increases in the consumer price index since the last increase in rent or service fee; or the cumulative increase in the cost of living during the next preceding years when taken together with all increases of rent charged in the park during the same period.
7. It provided for a review and determination of rent increases or service reductions by the commission and established criteria for rent increases which are attributable to increases in utility rates, property taxes and assessments, fluctuations in property value, increases in the cost of living relevant to incidental services and normal repair and maintenance, and capital improvements not otherwise promised or contracted for.
8. It set procedures for petitioning the court for enforcement of commission's orders.
9. And, finally, A.B. 195 provided penalties for violations of its provisions.

A.B. 390 and A.B. 525

The rent review procedures in A.B. 390 and A.B. 525 were somewhat similar and so they will be covered together. They permitted the governing board to provide by ordinance for a five-member board to review increases in the rents charged for mobile home lots if the governing board determines that an emergency exists with regard to these lots.

The bills permitted the board for rent review to (a) receive written complaints concerning mobile home lot rent increases; (b) review any proposed or actual increase in rent; (c) issue public announcements containing the name of the mobile home park against which a complaint has been filed with the board and the park's increase in rent; (d) impose a period of up to 60 days from the scheduled effective date of the proposed increase in rent during which the rent may not be increased; (e) recommend a settlement between the tenant and the landlord through the means of an advisory opinion, mediation or negotiation; and (f) recommend to the board of county commissioners changes in any applicable ordinance or in the procedures of the board for rent control.

A.B. 525, which had many other landlord-tenant provisions, specified that if the governing bodies of a city and county both provide for a board to review rent increases, the board established by the city has exclusive jurisdiction over rent review within the city.

S.B. 549

S.B. 549, which was similar to A.B. 195, was the only mobile home rent control bill to be considered by the senate. It died in the senate committee on the judiciary.

A.B. 768, A.B. 784 and A.B. 787

The assembly committee on commerce reached an impasse on the mobile home rent control bills mentioned earlier and had three measures, A.B. 768, A.B. 784 and A.B. 787, drafted for consideration. A.B. 768, provided for the review of rents and the adjustment of grievances in mobile home parks in certain circumstances. A.B. 787, which did not contain a rent review provision, revised certain duties and requirements under NRS 118.230 to 118.340, inclusive, "Landlord and tenant: Mobile home lots" and added new penalties for violations of its provisions.

A.B. 784 was the "compromise" landlord-tenant bill which passed the legislature. The bill, which became chapter 692,

Statutes of Nevada 1979, does not contain a rent control provision. It does, however, provide that the governing body of each city and county may establish a board to mediate grievances between landlords and tenants of mobile home parks. If such a board is created it must include owners and tenants of mobile home parks as well as members representing the general public. Boards are required to attempt to adjust grievances between landlords and tenants by means of mediation or negotiation, recommend changes in local ordinances relating to mobile home parks, recommend measures to promote equity and encourage the development of mobile home parks to meet community needs. The act specifies that a written rental contract or lease must be executed between a landlord and tenant if so requested by either party. The written rental contract or lease must contain the following 11 specific subjects:

1. Duration of the agreement.
2. Amount of rent, the manner and time of its payment, and the amount of any charges for late payment and dishonored checks.
3. Restrictions on and charges for occupancy by children or pets.
4. Services and utlities included with the lot rental and the responsibility of maintaining or payment for the services and utilities.
5. Fees which may be required and the purposes for which they are required.
6. Deposits which may be required and the conditions for their refund.
7. Maintenance which the tenant is required to perform and any appurtenances he is required to provide.
8. The name and address of the owner of the mobile home park or his authorized agent.
9. Any restrictions on subletting.
10. The number of and charges for persons who are to occupy a mobile home on the lot.
11. Any recreational facilities and other amenities provided to the tenant.

A.B. 784 also specifies certain acts which are not allowed of a landlord or his agent or employee including (1) charging any fee for the tenant's spouse or children other than as provided in the lease; (2) charging any unreasonable fee for pets kept by a tenant in the park; (3) increasing rents or service fees unless such fees apply in a uniform manner to all tenants similarly situated, except that a discount may be selectively given to persons who are handicapped or who are 62 years of age or older; and (4) interrupting, with intent to terminate occupancy, any utility service furnished the tenant except for nonpayment of utility

charges when due. Any landlord who violates the utility service provision is liable to the tenant for actual damages and $100 in exemplary damages for each day that the tenant is deprived of utility service.

A major point of interest to many in the bill is the removal from previous law of a provision that permitted a landlord to require that, if a tenant sold his mobile home, the mobile home be removed from the park if the mobile home is less than 12 feet wide or more than 10 years old.

Under the bill, unless further restricted by local ordinance, if more than 80 percent of the lots in a mobile home park are occupied, it is unlawful for a mobile home dealer, installer or salesman to rent or lease a vacant mobile home lot unless within 60 days he takes up residence in the mobile home or releases the lot to a qualified tenant. After the expiration of 60 days from the date of rental of the lot to the dealer, installer, or salesman, any qualified tenant is entitled upon written request to the landlord to obtain release of the lot.

Any landlord who charges or receives any entrance or exit fee to a tenant assuming or leaving occupancy of a mobile home lot is subject to a misdemeanor on the first offense, a gross misdemeanor on the second, and for the third or subsequent offense, is subject to imprisonment for 1-6 years or a fine of not more than $5,000, or both. Violation of other specified provisions in the bill is a misdemeanor.

04575

RESEARCH MONOGRAPH

SELECTED ISSUES BEFORE THE 1981 LEGISLATIVE ASSEMBLY

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s-420 state capitol/salem, oregon 97310
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OCTOBER 27, 1980
80:103

Legislative Research is a component of the Legislative Administration Committee

There are some who advocate centralization of OPI administration within the AFS division. However, many seniors believe that this would make OPI appear to be a welfare program. They believe that the involvement of local agencies on aging is important and that many seniors would rather do without assistance than have anything to do with welfare.

Another issue facing the 1981 Assembly will be increased services and funding for OPI. Although the 1979 Assembly increased OPI's budget by $1 million, a spokesman for the Office of Elderly Affairs said that this increase has been largely consumed by inflation. The OPI budget was reduced by two percent during the 1980 Special Session.

Those who advocate increased funding for the program state that additional services could increase its effectiveness. One suggestion is for the establishment of multi-purpose centers administered through the local agencies on aging. Some also suggest funding for respite care programs similar to day-care type programs. This would allow relief for persons who are caring for elderly family members and others in their homes.

Rent Control

Rent control is a method to limit escalation of rents that result from a severe housing shortage. Although no state has adopted comprehensive rent control legislation, Massachusetts and Maryland have passed enabling legislation that allows local governments to enact rent controls. New York City and munici-

palities in California and New Jersey have independently adopted rent controls.

A total rent freeze has been imposed only during wartime. (The Nixon Administrtion imposed a 90-day freeze in 1971, but it applied to all prices, wages, and rents and was intended to combat inflation, not housing shortages.) Today, "second generation" rent controls allow for rents to rise in accordance with some guideline, often the percentage change in the Consumer Price Index. Property taxes and capital improvements may also be passed on to tenants. These second generation controls typically exempt new construction, government subsidized units, hotels and motels, luxury housing, and owner-occupied housing of four units or less.

During the time lag between the rent control proposal and its final enactment, landlords may drastically raise rents. Roll-back provisions, a common feature to combat this practice, select a base rent from a time prior to proposal of the rent control law. All future rent adjustments are calculated from this base rent. Rent controls are usually administered by an elected or appointed rent control board or administrator. In this state a 1973 statewide rent control bill proposed the establishment of a Fair Rent Commission in the Department of Commerce. A report submitted to the Senate Consumer and Business Affairs Committee by the State Housing Division Administrator termed the plan "unmanageable" and said it would require "a staff of 125 in Oregon and a biennial budget of $3.8 million." The bill was not enacted.

Courts have consistently held that a state of emergency is a prerequisite for the establishment of rent controls. According to the federal Department of Housing and Urban Development, overall vacancy rates of five percent or less (or three percent or less for low cost rentals) constitute a housing emergency. A Portland Bureau of Planning report quoted the city's vacancy rate as of March 31, 1980, at 6.22 percent. Studies by the Northwest District Neighborhood Association and the Portland Tenants Union indicate a much lower rate, particularly in northwest Portland. Statewide data are not maintained.

There have been several attempts to establish rent controls on both a statewide and local basis. The Oregon State Tenants' Association (OSTA), primarily a mobile home park tenants organization, failed to gather enough signatures to put a rent control provision on the November 1980 ballot. The association's initiative would have limited rent to that charged on May 1, 1979, but would have allowed for operating cost increases from that date. No increase could have exceeded the Consumer Price Index in a 12-month period. Controls would have been administered by the courts. According to an OSTA spokesman, the group may attempt another petition drive in the future.

The Portland Housing Coalition, composed of various organizations that serve elderly and low-income persons throughout the city, supported the statewide OSTA measure, but has also drafted its own "fair rent" ordinance for Portland. It proposes that an elected board composed of two landlords, two tenants, and two home owners set an annual ceiling on rent increases. Housing

constructed after passage of the ordinance would not be affected. Landlords owning fewer than three contiguous units would also be exempt. The proposed board would be funded by an annual landlord fee of $12.

Rather than call for immediate city council approval, according to a coalition representative, the group will "hold back for a year or two to organize and raise money." The spokesman also said that statewide rent control is appropriate, but not possible at this time.

Landlords, investors, realtors, and the homebuilding industry are united in their opposition to rent control. They contend that rent controls will result in decreased construction and maintenance, as well as increased condominium conversion and abandonment. Opponents also argue that subsequent declines in rental property values will shift the tax burden to homeowners. A variety of research studies, many financed by the housing industry, support these contentions.

Rent control advocates can also point to research that supports their point of view. These studies conclude that moderate, second generation rent controls allow maintenance and improvement costs to be passed on to tenants in the form of increased rents. Such controls, supporters assert, guarantee owners a fair and reasonable return on investment.

Rent Control

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Lee Graham, President, Oregon State Tenants' Association, Salem.

Jack Munro, Association of Oregon Realtors, Salem.

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Background Paper 81-2

RENT CONTROL

Carson City, Nevada

RENT CONTROL

I

INTRODUCTION

WHY RENT CONTROL SHOULD END

- Because it is unchristian, un-American, and unconstitutional.
- Because it is against God and the Bible.
- Because it is atheist and Communist in origin.
- Because it is unfair, unjust, and discriminatory.
- Because it is arbitrary and unprincipled and unbusinesslike.
- Because it is dictatorial and tyrannical.
- Because it is basically and fundamentally wrong. It makes orphans out of tenants and slaves out of owners.
- Because it gives more money to the tenants to buy whiskey, to gamble, and to throw to the wind...*

Rent control often evokes strong visceral reactions, as the preceding passage attests. Rent control has been blamed for the fall of France, the fall of the democratic government of Austria, the decrease in the birth rate, and a good many other things. The praise or blame, hostility or applause predictably follow the economic self-interest and social philosophy of the individual. Debates over rent control carry both its proponents and its detractors into complex issues of economics, housing and taxation.

Though there may never be an ultimate resolution of these issues, rent control has existed in one form or another for centuries in scores of countries all over the world. Some sources suggest rent controls may have been used in ancient Rome about 150 B.C. and documentation of its existence dates from the Middle Ages in Europe.**

In the United States, state and local rent controls were enacted on a limited basis around the time of World War I.

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*Statement by the Property Owners Council, Nashville, Tennessee, by Rep. Rich of Pa., 95 CONG. REC. A1469 (1949) quoted in Willis, A Short History of Rent Control Laws, 36 CORNELL L.Q. 54, 87-88 (1950).

**Ibid, pp. 87-88.

"Emergency" rent controls were also enacted during World War II and temporarily renewed by Congress until 1954. New York City, in contrast to the rest of the nation, has had continuous controls, except for the period between 1929 and 1942, since 1921. State and local controls have been in effect in New York since 1950.

The high levels of inflation, which began in the late 1960's and which are still very much with us today, led, in the early 1970's, to the introduction of rent controls in many areas of the United States. Most of these so-called second generation controls were in the megalopolis from Washington, D.C. to New England.

At the federal level, on August 15, 1971, President Nixon ordered a 90-day national freeze on wages and prices, including rents, pursuant to the powers granted him under the Economic Stabilization Act of 1970 (Public Law 91-379, 84 Stat. 799). This temporary freeze was replaced by a phase II economic stabilization program which permitted landlords (1) an annual increase equal to 2.5 percent of the base rent, (2) rent increases based on increases of state and local property taxes, (3) capital improvement increases, (4) base rent increases, and (5) hardship increases. Single family homes and units owned by landlords who owned not more than four rental units were exempt from these controls.

The termination of the phase II controls on January 12, 1973, resulted in the passage of more state and local rent controls. Today, according to the National Multihousing Council, seven states (New York, Maryland, Connecticut, Maine, Massachusetts, Louisiana and Arizona) and Washington, D.C. have statutes relating to rent control. It is said, however, that the statutes in Arizona and Louisiana are actually a means to preclude rent control in those states because they preempt rent control. Arizona's law (Arizona Revised Statutes 33-1329) says, in part:

> A. Notwithstanding any other provisons of law to the contrary the state legislature determines that the imposition of rent control on private residential housing units by cities, including charter cities, and towns is of statewide concern. Therefore, the power to control rents on private residential property is preempted by the state. Cities, including charter cities, or towns shall not have the power to control rents.
>
> B. The provisions of subsection A shall not apply to residential property which is owned, financed, insured or subsidized by any state agency, or by any city, including charter city, or town.

The National Multihousing Council also advises that over 250 communities throughout the country have rent control ordinances in effect. By one estimate, about one eighth of all U.S. rentals are under some kind of control.* Major cities with rent control ordinances include San Francisco, Los Angeles, New York and Boston. Other California communities having rent control include Berkeley, Beverly Hills, Campbell, Carson, Cotati, Davis, Hayward, Hawthorne, Hemet, Rialto, San Bernadino, San Jose, San Marcos, Santa Barbara County and Santa Monica. Several of those ordinances relate to mobile home parks.**

On June 30, 1980, the California voters rejected a rent related measure (Proposition 10) by a vote of 4,090,180 (64.6 percent) to 2,247,395 (35.4 percent). Those opposed to Proposition 10 argued that it would have "eliminated * * * renter * * * protections and made effective future protections impossible.***

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*Fowler, George. "The Bitter Fruit of Rent Control." Nations Business, (August 1978), p. 63.

**A comprehensive review of rent control in California is contained in a December 4, 1980, California Association of Realtors memorandum. Information on the status of rent control legislation and ordinances in other states can be found in "The Spread of Rent Control - Rent Control Activities Through August 15, 1980," prepared by the National Multihousing Council. Both of these documents are available for review in the research division library.

***The official title and summary of Proposition 10 prepared by the attorney general says:

RENT, INITIATIVE CONSTITUTIONAL AMENDMENT. Declares rent control to be a matter of local government concern. Provides that rent control shall be imposed only by vote of the people through enactment of local ordinances. Prohibits state-enacted rent control. Permits annual rent increases based on Consumer Price Index and additional increases based on other specified factors. Requires that rent control ordinance establish a commission to resolve grievances involving rent increases. Exempts specified types of rental units from rent control. Prohibits landlord retaliation for exercise of tenant's rights. Repeals existing rent control ordinances as of date of next election. Fiscal impact on state or local governments: No state fiscal effect. Minor increases in local election expenditures. Possible increase in local government costs to administer landlord/tenant grievances.

II

COMPONENTS OF RENT CONTROL LAWS

Opponents of rent control have successfully attacked local measures on the ground that the state's delegation of police power is insufficient to allow such local enactments. Under the common law rule of municipal corporations, the state possesses all police power relating to any municipal affair, subject only to the federal or state constitutions. Thus, before a locality can enact rent control, the state must sufficiently delegate its police power to the municipality.

Decisions dealing with local rent control indicate that three factors play a role in determining whether a court will find a sufficient delegation of police power: (1) the source of the police power; (2) the language used in the delegation of police power; and (3) the judicial attitude towards rent control.

The literature defines four sources of police power which exist as possible bases for valid local rent control: the city charter, constitutional home rule, legislative home rule, and specific enabling legislation. Most state statutes dealing with rent control contain enabling provisions for local governments to adopt ordinances. Other principal components of rent control legislation include sections covering:

Emergency

Most rent control statutes and ordinances usually include "boiler plate" declarations that say there is an emergency in housing availability and describing the nature of the emergency. Vacancy rates, the trend in rent increases versus increases in operating costs, the percentage of income required to obtain decent housing, and patterns of housing construction and finance are all used to demonstrate the existence of an emergency. The Department of Housing and Urban Development advises that overall vacancy rates at five percent or below, or three percent or less for lower cost rentals, represent critical levels.

Until recent years, almost all courts have viewed the declaration of an emergency as a prerequisite to rent control legislation's constitutionality. Recently, however, several courts have rejected the housing emergency doctrine

and have upheld rent control measures even in the absence of a proven emergency.*

In any event, an emergency, by definition, is not permanent. Rent control statutes commonly have an automatic expiration date or a date certain at which the law is to be reviewed or renewed.

Exemptions

Most measures exempt new construction from controls. This is done, of course, to encourage new construction so as to alleviate the emergency housing situation. HUD by regulation since 1975 has asserted its right to ignore rent controls on any rental units it insures or for which it provides rent subsidies. Units renting to tourists are usually excluded as is luxury housing in complexes with a small number of apartments. Exemptions have been upheld by the courts so long as the classifications are reasonable.

Base Rents and Rollback Provisions

Almost every rent control measure specifies a date which determines the base-period rent. Rent increases are later computed using this figure. Often, the legislation contains a rollback provision selecting a date prior to the enactment of rent controls to set initial rent levels.

Rollback provisions are contained for two reasons. First, the rent charged on a prior date theoretically approximates the rent that would be paid in an open market without the upward pressures leading to rent control. Second, by setting the prior date early enough, the legislation can avoid incorporating landlords' anticipatory, last-minute increases and freezing them into controlled rental levels.

Rent Adjustments

Most rent control laws provide for rent increases. Such increases are supposed to guarantee landlords adequate income to meet mortgage payments, maintenance, operating expenses, taxes and yield a fair return on investment. What constitutes a "fair" return on investment can be problematical.

*See "Rent Control: A Practical Guide for Tenant Organizations" from the August 1978 San Diego Law Review.

Several alternative methods for rent adjustment are return on investment formulas, percentage increase with allowable pass-throughs, evaluation of individual cases by rent control boards, using the Consumer Price Index or a percentage thereof, and hardship rent adjustments.

Eviction Controls

Rent control measures often limit the permissible grounds for eviction and set procedures for local enforcement. It is suggested that eviction controls are a necessary adjunct, especially in times of housing shortages and rapidly increasing rents, if tenants are not to be intimidated if they complain about rent increases or inadequate upkeep.

Administration, Funding and Enforcement

Rent control measures usually provide for the administration of the controls. Rent adjustment can be placed with an administrator or with a review board. Rent control measures also include provisions for (1) funding the board, administrator and staff; (2) penalties and civil remedies; (3) notice and fair hearing for both landlords and tenants in compliance with minimum standards of due process; and (4) devices for preventing housing deterioration.

It should be noted that administration must be fair and responsive if a rent control law is to meet successfully a court challenge. Rollback provisions coupled with cumbersome adjustment procedures may render rent control legislation confiscatory and unconstitutional.*

III

Effects of Rent Control

Rent control studies, it has been observed, generally seem to support the point of view of those who finance or request them. In general, economists, representatives of financial institutions, landlords and other representatives of the business community oppose rent control and use economic and free market arguments to make their case against it. Often cited are articles or publications discussing the failure of rent control in other states.

*See Birkenfeld v. Berkeley, 550 p. 2d 1001 (1976). and City of Miami Beach v. Forte Towers, Inc., 305. So. 2d 764 (Fla. 1974).

The opponents arguments might be summarized, in part, by the following excerpt of an article written by Senator Thomas F. Eagleton for the September/October 1979 Journal of Property Management:

> Rent control is a prime example of what might be called "panacea politics." It is a quick fix, an instant solution, which its proponents promise will miraculously knock down rents and put up apartments overnight. In practice, of course, just the opposite has proven true. Rent control has produced debacles, not miracles.
>
> Controls have curbed free enterprise and clotted needed development in New York, Washington, D.C. and other cities. Instead of creating more housing, controls have led to slipshod maintenance. Instead of encouraging investment, controls have discouraged it. Instead of promoting preservation of buildings, controls have led to more buildings being boarded up and abandoned. As a result, tax bases have diminished. Neighborhoods have deteriorated. And, in the ultimate irony, rent control has severely wounded the persons whom controls are intended to help the most - senior citizens on fixed incomes, working families with small paychecks, students with part-time jobs. While in the short run, controls may appear to help these renters, in the long run, . . . controls are a trap.

Proponents of rent control usually point out their problems in obtaining suitable housing, at rates they can afford, during times of skyrocketing housing and rental costs. They say that however strong the arguments that rent control is inimical to tenants in the long-term, the fact is that in the short-term it does help many people who are pinched by inflation. Its immediate effect is clear: It keeps rents down. No argument about the long-term can impress poor people (or indeed tenants as a whole) as much as this fact, because paying rent is a short-term problem: It happens every month.

A report done for the California Department of Housing and Community Development is often cited by those who express the opinion that "modern" rent controls do not produce the adverse effects claimed by opponents of rent control. The report says, in part:

> The major findings of this updated report are that no evidence of statistical significance can be found to support the contention that short-term moderate rent

control * * * has led to a reduction in conventionally-financed multi-family residential construction, a decline in maintenance, an erosion of the tax base, relative to non-controlled cities, or an increase in abandonments or demolitions. Those studies analyzed since the appearance of the 1976 report are characterized by data rendered suspect because of non-representative sampling and use of highly selective statistics.*

The following is a summary of certain of the arguments which have been advanced for and against rent control.

Arguments Against Rent Control

1. If economic conditions are such that some people cannot afford rents, the solution is society's burden, not the burden of only landlords. Assistance should be provided through federal or state subsidy programs such as that specified in 42 USCA 1437F, "Lower-income housing assistance."
2. Because rent controls limit income from rentals, they create an atmosphere unconducive to investment in new apartment construction. Rent controls tend to compound the problems. Lenders refuse to lend money for rental housing in rent control areas.
3. If landlords cannot cover both their costs and their profit requirements, they will cut costs. This results in deterioration and even abandonment of property.
4. Property values are related to income from the property. If income is restricted, property value lowers.
5. Rent controls do not work; they have not worked in New York or Massachusetts.**

*Gilderbloon, John. The Impact of Moderate Rent Control in the United States: A Review and Critique of Existing Literature, California Department of Housing and Community Development, (March 1978), p. 1.

**For a complete treatment of the history of rent control in New York and recommendations for changes to those controls see the Report of the New York State Temporary Commission on Rental Housing which is available in the research division library. This and other articles listed in the selected readings section of this report and available in the library contradict, to some extent, this criticism.

6. Rent controls are expensive to administer and the expense is borne by all taxpayers.
7. Rental housing is not particularly profitable. Controls make the situation intolerable.
8. A free market is the most effective way of dealing with the high rent increase problem.
9. Rent controls negatively affect the community tax base.
10. Private agreements, such as lease arrangements or contracts specifying the terms under which rents may be raised can alleviate the necessity for rent controls.
11. The state should encourage the development of new rental housing through grants, subsidies or tax incentives. Increasing the amount of available rental housing would assist the normal free market mechanism to favorably affect rent levels.
12. If the state would encourage the rapid design and construction of adequate sewer treatment facilities and water supply, this would alleviate the housing shortage which is hurting most citizens.

Arguments For Rent Control

1. Apartment vacancy rates in Nevada's larger communities are so low that mobility is restricted. Tenants must pay exorbitant rents or pay the expense of moving.
2. In times of severe housing shortages tenants have no choice but to pay the higher rates.
3. Rents have increased dramatically in recent years but the pay of low income persons has not kept pace with rents
4. Rents have been raised far beyond the level necessary to cover increased costs to landlords.
5. Landlords exploit housing shortages.
6. Controls restore rents to a level fair to both tenants and landlords.
7. Housing supply is relatively unresponsive to changes in demand and this creates a situation ripe for exploitation. Rent control will curb excess rents.
8. Rent control is an expedient short-term response to a housing shortage. Telling an elderly person living on a fixed income who has just been told that he is getting a big rent increase that "competition will take care of the problem" offers little comfort or help.
9. Large rent increases are caused, in part, by the rapid turnover of ownership of rental housing and mobile home parks. Tenants should not be forced to pay the high profits of short-term speculators, many of whom are citizens of foreign countries and other states, who reap the benefit of Nevada's economy and then leave the state.

IV

RENT CONTROL IN NEVADA

There is no history of rent control in Nevada. There has never been a law that addresses the subject. Several bills, however, considered by the 1979 legislature dealt with the topic of mobile home park space rent review. A discussion of the 1979 legislature's activity pertaining to the mobile home park rent control issue is contained in the appendix of this background paper.

Given Nevada's legal and political traditions, there is little doubt that rent review or control would be enacted by local governments only through state enabling legislation. Nevada is not a home rule state. Neither the cities nor counties have any powers not granted in general laws or in city charters enacted by special laws. Any rent control, rent stabilization and probably even rent review, if it were not voluntary, would require enabling legislation. This was evidenced during the last session when the rent control issue was passed back and forth between the state and local governments like "a hot potato."

The final report of the legislative commission's subcommittee which studied the problems of owners and renters of mobile homes during the 1979-81 interim contains recommendations to increase the supply of mobile home spaces and thereby obviate the need for government intervention into the rent issue. These recommendations relate to financial and technical assistance for mobile homes and mobile home parks and zoning.

The report also notes the subcommittee's view that rent review or control should be addressed at the local level. Speaking to this matter, the subcommittee's report says, in part:

> * * * Based on testimony, space rents and mobile home space shortages vary greatly from community to community. It would be grossly improper for the state to impose a rent review measure on a community where such is not needed.*

*It is expected that a survey of Nevada's mobile home park landlords and tenants being performed by Clark County Community College at North Las Vegas, Nevada, will provide information about rent increases in mobile home parks. A report discussing this survey is expected to be completed during the early part of the 1981 legislative session.

Conversely, the state, the subcommittee feels, would be derelict in its responsibility for not providing for the welfare of its growing number of citizens that reside in mobile home parks by not allowing rent review or control of mobile home park space rents if such ever became necessary by virtue of an emergency or widespread rent gouging.

The subcommittee does not advocate rent control. It does, however, believe local governments should have the option to deal with emergencies. It therefore recommends:

- The governing body of any city or county be permitted to provide, by ordinance, for the review of increases or the setting of rents charged for mobile home lots or mobile homes and mobile home lots within mobile home parks in that city or county when the governing body of the city or county determines that an emergency exists with regard to the rental of those lots. An emergency exists where the governing body finds that the rate of vacancies in mobile home parks in the city or county is 5 percent or less (BDR 10-22)

The subcommittee's report concludes that there will never be the need for mobile home space rent review if the 1981 legislature enacted its recommendation. The report says:

> It is the subcommittee's firm belief that local governments will make Herculean efforts to increase the number of mobile home spaces so that, as the mobile home park landlords have advised the subcommittee, competition will handle the rent increase problem.

Similar logic could be applied to other forms of rental housing.

V

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Gilderbloom John. The Impact of Moderate Rent Control In The United States: A Review and Critique of Existing Literature. California Department of Housing and Community Development. (March 1978).

*These and other publications pertaining to rent control are available for review in the research division's library. Also available are copies of relevant state statutes, local ordinances and court cases.

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VI

APPENDIX

Matters relating to mobile homes were a topic of major concern to the 1979 legislature. The Index and Tables to the 60th Session lists 33 measures which deal, at least in part, with either mobile homes or mobile home parks. Eleven of these measures (A.B. 426, A.B. 453, A.B. 769, A.B. 784, A.C.R. 3, S.B. 173, S.B. 204, S.B. 356, S.B. 455, S.B. 484, S.B. 550) became law.

The mobile home measures which generated the most controversy dealt with rent control and mobile home park landlord tenant rights and duties. These bills came in two groups. First, A.B. 100, A.B. 195, A.B. 390 and A.B. 525 were considered by the assembly committee on commerce. None of these measures, however, became law.

The bills provided different mechanisms for rent review. A.B. 100 called for review and rent level approval to be done by a certified public accountant. A.B. 195 created a seven member commission on mobile home parks to do the reviews and possibly set the level of rent. A.B. 390 provided for a five member board in Clark County to review rents. No rate setting provision, however, was contained in this bill. And, A.B. 525, which contained many other "tenant rights" provisions besides rent review, allowed any city or county to establish a five member board to review rent increases.

The following is a brief summary of certain of the provisions contained in these bills.

A.B. 100

1. A.B. 100 declared legislative intent for the need for mobile home park rent control.
2. It established a mechanism for boards of county commissioners to determine by resolution, mobile home park vacancy factors and provided for the exclusion, and termination of such exclusion, from the bill's provisions on account of vacancy factor findings by the boards.
3. It provided for increases in rent calculated on the difference between the consumer price index between a specified base index and current index.
4. It required (a) any proposed increase in rent to be approved by a certified public accountant who is not otherwise in the employ of the landlord and (b) the accountant's fees to be paid by the tenants of the park on a pro rata basis.
5. And, finally, A.B. 100 provided penalties for violations of its provisions.

A.B. 195

1. Declared legislative intent for the need for mobile home park rent control and created a seven member commission on mobile home parks, appointed by the governor for unspecified terms, and defined the board's organization, power and duties, and membership.
2. A.B. 195 exempted mobile home parks which are established by an employer solely for the use and occupancy of his employees.
3. It established a mechanism for boards of county commissioners to determine, by resolution, mobile home park vacancy factors and provided for the exclusion, and termination of such exclusion, from the bill's provisions on account of vacancy factor findings by the county commissioners.
4. It created the regulatory fund for mobile home parks to be paid for out of registration fees.
5. It provided for the annual registration, with the commission, of mobile home parks containing 75 or more mobile home lots, required that each applicant pay a fee of $1 for each mobile home lot contained in the park and permitted the landlord to recover the fees by charging each tenant an annual $1 fee for such purpose.
6. It permitted mobile home tenants to petition the commission to review increases in rent or service fees, or . . . decreases in services, when the tenants have received written notice advising them of any increase in rent or service fee in any calendar year which is in excess of the net increases in the consumer price index since the last increase in rent or service fee; or the cumulative increase in the cost of living during the next preceding years when taken together with all increases of rent charged in the park during the same period.
7. It provided for a review and determination of rent increases or service reductions by the commission and established criteria for rent increases which are attributable to increases in utility rates, property taxes and assessments, fluctuations in property value, increases in the cost of living relevant to incidental services and normal repair and maintenance, and capital improvements not otherwise promised or contracted for.
8. It set procedures for petitioning the court for enforcement of commission's orders.
9. And, finally, A.B. 195 provided penalties for violations of its provisions.

A.B. 390 and A.B. 525

The rent review procedures in A.B. 390 and A.B. 525 were somewhat similar and so they will be covered together. They permitted the governing board to provide by ordinance for a five-member board to review increases in the rents charged for mobile home lots if the governing board determines that an emergency exists with regard to these lots.

The bills permitted the board for rent review to (a) receive written complaints concerning mobile home lot rent increases; (b) review any proposed or actual increase in rent; (c) issue public announcements containing the name of the mobile home park against which a complaint has been filed with the board and the park's increase in rent; (d) impose a period of up to 60 days from the scheduled effective date of the proposed increase in rent during which the rent may not be increased; (e) recommend a settlement between the tenant and the landlord through the means of an advisory opinion, mediation or negotiation; and (f) recommend to the board of county commissioners changes in any applicable ordinance or in the procedures of the board for rent control.

A.B. 525, which had many other landlord-tenant provisions, specified that if the governing bodies of a city and county both provide for a board to review rent increases, the board established by the city has exclusive jurisdiction over rent review within the city.

S.B. 549

S.B. 549, which was similar to A.B. 195, was the only mobile home rent control bill to be considered by the senate. It died in the senate committee on the judiciary.

A.B. 768, A.B. 784 and A.B. 787

The assembly committee on commerce reached an impasse on the mobile home rent control bills mentioned earlier and had three measures, A.B. 768, A.B. 784 and A.B. 787, drafted for consideration. A.B. 768, provided for the review of rents and the adjustment of grievances in mobile home parks in certain circumstances. A.B. 787, which did not contain a rent review provision, revised certain duties and requirements under NRS 118.230 to 118.340, inclusive, "Landlord and tenant: Mobile home lots" and added new penalties for violations of its provisions.

A.B. 784 was the "compromise" landlord-tenant bill which passed the legislature. The bill, which became chapter 692,

Statutes of Nevada 1979, does not contain a rent control provision. It does, however, provide that the governing body of each city and county may establish a board to mediate grievances between landlords and tenants of mobile home parks. If such a board is created it must include owners and tenants of mobile home parks as well as members representing the general public. Boards are required to attempt to adjust grievances between landlords and tenants by means of mediation or negotiation, recommend changes in local ordinances relating to mobile home parks, recommend measures to promote equity and encourage the development of mobile home parks to meet community needs. The act specifies that a written rental contract or lease must be executed between a landlord and tenant if so requested by either party. The written rental contract or lease must contain the following 11 specific subjects:

1. Duration of the agreement.
2. Amount of rent, the manner and time of its payment, and the amount of any charges for late payment and dishonored checks.
3. Restrictions on and charges for occupancy by children or pets.
4. Services and utlities included with the lot rental and the responsibility of maintaining or payment for the services and utilities.
5. Fees which may be required and the purposes for which they are required.
6. Deposits which may be required and the conditions for their refund.
7. Maintenance which the tenant is required to perform and any appurtenances he is required to provide.
8. The name and address of the owner of the mobile home park or his authorized agent.
9. Any restrictions on subletting.
10. The number of and charges for persons who are to occupy a mobile home on the lot.
11. Any recreational facilities and other amenities provided to the tenant.

A.B. 784 also specifies certain acts which are not allowed of a landlord or his agent or employee including (1) charging any fee for the tenant's spouse or children other than as provided in the lease; (2) charging any unreasonable fee for pets kept by a tenant in the park; (3) increasing rents or service fees unless such fees apply in a uniform manner to all tenants similarly situated, except that a discount may be selectively given to persons who are handicapped or who are 62 years of age or older; and (4) interrupting, with intent to terminate occupancy, any utility service furnished the tenant except for nonpayment of utility

charges when due. Any landlord who violates the utility service provision is liable to the tenant for actual damages and $100 in exemplary damages for each day that the tenant is deprived of utility service.

A major point of interest to many in the bill is the removal from previous law of a provision that permitted a landlord to require that, if a tenant sold his mobile home, the mobile home be removed from the park if the mobile home is less than 12 feet wide or more than 10 years old.

Under the bill, unless further restricted by local ordinance, if more than 80 percent of the lots in a mobile home park are occupied, it is unlawful for a mobile home dealer, installer or salesman to rent or lease a vacant mobile home lot unless within 60 days he takes up residence in the mobile home or releases the lot to a qualified tenant. After the expiration of 60 days from the date of rental of the lot to the dealer, installer, or salesman, any qualified tenant is entitled, upon written request to the landlord to obtain release of the lot.

Any landlord who charges or receives any entrance or exit fee to a tenant assuming or leaving occupancy of a mobile home lot is subject to a misdemeanor on the first offense, a gross misdemeanor on the second, and for the third or subsequent offense, is subject to imprisonment for 1-6 years or a fine of not more than $5,000, or both. Violation of other specified provisions in the bill is a misdemeanor.

24 FAIR RENT

FAIR RENT INITIATIVE 24

Rents are Rising Faster than Inflation

- ***Keep Rents Reasonable***
- ***Conserve Housing***
- ***Prevent Unfair Eviction***

To the City Council of the City of Seattle:

We the undersigned registered voters of The City of Seattle, State of Washington, propose and ask for the enactment as an ordinance of the measure known as Initiative Measure 24 entitled:

Shall the City regulate residential rent increases through a new board; and restrict certain evictions, condominium sales, and housing demolitions?

a full, true and correct copy of which is included herein, and we petition the Council to enact said measure as an ordinance; and, if not enacted within thirty days from the time of receipt thereof by the City Council, then to be submitted to the qualified electors of the City of Seattle for approval or rejection at the next regular election or at a special election in accordance with Article IV Section 1 of the City Charter; and each of us for himself says: I have personally signed this petition; I am a registered voter of The City of Seattle, State of Washington in the precinct (if known) written after my name, and my residence address is correctly stated.

SEATTLE VOTERS ONLY

	PETITIONER'S SIGNATURE	PRINTED NAME	RESIDENCE ADDRESS STREET AND NUMBER	PRECINCT (IF KNOWN)
1				
2				
3				
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KEEP SEATTLE AFFORDABLE

RETURN ALL PETITIONS TO: ROOF
1133 23rd Ave.
Seattle, WA 9812
322-6545

RETURN BY JULY 11, 1980

INITIATIVE 24

AN ORDINANCE to address the impact of the shortage of rental housing through a program to limit rent increases for most rental units, and, in aid thereof, to provide for a Rental Housing Board to administer the program, to provide for the financing of the program, to establish standards and procedures for rent adjustments, to maintain the protections of the program by prohibiting unjust evictions, to limit further reductions in the rental housing stock by restrictions on demolitions and sale as condominiums of rental units, to provide standards for the Board to recommend ending of the program when circumstances no longer warrant its existence and to establish enforcement mechanisms and penalties for the violation of this ordinance.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

PART I

Section 1. Purpose

A growing shortage of housing units in Seattle, caused by demolition of structurally sound housing, conversion of rental units to condominiums, population influx due to the desirability of the Seattle area as a place to live, and the lack of new construction, has resulted in an extremely low vacancy rate in rental housing. These factors, together with speculation in existing units, have caused rents to rise so rapidly as to constitute a serious housing problem adversely affecting the welfare of a substantial portion of Seattle residents. These conditions endanger the public health and welfare, and especially endanger the health and welfare of the poor, minorities, young families and senior citizens.

This ordinance will address these housing problems in a unified and comprehensive manner, reduce the hardship caused by these serious housing problems, preserve the character of the existing housing stock, assure that rental housing costs are at fair and reasonable levels which allow landlords the opportunity to make a fair and reasonable return on investment, and provide for prompt resolution of disputes.

PART II
Definitions

Section 2.01. Rental unit means any structure, or part thereof, rented or offered for rent for residential use as a single habitable unit, or, which when last occupied, was so rented, together with all land, structures and services connected with such use.

Section 2.02. Controlled rental unit means any rental unit, except a rental unit:

(a) in any convent, monastery, hospital, extended medical or congregate care facility, asylum, or dormitory owned and operated by an educational institution exclusively for the housing of its students and their families;

(b) in a non-profit stock cooperative which is occupied by a shareholder whose share of cooperative stock is substantially equivalent to the share of total building space occupied by the shareholder's unit;

(c) which is governmentally owned, operated or managed, or in which a governmentally subsidized tenant resides, if state or federal laws or regulations exempt that unit from municipal rent control and an actual conflict with the operation of this ordinance exists;

(d) in an owner occupied building or complex of no more than four dwelling units;

(e) in a hotel, motel, inn or tourist home operated primarily for transient guests staying less than thirty days; but once the tenant lawfully resides in the building for more than sixty consecutive days, no exemption from controls may result under this subsection for the unit while it is so occupied;

(f) whose construction is completed, and which is first occupied after the effective date of this ordinance, except for replacement units constructed under Section 8.03(c) of this ordinance; but if a rental unit has been demolished pursuant to a permit applied for after April 16, 1980, but prior to the effective date of this ordinance, or demolished illegally, and new rental units are constructed on land where the demolished unit stood, the landlord may only claim exemption from controls by this subsection for rental units in excess of the number of demolished units;

(g) which is the primary residence of the landlord and is being temporarily rented for a period not to exceed 18 consecutive months, due to the temporary absence of the landlord for that period.

Section 2.03. Services means any benefits, privileges, or facilities connected with the use or occupancy of a rental unit, including a proportionate part of services shared by the tenant in common with others.

Section 2.04. Landlord means any owner, lessor, assignor, sublessor or other person entitled to receive rent, or any agent or successor thereof; but an assignor or sublessor shall not be considered the landlord of a rental unit under this ordinance unless the assignor or sublessor rents out the unit at a greater rate than that lawfully charged by his or her landlord.

Section 2.05. Tenant means any person entitled to the use and occupancy of a rental unit.

Section 2.06. Rent means the periodic consideration, including any periodic bonus, benefit or gratuity, demanded, accepted or retained for, or in connection with, the use or occupancy of a rental unit, including, but not limited to, periodic consideration for parking, utilities, pets, keys, furniture and subletting.

Section 2.07. Rental agreement means any oral, written or implied agreement between a landlord and a tenant for the use and occupancy of a rental unit.

PART III
Rental Housing Board

Section 3.01. Composition and Appointment

(a) There shall be a Rental Housing Board (Board) in the City of Seattle consisting of seven members appointed by the Mayor and confirmed by the City Council. All members of the Board shall be residents of the City of Seattle. Two shall be landlords, two shall be tenants, and the remaining three neither landlords nor tenants. The non-landlord members shall not be involved in the ownership, management, appraisal, sale, leasing, or financing of real estate, except for their personal use, and such involvement shall result in his or her removal from the Board.

(b) The initial appointments to the Board shall be made by the Mayor no later than January 1, 1981, and such Board members shall act temporarily for a period of sixty days, without confirmation, and for successive sixty day periods thereafter with the approval of the City Council, until the Board's membership has been confirmed by the City Council.

Section 3.02. Term of Office and Vacancy

The Board members shall each serve a term of three years, except that, of the first appointed Board two shall be appointed to serve an initial term of one year, two shall be appointed to serve an initial term of two years and at least one landlord and one tenant of the remaining three shall be appointed to serve the full three year term. No Board member shall serve more than two consecutive terms. Vacancies on the Board shall be treated as provided in this ordinance and in Article XIX of the City Charter. Within thirty days of the vacancy, the Mayor shall fill it for the remainder of the unexpired term, subject to City Council confirmation.

Section 3.03. Meetings

(a) The Board shall meet as often as necessary, in public, except as provided by law, according to a published schedule. A substantial portion of the meetings shall be on weekends and evenings.

(b) A quorum shall be four members of the Board. The Board members shall be compensated at the rate of $50.00 per meeting but each Board member shall receive no more than $3,750.00 annually.

Section 3.04. Financing

The Board shall finance its expenses by charging landlords reasonable annual registration fees per unit and by charging reasonable fees for rent adjustment petitio Such fees may be adjusted annually according to the needs of the Board. Petition fees may be waived if substantial hardship is shown. The City Council shall appropriate funds to finance the initial establishment of the Board and advance funds for the Board's first year of operation. These funds shall be repaid by the Board.

Section 3.05. Powers and duties

The Board shall have all powers necessary and proper for carrying out the provisions of this ordinance, including, but not limited to:

(a) hiring of necessary staff for the administration of the ordinance, including hearing examiners to conduct hearings pursuant to this ordinance, to whom it may delegate such powers as are appropriate;

(b) administration of oaths or affirmations and issuance of subpoenas;

(c) making such studies, surveys, investigations, and conducting of such hearings as are necessary to carry out its responsibilities;

(d) promulgating rules and regulations necessary to effectuate the purposes of this ordinance; and

(e) all duties specified or implied by this ordinance.

PART IV
Rent Stabilization

Section 4.01. Consumer Price Index (CPI) means the Consumer Price Index of All Items for All Urban Consumers in the Seattle-Everett Metropolitan Statistical Area issued by the United States Department of Labor, Bureau of Labor Statistics. The change in the CPI for a given time period shall be the percentage change between the most recent index issued before the beginning of the time period and the most recent index issued before the end of the time period.

Section 4.02. Base Rent.

Base rent means rent for a controlled rental unit as of July 1, 1979, plus that percentage amount of the rent equal to one-half of the percentage change in the CPI from July 1, 1979 to February 28, 1981, per the following example:

July 1, 1979 rent	=	$100.00
July 1, 1979 CPI	=	150
February 28, 1981 CPI	=	165
Percentage increase in CPI	=	10%
One-half of CPI increase	=	5%
Base rent	=	$105.00

(b) If no rent was in effect on July 1, 1979, the base rent means the rent first in effect after that date, plus a percentage increase, calculated in the same manner as in subsection (a), from the date of the first rent to February 28, 1981.

(c) If the unit becomes a controlled rental unit after February 28, 1981, the base rent means the rent first in effect after that date.

Section 4.03. Temporary Rent Stabilization

Rents, fees and deposits for controlled rental units shall not be increased in any manner, including by reduction in services, between the effective date of this ordinance and February 29, 1981.

Section 4.04. Registration

(a) The landlord of a controlled rental unit shall register it with the Board, on a form provided by the Board, by February 28, 1981. The initial registration shall include the amount and type of rent, services, fees and deposits in effect currently and as of July 1, 1979, the address of the controlled unit, the name and address of the landlord and tenants, and if the landlord is not a resident of the City of Seattle, the name and address of the local agent designated by the landlord to accept service of process and other legal notices, together with any other information the Board requires for the enforcement of the ordinance. The form shall be accompanied by the registration fee.

Section 4.05. Maximum rent

Beginning on March 1, 1981, the maximum rent on any controlled rental unit shall be the base rent, plus any adjustments under this ordinance. No landlord may demand, accept or retain rent in excess of the maximum rent authorized by the ordinance for that unit; however, the parties may agree to a lesser rent.

Section 4.06. Maximum fees and deposits

(a) No fee or deposit not chargeable as of the base rent date may be demanded, accepted or retained by the landlord of a controlled rental unit after the effective date of this ordinance.

(b) From the effective date of this ordinance through February 28, 1981, no landlord of a controlled rental unit may demand, accept or retain fees or deposits in amounts greater than those lawfully demanded prior to the effective date of the ordinance.

(c) On and after March 1, 1981, no landlord of a controlled rental unit may demand, accept or retain fees or deposits in any amount greater than that chargeable on the base rent date, plus an annual percentage increase equal to that allowed by Section 4.07 of this ordinance.

(d) This section applies to non-periodic fees and deposits. Periodic fees and deposits are considered rent.

(e) Any Board decision on a rent adjustment may adjust the maximum fees and deposits chargeable under this ordinance.

Section 4.07. General Rent Adjustment

(a) After March 1, 1981, the maximum rent may be increased annually to cover past net cost increases by an amount not more than one-half of the percentage increase in the CPI since March 1, 1981, or the date of any other adjustment under this ordinance, whichever is later. Rents may be adjusted under this section only once in twelve months. If a landlord claiming hardship wishes to increase rent by more than the amount allowed in this section, the landlord may request a special rent adjustment under Section 4.08.

(b) Rents may be increased under this section only after the tenant and the Board are given at least thirty days written notice of the increase on a written form specified by the Board, and only after the landlord's compliance with the requirements of the notice. The notice shall contain

(1) the name and address of the tenant;
(2) the base rent, current rent, proposed adjustment, plus similar information on fees and deposits;
(3) the nature and amount of net cost increases;
(4) the date of registration and the date of last adjustment;
(5) a statement that within ten days of the tenant's written request, the landlord shall make available for inspection and copying, at a reasonable time and place, documentary evidence of the net cost increases;
(6) a statement of the tenant's right to petition the Board under Section 4.08 of this ordinance to contest the landlord's general adjustment or petition for special adjustment;
(7) a statement of the percentage increase in the CPI since the last adjustment of rent under this ordinance, as provided by the Board;
(8) a statement that no rent increase is permitted in the absence of substantial compliance with the Seattle Housing Code.

(c) Notices required in Section 4.07(b) shall be given simultaneously to any controlled rental units in the building or complex for which the landlord seeks general adjustments in the coming twelve months. Failure to give such notice shall operate as a waiver of any right to an adjustment within that year for any unit not so notified.

Section 4.08. Special Rent Adjustment and Tenant Challenge to Adjustments

(a) On and after March 1, 1981, a landlord claiming hardship may petition the Board for a special rent adjustment when a general adjustment would not allow him or her the opportunity to make a fair and reasonable return on investment. A tenant may petition the Board to deny any adjustment under Section 4.07 or challenge the landlord's petition under this section. Notice of a petition for a special adjustment by a landlord shall be made in the manner required by Section 4.07, except that the Board may by regulation require the landlord to provide such additional information as may be necessary to determine a fair and reasonable return to the landlord. No landlord may apply for a special adjustment more than once in any twelve month period, except that upon a showing of substantial change in circumstances from the time of the last special adjustment hearing, the Board may, in its discretion, schedule another special adjustment hearing. A tenant shall file his or her petition to deny a rent adjustment under Section 4.07 within thirty days of receipt of the notice under Section 4.07(b).

(b) In making such an adjustment, the Board shall provide the landlord with the opportunity to make a fair and reasonable return on his or her investment in the building or complex. In making a special rent adjustment, the Board may consider, but is not limited to, the following factors, except as limited by Section 4.10:

(1) the purposes of this ordinance;
(2) the amount of property taxes;
(3) operating, maintenance, utility and financing expenses;
(4) capital improvements;
(5) the amount of living space and services;
(6) the condition of the unit, and the level of compliance with the Seattle Housing Code;
(7) the extent to which the building is being efficiently operated and managed;
(8) whether the property has been purchased and is being held as a speculative investment as opposed to a long term cash flow investment;
(9) income tax shelter benefits accruing to the landlord;
(10) the frequency and amount of past rent increases imposed by the same landlord and
(11) any other relevant factors.

The Board need not consider all of the listed factors in each individual rent adjustment, but, on its own motion, or the motion of a party, it shall consider any or all of the listed factors.

(c) All hearings shall be consolidated on a building-wide or complex-wide basis.

Section 4.09. Effective Date of Rent Adjustment

(a) Proposed general adjustments shall not be stayed by a tenant's petition to deny, but if the Board denies any portion of the proposed adjustment, the tenant may deduct the excess rent paid from subsequent rent payments, or recover it by other legal means.

(b) The Board may grant retroactive effect for a special adjustment to the date the adjustment petition was filed upon showing by the landlord of substantial hardship outweighing any hardship to affected tenants. The impact of such a retroactive grant may be ordered spread over not more than six monthly rental payments.

Section 4.10. Costs not passed on to tenants

The following costs may not be passed on to tenants in any rent adjustment:

(a) increased costs due to refinancing, except to the extent the proceeds of the refinancing were used to make repairs or improvements on the premises or to pay a legally enforceable obligation arising out of the purchase of the premises;

(b) increased financing costs for controlled rental units purchased after the effective date of this ordinance and within three years of the previous sale except as follows: only one-fourth of such increased costs may be taken into account in the first adjustment following such purchase, and additional one-fourth increments may be taken into account in adjustments during the next three years;

(c) costs for which the landlord has been or reasonably expects to be reimbursed by insurance payments or other compensation or fund;

(d) capital improvements not amortized over the useful life of the improvement or luxury capital improvements; but any improvement necessary to maintain a fully habitable or energy efficient dwelling shall not be considered a luxury improvement;

(e) fines or penalties, including interest, for violation of this ordinance or any law dealing with the controlled rental unit's operation or late payment of taxes;

(f) depreciation claimed as a federal income tax deduction;

(g) judgments or settlements paid for claims concerning the landlord's willful, knowing, reckless or negligent act or omission;

(h) registration or petition fees under this ordinance;

(i) attorney's fees for evictions in which a tenant has prevailed;

(j) attorney's fees for other hearings, trials or suits where the landlord does not prevail;

(k) any cost not reasonably related to the operation of the premises;

(l) costs whose payment or amount is commercially unreasonable.

Section 4.11. Rent Increase Stay for Code Violation

(a) The hearing examiner shall stay the effective date of rent adjustment if it is determined at the rent adjustment hearing that there exists on the premises any substantial violation of the Seattle Housing Code. The adjustment shall not take effect until the landlord has filed with the Board a copy of the appropriate certificate of compliance issued by the City of Seattle, and shall not be retroactive.

(b) Notwithstanding the above, the rent adjustment shall be given immediate effect if the hearing examiner finds that

(1) the code defect was the result of the tenant's willful or negligent act or omission; or,
(2) the code defect was not the result of the landlord's willful or negligent act or omission, and there exists no other source of funds, available to the landlord within a reasonable time period, to remedy the defect.

Section 4.12. Binding Opinions on Capital Improvements

The Board shall provide by regulation for issuance of binding opinions regarding whether and to what extent the cost of any proposed capital improvement may be passed on to tenants of a controlled rental unit through a rent adjustment. If a hearing is required under these regulations, such hearings shall be governed by Part V of this ordinance.

PART V
Procedure

Section 5.01. Reference to Administrative Code

Except as provided herein, the administrative procedures of the Board shall be consistent with the Administrative Code of the City of Seattle.

Section 5.02. Hearing Examiners

The Board shall delegate to its hearing examiners power to conduct hearings under this ordinance, except where such hearings are specifically delegated to a separate department, and to make all decisions, orders and rulings in such cases.

Section 5.03. Notice of Petition, Public Hearing

The Board shall send a notice to all interested parties of the filing of a petition for a hearing before the Rental Housing Board or hearing examiners appointed by such Board, together with a copy of the petition and the date, time and location of the hearing. All such hearings shall be public.

Section 5.04. Accelerated hearing

Upon a showing of substantial injury requiring an early hearing, the hearing examiner may schedule a hearing to take place within less than twenty days from the date of filing of a petition.

Section 5.05. Quantum of proof

No rent adjustment may be granted nor any opinion issued pursuant to Sections 4.08 or 4.12 unless supported by a preponderance of the evidence.

Section 5.06. Time for decision

The decision on any rent adjustment or other hearing shall be rendered within ninety days of the filing of the petition for a building or complex of six controlled rental units or less, or within one hundred twenty days of the filing of other petitions. A party shall be deemed to have waived any right to obtaining a decision within the above time limits if he or she has requested delays or continuances in the proceedings or has failed to timely provide testimony or documents necessary to a decision.

Section 5.07. Hearing record

The hearing examiner shall compile an official record of any contested case, which shall include: all exhibits, papers and documents required to be filed or which were accepted into evidence; an electronic recording of the hearing; a statement of materials officially noticed; findings of fact, conclusions of law and the decisions, orders or rulings in the case.

Section 5.08. Notice of decision

The hearing examiner shall immediately mail a copy of any decision to all parties.

Section 5.09. Appeal

Any aggrieved person may appeal final decisions of the hearing examiner to the Board, but decisions shall not be stayed pending appeal. An appeal shall be filed no later than twenty days after notice of the decision. The Board shall delegate the power to decide the appeal to a three member panel of the Board, containing no more than one landlord and one tenant member. The sole record for appeal shall be the record prepared by the hearing examiner, written arguments by the parties and, if the panel desires, oral argument. In the event that the appeal panel reverses or modifies the decision, the parties shall be restored to the position they would have occupied had the examiner's decision been the same as the panel's. The appeal shall be decided no later than ninety days after its filing.

PART VI
Just Cause Eviction

Section 6.01. Reasons for Eviction

No landlord may evict or threaten to evict any tenant of a controlled rental unit unless:

(a) the tenant has failed to pay rent lawfully owed;

(b) the tenant has permitted the unit to be used for any illegal business, permitted a nuisance or committed waste on the premises;

(c) the tenant has intentionally or negligently caused substantial damage to the premises or allowed any member of his or her family, invitee, licensee or any person acting under his control to do so;

(d) the tenant has continued to breach any reasonable rules of tenancy, or duties imposed by law;

(e) the tenant has created an unreasonable interference with the comfort, safety or enjoyment of the other residents of the same or any nearby building;

(f) the tenancy was conditioned on employment of the tenant by the landlord and that employment has lawfully terminated;

(g) the owner seeks in good faith to recover possession for his or her own use or occupancy or for the occupancy of his or her child, parent, grandparent, brother, sister, or parents-in-law, provided that no substantially equivalent unit is vacant and available in the same building;

(h) the owner of a single-family dwelling has accepted a bona fide offer of purchase for such dwelling from a purchaser who intends to use or occupy such dwelling and who requires eviction of the tenant as a condition of closing the sale;

(i) the landlord, after having obtained all required permits, intends to undertake substantial rehabilitation which cannot be done while the premises are occupied, provided that the landlord notifies the tenant that the tenant shall have the right to reoccupy the unit after rehabilitation is completed;

(j) the landlord, after having obtained all required permits, intends to demolish the unit, or to sell it as a condominium.

This section is intended to provide tenants of controlled units with the substantive affirmative defense that an eviction has been undertaken in the absence of the just causes enumerated above. It is not intended to interfere with the initiation of such an eviction by a landlord. The affected tenant may also bring a civil action for damages under Section 10.02 for violation of this section.

PART VII
Sale of Condominium Units

Section 7.01. Conditions of removal from rental market

No landlord shall remove a controlled rental unit from the rental market by offering it for sale to the public as a condominium unit unless he or she has obtained a certificate of compliance with this part from the Superintendent of Buildings. The Superintendent shall not issue the certificate unless he or she certifies that:

(a) at least one hundred and twenty days before the unit is to be offered for sale to the public, the landlord has delivered to each tenant written notice of intention to sell, a written offer of sale to the tenant, and a statement of the tenant's rights under this part;

(b) the offer of sale has included on its face a provision that it is conditioned upon tenants in at least fifty percent of the total controlled rental units in the building or complex accepting the offer and depositing a commercially reasonable down payment into an escrow account; and

(c) tenants in at least fifty percent of the total controlled units have accepted the offer and made the deposit as set forth above. The deposit shall not be provided from funds under the control of the landlord.

Section 7.02. When certificate shall not issue

Notwithstanding the above provisions, the Superintendent of Buildings shall not issue the certificate of compliance if he or she finds that the landlord has, within the previous twelve months, engaged in misrepresentation, or harassment of tenants, illegally raised rents, reduced services or evicted tenants without just cause, for the purpose of preparing for the sale of the units as condominium units.

Section 7.03. Appeal

The issuance or denial of the certificate of compliance shall be subject to review by the Office of Hearing Examiner created by the Administrative Code. No certificate of compliance shall be finally issued until the time for notice of appeal has expired, or if an appeal is taken, until the appeal has been decided in the landlord's favor.

PART VIII
Demolition

Section 8.01. Notice

The owner of a controlled rental unit shall give written notice to all tenants thereof of his or her intent to apply for a demolition permit for the building in which the unit is located. The notice shall be given at least ninety days prior to filing the application and shall include the following information:

(a) owner's intent to apply for the demolition permit;

(b) tenant's right not be evicted without good cause, as set forth in Part VI of this ordinance;

(c) owner's obligation to offer tenants the right to occupy replacement units, if any are to be built under Section 8.03(c) of this ordinance, before offering the units to the general public;

(d) owner's obligation to provide relocation assistance to the tenants; and

(e) tenant's rights of enforcement under this ordinance.

Section 8.02. Permit Application

Any application for such a demolition permit shall be filed with the Superintendent of Buildings and shall include the following:

(a) copies of written notices given to tenants pursuant to Section 8.01.

(b) an itemized estimate of the cost required to bring the building up to a decent, safe and sanitary condition by rehabilitation and an itemized estimate of the cost of replacing the building on-site with a residential building which would contain an equal number of comparably-sized controlled rental units, if the owner seeks a finding under Section 8.03(a); and

(c) all documentation necessary to assess the factors identified in Section 4.08 to determine a fair and reasonable return, if the owner seeks a finding under Section 8.03(b).

Section 8.03. Conditions for issuance of a permit

The Superintendent of Buildings shall not issue a permit to demolish a building containing one or more controlled rental units unless he or she finds that the owner has complied with the provisions of Sections 8.01 and 8.02 and that any one of the following conditions have been met:

(a) the owner establishes that the building is not structurally sound, that is, the cost of bringing the building up to a decent, safe and sanitary condition by rehabilitation exceeds the cost of replacing the building on-site with a residential structure containing at least an equal number of comparably-sized controlled rental units;

(b) the owner establishes that he or she has owned the building for at least three consecutive years prior to the date of application for the permit and is unable to realize a fair and reasonable return on his or her investment in the building; or

(c) the owner has:

(1) signed a contract with the City which includes the following provisions:

(A) owner will replace the existing controlled rental units with the same or a greater number of comparably-sized and comparably-priced controlled rental units;

(B) replacement units will be located within a two mile radius of the demolition site;

(C) replacement units will be completed within two years of the issuance of the demolition permit;

(D) tenants displaced by the demolition will be offered the right to occupy the replacement units before the units are offered to the public;

(E) the contract shall be binding on subsequent purchasers of the land, enforceable by the City or by any such displaced tenant, and publicly recorded by the owner; and

(2) submitted to the Superintendent of Buildings all plans, permit applications and proof of availability of financing for the replacement units.

Section 8.04. Appeal

The issuance, suspension or denial of the demolition permit or failure to suspend such permit shall be subject to review by the Office of Hearing Examiner, as provided in the Administrative Code. The Superintendent shall not issue the permit until the time for appeal has expired or until any appeal is finally decided in favor of the owner.

Section 8.05. Administration

The Superintendent of Buildings shall adopt, amend or rescind such rules and regulations as are necessary to carry out the duties imposed by this ordinance.

Section 8.06. Relocation assistance

The owner shall pay relocation assistance of one thousand dollars per controlled rental unit to tenants thereof who have vacated the building after receipt of the notice required by Section 8.01. The owner shall pay the relocation assistance on or before the date that tenants of a unit vacate the premises. The payment shall be in addition to any security deposit or other compensation or refund to which the tenants may be entitled. The Superintendent of Buildings shall suspend the permit if he or she has reasonable grounds to believe that any such payment has not been made.

PART IX
Decontrol

Section 9.01. Decontrol

Within two years of the effective date of this ordinance, and on an annual basis thereafter, the Board shall conduct a vacancy survey of a valid sampling of rental units. If two successive annual surveys find a vacancy rate of greater than five percent, and if the Board, after public hearings, finds that the serious housing problems addressed by this ordinance are no longer present to a significant degree, the Board shall recommend to the City Council that this ordinance be repealed.

PART X
Enforcement

Section 10.01. Civil Penalty

A violation of any provision of this ordinance or of any Board regulation, decision or order shall be punishable by a civil penalty of no less than $100 and no more than $500. A violation affecting more than one controlled rental unit or concerning more than one payment period shall be considered a separate violation as to each unit and as to each payment period. The penalty shall be paid to the Board.

Section 10.02. Private Civil Remedies

Any landlord who violates this ordinance or any Board regulation, decision or order, shall be liable to any affected tenant in the amount of $500, or three times the amount of actual damages, whichever is greater, plus costs and a reasonable attorney's fee. A tenant may assert any rights under this ordinance, or under any Board regulation, decision or order, in any answer, set-off, affirmative defense or counterclaim, and may deduct any excess rent previously paid from his or her rent. A tenant may also bring any other civil action to enforce his or her rights under this ordinance, or under any Board regulation, decision or order, in a court of appropriate jurisdiction. Remedies provided in this section are in addition to any other legal or equitable remedies and are not intended to be exclusive.

PART XI
Miscellaneous Provisions

Section 11.01. Sham Transactions

Sham transactions shall be disregarded in determining whether or not a rental unit is controlled, in considering rent adjustments, in finding whether a violation of this ordinance, or of any Board regulation, decision or order has occurred or in any other appropriate circumstances.

Section 11.02. Waiver of rights

No landlord may impose as a condition of tenancy of a controlled rental unit a waiver of the tenant's rights under this ordinance or under any Board regulation, decision or order, and any such waiver is void and against public policy.

Section 11.03. Interference with exercise of rights

No landlord may restrain, coerce, interfere with, or retaliate against his or her tenants, or any person acting in concert with them, in any lawful exercise, either individually or collectively, of rights under this ordinance, or under any Board regulation, decision or order.

Section 11.04. Severability

If any section, subsection, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such decision shall not effect the validity of the remaining portions thereof.

Section 11.05. Liberal Construction

This ordinance shall be liberally construed to achieve its purpose and preserve its validity.

WARNING

Ordinance 94280 provides as follows:

Section 1. It is unlawful for any person:

(1) To sign or decline to sign any petition for a city ordinance initiative or referendum or a city charter amendment for any consideration or gratuity or promise thereof, or

(2) To solicit or procure signatures upon a city ordinance initiative or referendum, or city charter amendment petition for any consideration or promise thereof; or

(3) To give or offer any consideration or gratuity to anyone to induce him or her to sign or not to sign, or to solicit or procure signatures upon a city ordinance initiative or referendum, or city charter amendment petition; or

(4) To interfere with or attempt to interfere with the right of any voter to sign or not to sign a city ordinance initiative or referendum, or city charter amendment petition by threat, intimidation or any corrupt means of practice; or

(5) To sign a city initiative or referendum or city charter amendment petition with any other than his or her true name, or to knowingly sign more than one petition for the same initiative, referendum, or charter amendment measure, or to sign any such petition knowing that he or she is not a registered voter of the City of Seattle.

The provisions of this ordinance shall be printed as a warning on every petition for a city ordinance initiative or referendum or city charter amendment.

Section 2. Any person violating any of the provisions of this ordinance shall upon conviction thereof be punished by a fine of not more than five hundred dollars or by imprisonment in the city jail for a period not to exceed six months, or by both such fine and imprisonment.

INSTRUCTIONS TO SOLICITORS

1. Voters must be registered in the City of Seattle.
2. Voters should sign EXACTLY AS REGISTERED. (If voter is registered as John B. Smith, he should sign that only and NOT J.B. Smith or any other form of name.)
3. Petition may be signed in pencil or ink.
4. Voters may sign initiative 24 only once. (If a voter signs more than once, only the first signature will be counted).
5. Every signature counts (35,000 are required). Return all petitions no matter how few names.
6. Payment for circulating petitions is prohibited by law.

HB 356

The following letter of intent on COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 356 (relating to unlawful practices in the sale or rental of real property) dated April 30, 1981 was received (the Judiciary committee report appears on page 894 of the journal) and appears as follows:

LETTER OF INTENT

CSHB 356

April 30, 1981

The Honorable Jim Duncan
Speaker of the House

Dear Mr. Speaker:

The Committee on Judiciary has had under consideration House Bill 356, "An Act relating to unlawful practices in the sale or rental of real property", and has provided you with a committee report recommending that it be replaced with our committee substitute for that bill, and that committee substitute for House Bill 356 do pass.

Although the bill prohibits discrimination in the sale, lease, or rental of real property because of a person's status as a parent, the committee wishes to point out that the bill does not proscribe any other existing management tools that a landlord may have with regard to rental units. For example, a landlord may still adopt rules and regulations concerning a tenant's use and occupancy of the premises in order to promote safety, health, or welfare of the tenants.

A landlord may also regulate the tenant's use of the property to avoid abusive use, or to make a fair distribution of services and facilities for tenants generally. This bill also does not prohibit a landlord from taking action against a tenant who fails to quietly enjoy the premises, or fails to occupy and use the premises in a clean and safe condition. Also, it is clear that a landlord can provide reasonable provisions in a lease limiting the number of persons occupying a unit, without regard to issues of [illegible]ntage.

In conclusion, we believe this legislation should prohibit discrimination against individuals due to their parenthood status, while still allowing a landlord the existing legal controls over the use and occupancy of his rental units.

Very truly yours,

Rep. Fred Brown, Chairman
Committee on Judiciary

FB/MF/dm

With pullout section: Page B1

THE CHRISTIAN SCIENCE MONITOR

Tuesday, August 12, 1980 40¢

Opening apartment doors closed to kids

By Randy Shipp

Boston

Anyone trying to find an apartment that accepts children will not be surprised by the conclusions of a recent US Housing and Urban Development survey. It shows that, nationwide, 26 percent of all rental units have "no children" policies, and many that do accept children have restrictions on the number, sex, or age of the youngsters.

These restrictions affect roughly 2 million families, says Elizabeth Roistacher, HUD's deputy assistant secretary for policy development and research.

The report adds that restrictive rental policies also may mean that families may be split up, with children being sent to live with other relatives, until parents can find some place for them to live, or doubling up with another family, leading to increased family tension.

"There is also a real feeling among people who are hit by this that society thinks there's something wrong in having children," Dr. Roistacher says. 'Children react to this. They are hurt, they're parents are hurt. They're all really disturbed by the fact that children don't seem to be wanted."

The problem is growing worse. The number of rental units unavailable to families with children is rising. And with more apartment buildings switching to "no children" policies, and more one-bedroom rather than multi-bedroom units being built, it is likely to continue to rise.

In Massachusetts, state law prohibits such discrimination in dwellings with three or more units. Violations carry a fine of up to $1,000. Even so, discrimination against families with children is "the biggest problem right now for housing," according to a spokesman for the Massachusetts Commission Against Discrimination. Because of exemptions under the law, he says, very few rental units actually are affected.

The California-based Fair Housing for Children Coalition (FHCC) conducted a survey of apartment ads in newspapers. In Los

Focus

Angeles, 71 percent allowed no children of any age, and Fresno, San Diego, and San Jose showed 53 percent, 65 percent, and 70 percent respectively.

"We've dealt with people who are living with six kids in a station wagon on the Santa Monica pier, and a woman living with two kids in a tent on the beach," says FHCC executive director Dora Ashford.

FHCC also gets calls from pregnant women worried that they will lose their apartment when they have their baby.

"We had a recent case of a couple in Santa Monica who had a baby a few months ago. They got a letter from [the apartment management company] saying, 'Congratulations on your new baby – and we would like you to find another place to live in 60 days.'"

But when FHCC lawyers took the case and pointed out that the family would not be violating any occupancy codes, and that a local ordinance forbade age discrimination, the family was allowed to stay.

The generally tight housing market is a major cause of the problem, Ms. Ashford says.

"As long as the housing crisis worsens [the discrimination problem] will, too. Families with children are in a worse position to buy their way out, as are the elderly, when housing crunches hit, so they're hurt a lot worse than other people."

Helen Blank of the Children's Defense Fund (CDF) says positive steps are being taken. The HUD study, for instance, is an example of interest in the issue on the part of the federal government.

Moreover, anti-discrimination statutes have been passed in Arizona, Connecticut, Delaware, Illinois, Massachusetts, Minnesota, New Jersey, New York, and the District of Columbia. The California Legislature is considering similar legislation.

The CDF has set up a national network of organizations concerned with discrimination against families with children. Its purpose, Ms. Blank says, is ". . . to communicate with each other about local ordinances they are working on, share strategy, and give each other mutual support."

Dr. Roistacher says increasing the number of available homes and apartments would help solve the problem. She says HUD is looking into possible roles that it can take, and also would like state and local governments to get involved with the issue.

reqs

- upper limit of units
- scattered sites.
- should be set under greatest need.

criteria for judging which has most need

- higher limits for accessible units.

what good reasons can ~~be~~ be thought of ~~to~~ for getting more housing money.

1) direct approp. to ASHA
2) approp for housing (grants),

money

HR1 - Sec. 208

establish 50% fair market rents.

— Fair Market Rents

— Grants for ~~extra~~ other protected classes.

Anyway to get

Sunday's news.

AIATFC - public hearing
changes
- if propose, rep. want to
be notified.

Tim Buckley
Elaine Holtzberg: Women's oral history

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC ASSISTANCE

POUCH H-07
JUNEAU, ALASKA 99811
PHONE:
465-3355

August 1, 1983

Ms. Suzanne Tryck
Office of Senator Vic Fischer
1024 W. 6th Ave. Suite 204C
Anchorage, Alaska 99501

Dear Ms. Tryck,

Thank you for clarifying for me the information which you requested from our Anchorage office on July 21, 1983. As per our telephone conversation of July 28th, I shall compile and send to your office information and handbooks explaining Public Assistance services available; copies of the AFDC, Medicaid and Food Stamp corrective action plans and information on monthly reporting for the Bethel area.

If I can be of further assistance, please contact me.

Sincerely,

Jerry Harris
Acting Director

cc: Dan Burton

COMMON RENTAL PROBLEMS

Problem	Remedy
1. No written notice	1. Written notices are required in many sections of the law; re-read this bulletin carefully to see when to use a written notice.
2. Landlord tells a tenant to move immediately or cuts off essential services without warning	2. Evictions are controlled by specific sections of the law. Tenants do not have to move if these rules are not followed and may sue for 1½ times actual damages.
3. Tenant refuses to move after receiving an eviction notice	3. The landlord should go to court for an F.E.D. order; the State Troopers will carry out the order. In addition, the landlord may sue for 1½ times the actual damages. See the section—EVICTIONS.
4. Deposit is not returned	4. Tenants may sue for twice the amount kept; re-read the section —DEPOSIT RETURN.
5. Tenant is habitually late with rent or repeatedly breaks rules	5. Late rent and other problems repeated within a 6-month period may be grounds for eviction; re-read section on EVICTIONS or see a lawyer.

RENT CONTROL

During the pipeline boom of the early 1970's, several Alaskan cities experienced a severe housing shortage, and the legislature passed an emergency rent control law. (A.S. 34.06.010-.060)

When emergency rent control is in force, the rules regarding rent increases and evictions change; however, the law expired in 1977, and if an emergency situation occurred again, a new law would have to be passed by the legislature.

THERE IS NO RENT CONTROL IN ALASKA AT THE CURRENT TIME.

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ALASKA LANDLORD TENANT LAW

This booklet is a June 1982 update of the 1980 publication prepared by the Cooperative Extension Service, with the assistance of Alaska Legal Services and the Consumer Protection Section of the Alaska Dept. of Law.

INTRODUCTION

In 1974, the Alaska Legislature passed the Uniform Residential Landlord and Tenant Act (A.S. 34.03.010-.380). The purpose of the Act was to simplify, clarify and modernize Alaskan laws relating to the rental of dwellings. It was also intended to encourage both landlords and tenants to maintain and improve the quality of housing.

While the law does not cover every problem a landlord or tenant may have, it was written to protect the rights of both parties.

In addition to the Uniform Residential Landlord and Tenant Act, other laws which have application to the rental of dwellings include:

1. Alaska Statute 09.45.060-.160
   Procedure for Recovering Possession
2. Alaska Statute 34.06.010-.060
   Emergency Residential Rent Regulation and Control

This booklet was prepared directly from A.S. 34.03.010-.380. Where appropriate, we have cited the actual portion of the law that pertains so that if you need to go to court, you can either use this booklet or can refer directly back to the law. The reference will be the letters "A.S." (short for Alaska Statute) followed by some numbers (these are the title, chapter and article numbers of the law respectively), for example: (A.S. 34.03.330).

You can get a copy of the actual law at your nearest courthouse, public library or magistrate's office.

who is covered

A dwelling, in this law, is a structure or part of a structure used as a home, residence or sleeping place by one or more persons, including the rental of mobile home space.

If you rent a house, apartment, mobile home, mobile home space, condominium, townhouse or duplex, this law applies to you!

the law **does not** cover:

1. residency in an institution (school dorm, jail, hospital, nursing home, etc.);
2. hotels, motels and other transient housing;
3. condominiums occupied by the owner;
4. occupancy under a contract of sale;
5. occupancy of a dwelling owned by a fraternal or social organization of which you are a member;
6. live-in employment (apartment managers, housekeepers, etc.),
7. occupancy when the premises are used primarily for agricultural purposes.

terminology

In this booklet, several terms are used that mean the same thing.

Landlord means the owner or manager or rental agent for the dwelling.

Dwelling, unit, property and **premises** means the rental unit, whether it is a home, apartment, mobile home, etc.

Tenant means any of the people who rent a dwelling.

Other technical definitions may be found in A.S. 34.03.360—Definitions.

written notices

Putting things in writing does not mean the landlord and tenant are enemies or do not trust each other. It is simply a good way to do business. Oral agreements are legal; however, under the law, a written notice or agreement may be your only protection if something goes wrong. Some people hesitate to put agreements in writing because they don't know what to say. There are examples of various notices in the back of this booklet that may help.

Here are some things that should definitely be in writing:

1. receipts for payments of any kind;
2. promises to fix things;
3. rental agreements;
4. eviction or moving notices;
5. notices of repairs needed;
6. details of what needs to be done to get back a deposit.

It cannot be emphasized strongly enough how important this is: GET IT IN WRITING!

BEFORE YOU MOVE IN

rental agreements

Rental agreements may be either written or oral, but written is best. If any disagreement occurs later, both tenants and landlords will have evidence to back their claims.

If a tenant signs a rental agreement, moves in and begins paying rent, the agreement is still legal even if the landlord didn't sign the agreement.

If the landlord shows the tenant a rental agreement to which the tenant agrees, moves in and begins paying rent, the agreement is still legal even if the tenant did not sign it. It is critical that tenants and landlords review and discuss any rental agreements and rules before anyone moves in or money changes hands.

A lease is a rental agreement that tells how long the tenant will stay (usually four, six or twelve months). If there is a lease, the landlord cannot raise the rent or evict the tenant unless promises in the lease are broken. If there is a lease but the tenant must move, the tenant is still responsible for the rent for the rest of the lease period, unless the dwelling can be re-rented.

Here are some things which should appear in a rental agreement:

1. name and address of the owner and his/her manager or agent as well as the tenant's name and address;
2. the amount of rent, when it is due, where and how it is to be paid;
3. if this is a month-to-month agreement or lease with time limits;
4. when the rent will be considered overdue and what penalty will be levied;
5. what is included in the rent (heat, lights, water, etc.) and what is provided (driveway, garage, furnishings, kitchen appliances, snow removal, storage, laundry, etc.);
6. total number of full-time occupants and pets allowed;
7. a list of prohibited equipment (snowmobiles, motorcycles, musical equipment, etc.);
8. the amount and type of deposit (cleaning, security, pets, etc.) and what has to be done to get it back;
9. a list of landlord and tenant repair and maintenance duties;

Rental agreements cannot:

1. force a tenant to waive any legal rights,
2. excuse the landlord from any legal responsibilities,
3. let the landlord sue the tenant without notice,
4. require the tenant to pay the landlord's attorney fees should you go to court;
5. allow the landlord to take a tenant's personal belongings (A.S. 34.03.040).

DO NOT SIGN A RENTAL AGREEMENT THAT HAS ILLEGAL WORDING.

If the rental agreement contains any of the things listed below, they should be removed before signing:

1. agreeing to let the landlord come into the dwelling whenever he/she wants;
2. agreeing to immediate eviction for nonpayment of rent;
3. agreeing that the tenant will make all repairs;
4. excusing the landlord from liability in case of accidents due to his/her neglect;
5. giving up rights to the deposit.

NOTICE OF DEFECTS IN ESSENTIAL SERVICES

_____ _____
(Date)

TO: _____
(Landlord)

_____

_____
(Address)

You are notified that you are failing to provide (water/hot water/heat/sewer service or other essential services) at the above address. The specific defect (s) is as follows: _____

_____

_____

_____

If you do not fix this defect WITHIN 24 HOURS, I have a right to 1) have it fixed myself and deduct the cost from my rent, 2) sue you for damages, or 3) move out and hold you responsible for my expenses in doing so.

Signed,

_____
(Tenant)

Receipt:

I received this notice on the _____ day of _____ 19____ at _____ am/pm.

_____
(Landlord)

KEEP A COPY OF THIS NOTICE

NOTICE OF TERMINATION OF TENANCY BY LANDLORD

_____
(Date)

TO: _____
(Tenant)

_____

_____
(Address)

You are notified that your tenancy is terminated and that you must move from the address listed above on the rent due date which occurs at least 30 days from the date you receive this notice. Your rent is due on the _____ of each month, so you must be gone by the _____ day of _____ 19____.

The reason you are being evicted is as follows:

_____

_____

_____

_____

If you are not gone by that date, a lawsuit will be filed to evict you.

Signed,

_____

Receipt:

I received this notice on the _____ day of _____ 19____ at _____ am/pm.

_____
(Tenant)

KEEP A COPY OF THIS NOTICE

NOTICE OF TERMINATION OF TENANCY (BY TENANT)

_____
(Date)

TO: _____
(Landlord)

_____

_____
(Address)

You are notified that I am terminating this tenancy effective on the rent due date which occurs at least 30 days from the date you receive this notice. My rent is due on the _____ of each month, so I will be gone by the _____ day of _____, 19____.

Please send my security deposit of $_____, or an explanation of how it was used, to _____
(address)
within 14 days of the date I move.

Signed,

_____
(Tenant)

_____

_____
(Address)

Receipt:
I received this notice on the _____ day of _____
19____ at _____ am/pm.

_____
(Landlord)

KEEP A COPY OF THIS NOTICE

NOTICE OF EVICTION FOR VIOLATION OF AGREEMENT AND/OR THE LAW

_____
(Date)

TO: _____
(Tenant)

_____

_____
(Address)

You are notified that you have seriously violated your agreement with me and/or your duties under the law. The violation (s) are set out specifically as follows: _____

_____

_____

_____

If you do not remedy the violation (s) listed above within TEN DAYS after the date you receive this notice, your tenancy will terminate in not less than TWENTY DAYS, and you must move. Failure to remedy the violation (s) listed above will mean you must move by the _____ day of _____, 19____.

If you have not remedied the problem (s) and have not moved by the date listed above, a lawsuit will be filed to evict you. If you remedy the problem (s) within TEN DAYS, you may stay.

Signed,

_____
(Landlord)

Receipt:
I received this notice on the _____ day of _____
19____ at _____ am/pm.

_____
(Tenant)

KEEP A COPY OF THIS NOTICE

change your mind?

Once an agreement to rent a place has been made, and all or part of the deposit and rent has been paid and then a tenant doesn't move in, he/she may not be able to have all his/her money returned. If this happens on a month-to-month agreement (written or oral), the tenant may have to pay for one month's rent or rent on a day-to-day basis until someone else rents the place, whichever is less. If a lease was signed, the tenant may owe rent until the place is re-rented or the lease period ends, whichever is less.

EXCEPTION: If the landlord lied about the place or deceived the tenant by not telling about important problems (for instance, no heat, the building is condemned, etc.) the tenant should get all the money back. In addition, the tenant could sue for fraud. If this situation comes up, see a lawyer.

illegal discrimination

It is illegal for landlords to refuse to rent to someone because of sex, age, race, religion, national origin, color, marital status, pregnancy or changes in marital status, unless the housing is specially designated for "singles only" in advance.

It is unlikely that a landlord will openly refuse to rent to someone for an illegal reason. There are some indications that a landlord may be practicing discrimination in renting when:

- the apartment the tenant called about is "suddenly" taken when the landlord sees the tenant.
- a place the tenant was told is "rented" remains vacant.
- the rent or deposit is much higher than advertised or charged for similar units.
- rules will be different for one tenant than for others in the same apartment house or court. (For example, others have pets, but you cannot. A landlord may decide to allow no more pets, but he/she must stick to the new rules as far as new tenants are concerned.)
- the tenant is not referred to a listing in a real estate office that fits his/her needs.
- a house or apartment in the tenant's area is rented with the intention of forcing others to leave (block-busting).
- an advertisement indicates a preference based upon race, color, religion, sex, age, marital status or national origin.

Everyone should have a free choice about where to live, and there are legal methods of fighting discriminatory practices. If you feel you have been discriminated against and want to do something about it, you can complain to the State Human Rights Commission. The Commission's investigation costs you nothing.

For more help on illegal discrimination, contact the Human Rights Commission in your town or:

State Human Rights Commission
204 East 5th
Anchorage, Alaska 99501
phone: 276-7474

disclosure

The law says that someone must be responsible for such things as decisions about maintenance, repairs, collecting rent and receiving notices from tenants or from the court. It is a requirement that when a tenant moves in, he/she must be told in writing the name and address of the owner (or who the owner wants his/her agent to be). This information must be kept up-to-date.

If this information is not provided, whoever made the rental agreement or receives the rent becomes the legally responsible person. Then, when the tenant is required to give a written notice or wants to sue, he/she should:

1. contact the owner or his/her agent, or
2. if that information was never officially given to the tenant, contact the person who made the original agreement or takes the rent. (A.S. 34.03.080)

deposits

Deposits are often collected for pets, children, cleaning or security before a tenant moves in. Sometimes the tenant will be asked to pay the last month's rent, too. The total amount collected for all deposits and pre-paid rent, except the first month's rent, cannot exceed two month's rent. (A.S. 34.03.070)

Deposits and pre-paid rent along with first month's rent can make total move-in costs high. Here are some examples of how these move-in costs might be set:

deposits

#1: $ 375 first month's rent $ 375 last month's rent $ 375 security deposit $1125 total to move in	#1: $ 375 first month's rent $ 375 last month's rent $ 400 security deposit $1150 total to move in
#2: $ 325 first month's rent $ 150 cleaning deposit $ 175 security deposit $ 325 last month's rent $ 975 total to move in	#2: $ 325 first month's rent $ 300 cleaning deposit $ 200 security deposit $ 325 last month's rent $1150 total to move in

The deposit and any pre-paid rent must be deposited in a trust account in a bank, savings and loan association or with a licensed escrow agent. Exceptions are made for rural Alaska, if it is impractical to bank the money. When the deposit is collected, be sure to get a receipt. Also, it is a good idea to have the landlord write on the receipt the amount paid for each type of deposit and what has to be done to get the deposit back. (Always get and keep records for any money paid.)

If the tenant is renting a unit and the building is sold, there is often confusion as to which person, the old or new landlord, is responsible for the deposit and pre-paid rent money. The original landlord who accepted the money is the person responsible for returning the money to the tenant UNLESS the new owner receives the money from the old landlord and agrees to the responsibility of taking care of it.

When a tenant finds out the building is being sold, he/she should find out whether the old or new landlord will hold the deposit money. If the old landlord keeps the deposit, the tenant should get in writing the name of the bank where the deposit is kept and the new address of the old landlord.

inspections

While the law does not specify that an inspection must be done, it is a good idea for the landlord and tenant to inspect the dwelling together before anyone moves in. Make a list of items needing repair and the date the work should be completed (10 days is standard). Make another list of damage that will not be changed or repaired. Both the landlord and the tenant should sign and date these lists. Each of you should keep a copy. These lists will be handy when the tenant is ready to move out.

WHILE RENTING

paying rent/rent increases

The landlord is not required to ask tenants each month for their rent before they are "required" to pay it. If a time and place for payment of rent was not agreed upon when the tenant moved in, it is assumed that the rent will be collected at the dwelling.

If the tenant rents monthly, the rent is due every 30 days, unless otherwise agreed. So, if the tenant moves in on the 8th, the rent is due on or before the 8th of every month.

If there is a signed lease, rent may not be increased during the lease period. Other rent increases may be levied as the landlord sees fit; however, the law is unclear regarding the notice period which the landlord is required to give.

The general interpretation is that a rent increase is either:

1. a termination by the landlord of the tenancy at the old rental rate and an offer to renew it at a higher rate or
2. a modification of a rule or regulation.

In either case, tenants should be given a written notice 30 days before the next rental due date. If the tenant does not agree with the rent increase or cannot pay, he/she may give notice to move. Since the law is not clear, landlords and tenants should seek legal advice if they are unsure about a proposed rent increase. (A.S. 34.03.290b and A.S. 34.03.130b)

rules and regulations

Almost every landlord has rules and regulations. Often these are not mentioned until after a tenant moves in or until the rule

SETTLING DISPUTES

When landlords and tenants disagree, sometimes tempers flare, and things may be said and/or done which are wholly outside the law. Sometimes the disagreement becomes just plain petty and small. It will only complicate matters if either party takes the issue to court.

If there is disagreement on any issue, remember that the court looks favorably on "good faith" action; that is, action taken in an honest, forthright manner. Try to remain calm. Gather your facts and PUT THEM IN WRITING. Be sure to pay attention to sections of the law that require written notices and that specify the number of days allowed for landlords or tenants to remedy disagreeable situations. Present your problem to the other party in writing, clearly stating what you want to change and what you will do if the situation doesn't change. The forms in the back of this booklet may help.

Generally speaking, the rental of dwellings is a business, and as in any other business, both parties should conduct themselves in a fair, honest manner. There are not many agencies that will mediate landlord/tenant disputes, and problems are frequently not serious enough to require a lawyer or go to court. Most landlord/tenant problems could be settled by both parties acting "in good faith".

If serious problems do arise, it is always advisable to see a lawyer. But first, give the other person a chance by trying to work it out together.

SAMPLE FORMS

The following notices were prepared as samples of what is necessary. These samples may not apply in all situations, but could be helpful.

NOTICE OF EVICTION FOR NON-PAYMENT OF RENT

_____
(Date)

TO: _____
(Tenant)

_____

_____
(Address)

You are notified that you owe rent in the amount of $_____. If you do not pay this rent within TEN DAYS of the day you receive this notice, your tenancy is terminated and you must move. You must pay your rent in cash, money order or certified check.

If you have not paid the rent or moved within TEN DAYS, a lawsuit will be filed to evict you. If you pay your rent on or before the TEN DAY period, you may stay.

Signed,

_____
(Landlord)

Receipt:

I received this notice on the _____ day of _____ 19___ at _____ am/pm.

_____
(Tenant)

KEEP A COPY OF THIS NOTICE

WHERE TO GO FOR HELP

Both landlords and tenants can get help from the following agencies:

1. For copies of this publication and general assistance, contact the Cooperative Extension Service.

Anchorage	277-1488
Bethel	543-2503
Fairbanks	456-6885
Homer	235-8176
Juneau	586-7103
Ketchikan	225-3290
Nome	443-2320
Palmer	745-3360
Soldotna	262-5824

2. To file a complaint on false advertising, chronic misuse of deposit money or fraud, see the Consumer Protection Section, Alaska Department of Law.

Anchorage 1049 West 5th Avenue, Suite 101
Anchorage, AK 99501
279-0428

Fairbanks 604 Barnette, Room 228
Fairbanks 99701
456-8588

Juneau NBA Building
217 2nd Street
Pouch K
Juneau, AK 99811
465-3692

3. Persons with low incomes may call Alaska Legal Services for attorney help. If your landlord tries to evict you, be sure you mention this when you call.

Anchorage	272-9431
Barrow	852-2311
Bethel	543-2237
Dillingham	842-5653
Fairbanks	452-5181
Juneau	586-6425
Ketchikan	225-6420
Kodiak	486-4178
Kotzebue	442-3398
Nome	443-2951

4. If you need a lawyer but don't qualify for Alaska Legal Services, see the low-cost legal clinics in your town or call the statewide Lawyer Referral Service at 272-0352 in Anchorage. They may be able to refer you to a lawyer in your town.

5. For complaints against state government officials, contact the State Ombudsman Office.

Anchorage 840 K Street
Anchorage 99501
276-4011

Fairbanks 613 Cushman
Fairbanks 99701
452-4001

Juneau 525 Village Street
Juneau 99811
465-4970

6. For complaints against Municipality of Anchorage employees, contact the Municipal Ombudsman Office at 264-4461.

7. To file a claim for damages of $2,000 or less, see the Alaska Court System and ask for their publication, "Alaska Small Claim Handbook".

has been broken. To avoid problems, the law requires the landlord to show his/her rules and regulations to the tenant before the tenant commits himself to a rental agreement (oral or written). The tenant may discover that he/she does not agree with them and decide not to move in. The rules and regulations must be reasonable and specific, or under the law, the landlord will not be able to enforce them.

Remember that once the tenant has seen the rules and moved in, he/she is agreeing to live by these rules. A copy must be posted by the landlord someplace at the dwelling where it can be easily seen.

Rules must apply to all tenants equally and fairly. Rules and regulations cannot be changed without first giving tenants reasonable notice. If tenants do not agree to the change, and it changes the original rental agreement a great deal, they may move after giving at least 30 days notice or they may refuse to accept the rule. Landlords may evict tenants who refuse to abide by a reasonable rule change. If the change does not apply to all tenants in the building equally, an eviction based on a tenant's breaking of a rule may be illegal. (A.S. 34.03.130)

subleasing

When a lease is signed, the tenant is promising to stay for a certain length of time (usually four, six or twelve months). The tenant is telling the landlord that each and every month, whether the tenant still lives in the apartment or not, he/she will be responsible for paying the rent. Unless the landlord signs a paper saying it's okay with him/her for someone else to move in if the tenant moves out, the tenant cannot just have someone else "take over" the place.

There are usually only two ways to get out of a lease:

1. If the landlord breaks his/her part of the bargain (what's written in the lease), the tenant can move after giving 30 days written notice.
2. Get the landlord to agree to let the tenant sublease the place. Under the law the landlord has a right to ask for certain information about the new tenants. The landlord can reject the new tenants only for certain reasons, and cannot unreasonably prevent subleasing.

The information the landlord can ask for IN WRITING about the new tenant includes:

1. name, age and present address;
2. occupation, present employment and name and address of employer;
3. marital status;
4. how many people will live in the apartment;
5. two credit references;
6. names and addresses of all landlords of this person for the last three years.

Once this information has been given to the landlord, he/she has 14 days to answer the request. No answer within 14 days is considered the same as consent, so go ahead and sublease. If the answer is "no", the landlord must give written reasons for the decision.

The only legal reasons for refusing to allow a sublease are:

1. bad credit record;
2. too many people;
3. too many children;
4. unwillingness of new tenant to accept rental agreement;
5. pets not acceptable;
6. proposed business activity;
7. bad report from former landlord.

If the landlord says "no" to the suggested new tenant, but doesn't give reasons in the list of acceptable rejection reasons, the law says the old tenant can go ahead and sublease or move out; however, to move out without subleasing, a thirty day WRITTEN notice must be given to the landlord. (A.S. 34.03.070)

privacy

A common problem landlords and tenants have is that of the tenant's right to privacy. Many landlords feel they can come and go from their property whenever they please. Some tenants feel they never have to let a landlord come in.

To clear up the confusion, the law says a landlord must give a tenant 24 hours notice that he/she would like to come for the purpose of making repairs, maintenance, an inspection or showing the place. The landlord may enter only with the tenant's consent and only at reasonable times.

TWO EXCEPTIONS: No such notice is required if it is not possible to contact the tenant by ordinary means within 24 hours, or if there is an emergency (smoke, water, explosion, etc.).

privacy

Landlords cannot abuse their right to request entry or harass tenants, and tenants cannot unreasonably keep a landlord from entering.

If a tenant has a nosey landlord who believes he/she can come and go as he/she pleases, it might be a good idea to get a copy of the law to show him/her the section called ACCESS (34.03.140). If the landlord comes in and will not leave, call the police.

When a landlord does abuse his/her right to enter (by coming in without the tenant's permission, or when the tenant is gone or repeatedly without need), the tenant can ask a court to demand that the landlord stop (called an injunction). The tenant may also sue for actual damages or one month's rent, whichever is greater, court costs and attorney fees. If the tenant wishes to move because the landlord has abused the access privilege, a 10-day written notice is required.

If the tenant unreasonably refuses to allow the landlord in, the landlord can get an injunction. The landlord may also sue for actual damages or one month's rent, whichever is greater, or evict the tenant with a 10-day written notice.

absence/abandonment

Tenants must tell their landlord every time they plan to be gone for more than seven days. If the tenant plans to be gone only 2 or 3 days, then finds that for whatever reason he/she will actually be gone more than a week, they must notify the landlord as soon as possible.

This is to help protect the property from pipes freezing up, etc. While the tenant is gone, the landlord may go into the place only if there is an emergency or with 24 hours notice.

A landlord may assume the dwelling has been abandoned when:

1. the tenant is behind in rent, and
2. the tenant has been gone for more than 7 straight days and
3. the tenant did not notify the landlord that he/she would be gone.

The landlord may then enter the dwelling, store the tenant's belongings and re-rent the place. He must attempt to send the tenant a notice telling where the belongings are being kept and asking the tenant to remove his/her property within 15 days. The notice must also tell whether the landlord is going to have a public sale to get rid of the belongings or is going to throw or give them away, if they are not picked up within 15 days. A tenant's belongings cannot be thrown or given away unless they can be considered to have no value or are food. (A.S. 34.03.230 and 34.03.260)

fire/casualty damage

If the dwelling is damaged by a fire or other casualty (earthquake, flood, etc.), depending on the amount of damage, there are a couple of things the tenant can do.

1. Partial damage: When only a part of the dwelling is damaged and it is lawful for the tenant to stay (the place isn't condemned), move out of the damaged part. The rent can be reduced to an amount which reflects the fair value of the undamaged part of the dwelling.
2. Total destruction: If the tenant can no longer live in the place, he/she can move out, notify the landlord and stop paying rent. The rental agreement and responsibility to pay rent ends when the tenant moves.

After the tenant moves, the landlord must return any deposits and/or pre-paid rent to the tenant. Rent paid for the time the tenant didn't live in the dwelling must be returned (counted from the day of the casualty and including the day of the casualty) to the tenant. (A.S. 34.03.200)

housing codes

The primary objective of codes is the protection of the health and safety of the people who live in houses and apartments. A minimum standard of maintenance is set, making the landlord (not his tenants) responsible for keeping rental property in decent shape. (The section of this booklet called LANDLORD DUTIES explains what the landlord is expected to repair and maintain.)

The law protects tenants who use their right to report code violations. If they call to complain and ask for an inspection, the landlord cannot take revenge by evicting or harassing the tenant. Alaska has a statewide fire code but does not have a statewide housing code.

The following places do have local housing codes. Report substandard conditions to:

Anchorage - New Construction—Building Safety Division (264-6533)
- Existing Housing—Health & Environmental Protection (264-4666)

SPECIAL RULES FOR MOBILE HOMES

rental agreements

Rental agreements between mobile home park operators and mobile home park tenants may not:

1. prohibit the tenant from selling his mobile home (unless the mobile home is in violation of laws or ordinances, the proposed buyer doesn't agree with the terms of the existing rental agreement or the buyer does not have sufficient financial responsibility, and the park operator notifies the tenant of his/her objection in writing 30 days in advance);
2. require the tenant to provide permanent improvements to park property (the tenant may be required to maintain existing conditions);
3. require the tenant or prospective buyer to pay a fee to sell or transfer the mobile home (unless services were actually performed by the park operator to assist the sale or transfer, and the tenant was notified in writing of these charges before he/she moved into the park), or
4. require a fee to set up a mobile home in the park or to move an existing home out of the park (unless services were actually performed by the park, and the tenant was notified in writing of the charges before he/she moved into the park).

capital improvements

Mobile home park operators must give prospective tenants a list of all capital improvements that will be required (skirting, utility hookups, tie-downs, etc.) before the tenant moves in. Even though park operators may specify the type of equipment, tenants cannot be required to buy their equipment from the park operator.

eviction

Mobile home park tenants may be evicted only if:

1. they are behind in the space rent; or
2. they are violating a law or ordinance, and the violation endangers the health, safety or welfare of others in the park; or
3. the tenant has substantially violated a reasonable term or provision of the initial written rental agreement; (new law, effective 8/18/83)

or

4. there is to be a change in the use of the land on which the park is located. When there is to be a change in the use of the mobile home park land, landlords or park operators must give tenants a 90-day written notice, unless a longer period was specified in a previously signed lease.

For all other evictions, the same notices are required as for other types of tenants. (A.S. 34.03.040c, 34.03.080d, 34.03.130c and 34.03.225)

MOVING OUT

proper notice

When a tenant wants to move, the law requires that he/she give a written notice 30 days before the next rental due date. For example, if rent is due on the 8th of each month and the tenant decides on January 20 that he/she wants to move, the soonest he/she could get out of the obligation would be March 8, providing the tenant gives a written notice on or before February 8.

(Tenants who rent by the week must give 14 days written notice.)

Tenants not giving proper written notice will be held responsible for rent up to that 30-day period or until the place is re-rented, whichever is less.

This does not include tenants who are moving because of serious problems which the landlord has not fixed (see the section under LANDLORD DUTIES).

Also, tenants who do not give proper written termination notice, the proper number of days before they move out, may have to wait 30 days after the move to get their security deposit refund (with proper notice, the refund must come back in 14 days).

cleaning and damages

Tenants should clean the dwelling completely before moving, including the refrigerator, bathtub, toilet and oven. Other cleaning responsibilities may have been spelled out in the rental agreement, lease or landlord's posted rules.

When the place has been cleaned, the tenant and landlord should inspect the place together, using the damage list prepared when the tenant first moved in as a guide. Tenants cannot be charged for ordinary wear and tear. But, since landlords and tenants sometimes disagree on what "ordinary wear and tear" is, here are some guidelines:

1. A family with children or pets will wear things out faster —this type of wear is the landlord's responsibility.
2. If something cannot be cleaned because of the landlord's act or negligence, it is the landlord's responsibility (non-washable paint on the walls, water leaks staining the walls, etc.).
3. Shampooing carpets and painting walls are usually considered landlord responsibilities, as these items are bound to get dirty through normal useage. Holes in the carpet or writing on the walls, however, are not normal wear and tear and are the tenant's responsibility to repair.

Damages caused by the tenant are the tenant's responsibility, even if they were caused by an accident. The damage deposit can be kept by the landlord in the amount needed to make repairs. If the tenant has purposely destroyed the landlord's property (throwing a rock through the window, writing on the walls, smashing furniture, etc.) the tenant may be guilty of a misdemeanor and face up to one year in prison, a $500 fine or both and will still have to pay for the damage.

deposit return

After either the landlord or the tenant has given a proper written termination notice, (see the section above: "Proper Notice"), then the landlord must return the security deposit to the tenant within fourteen (14) days after the tenant moves out, or the landlord must send a written notice telling the tenant why any or all of the deposit is being kept by the landlord.

If the tenant does not give proper written termination notice, then the landlord can take up to thirty (30) days after the tenant moves to send the tenant's deposit refund or a written notice about withholding refund.

The landlord is obligated to send the written notice plus the refund being returned to the tenant to the last known address of the tenant. Therefore, the tenant should be sure to give the landlord a good forwarding address, since the landlord has the duty only to make a "reasonable effort" to locate the tenant, and only if the landlord "actually knows or has reason to know" he's to locate the tenant.

(These are some new amendments, effective 7/19/82.)

Deposits may be kept only if the tenant:

- causes damage;
- owes back rent;
- doesn't leave the place as clean as it was when he/she moved in (other than ordinary wear and tear that cannot be removed by cleaning);
- does not comply with previously agreed upon requirements of deposit return as specified in the lease, rental agreement or landlord's posted rules. (A.S. 34.03.070b)

Fairbanks - Fairbanks Building Official (452-1881)
Juneau - Juneau-Douglas Borough Housing Inspector (586-3300)
Ketchikan - City Building Inspector (225-3111)
Kodiak - City Building Inspector (486-5731)

condemned

Buildings inspected and found to be very unsafe may be condemned. The housing inspector will tell the landlord that he/she must repair the problems or he/she will be taken to court. If the problems are so serious that the inspector feels the building is beyond repair, the inspector will order that it be torn down.

The tenant may come home one day and find a sign posted on the building saying that the place is unsafe for anyone to live there. Tenants should immediately find out when the inspector and landlord expect all the tenants to move. They should also see an attorney before paying any more rent.

landlord duties

These are the things tenants can expect their landlords to do:

1. make all repairs to keep the dwelling in a livable condition;
2. keep all common areas (stairs, halls, yard, garbage area, etc.) clean and safe;
3. keep in safe and working condition all electrical, plumbing, toilet ventilating (fans, windows), air conditioning, kitchen and other appliances or facilities supplied by him/her;
4. provide garbage cans and arrange for removal service;
5. supply running water and reasonable amounts of hot water and heat at all times, unless there is a severe energy shortage or the furnace or hot water heater is in the complete control of the tenant (as in a house);
6. if requested by the tenant, supply locks and keys. If the lock can be easily broken, it does not provide enough protection. A tenant can demand that a proper lock be put on the door.

This is a check list of the main things the landlord should repair and maintain:

- doors, windows, roof, floors, walls, and ceilings that leak or have holes;
- plumbing fixtures (must work, not leak and provide a reasonable amount of running, hot and cold water at a reasonable water pressure level);
- a working and safe stove and oven;
- a reliable heating system which provides heat to all rooms in a reasonable amount;
- a safe electrical system (no loose or exposed wires, sockets that do not spark and enough power so the system does not blow fuses when used normally);
- windows (or fans) that provide fresh air when wanted;
- enough garbage cans to provide an adequate and safe trash removal service;
- extermination service if roaches, rats, mice or other pests infest the building, apartment or property;
- proper maintenance of vacuum cleaners, washing machines, dish washers, etc. supplied by the landlord (when not abused or broken by the tenant).

If the dwelling is in an isolated area where public sewer or water service is not available, the landlord does not have to provide those services; however, if the landlord privately provides these services at the beginning of the rental agreement, he/she must maintain the services. If there is a serious problem with something mentioned above that is not the tenant's fault, the law provides remedies for the tenant. The landlord must be given a reasonable chance to fix the problem first, but if he/she won't fix it, here is what the tenant can do:

1. **MOVE.** The tenant gives the landlord a written notice describing the problem and saying that if the problem is not fixed within 10 days, he/she will move within 20 days. If the problem is fixed within 10 days, but the tenant still wants to move, a regular 30-day notice is required.

2. **EMERGENCY REPAIR AND DEDUCT.** If heat, water, sewer or other essential service breaks down, the tenant may get the problem fixed and deduct the actual and reasonable expenses from the next month's rent. The tenant must give the landlord a written notice that this is what he/she plans to do, and if the problem is major, the tenant must provide the landlord with a copy of the estimated repair costs. However, once written notice is given, the tenant may immediately go ahead with repairs. If the cost is very great, it is advisable to contact a lawyer before proceeding with repairs. If the problem cannot be fixed right away and it

landlord duties . . .

makes the dwelling unlivable, the tenant can give the landlord written notice that he/she is moving into substitute housing. The tenant is excused from paying rent until the problem is cured and may charge the landlord for the cost in excess of rent of staying in a hotel or other substitute housing until the problem is fixed. (A.S. 34.03.180)

3. **SUE FOR DAMAGES.** If the tenant or his family have suffered because the landlord failed to fix something, the tenant can sue. If the total amount is less than $2,000, the tenant may sue in the state small claim court. For larger claims, the tenant should see a lawyer.

4. **WITHHOLD RENT.** In some cases where the problem is really serious, it may reduce the value of the dwelling. If this happens, tenants may give written notice to their landlord that they refuse to pay a part of their rent until the problem is fixed. However, landlords and tenants may not agree on what is a serious problem, so it is wise to see a lawyer before using this remedy.

If the tenant notified the landlord in writing of a problem, and the landlord fixed it within the time allowed, but through the landlord's negligence, virtually the same thing happens again within 6 months, the tenant may terminate the rental agreement with a 10-day written notice. The notice must specify the problem and the date of termination.

handyman agreements

In the renting of a house or duplex, the landlord and tenant may agree IN WRITING that the tenant will be responsible for (4), (5) and (6) of the **LANDLORD DUTIES.** Also, if it is done in good faith, the landlord and tenant of any dwelling may agree that the tenant will do specific repairs, remodeling or maintenance jobs in exchange for payment or reduction of rent, etc. The landlord cannot force a tenant to agree to this kind of arrangement to get out of his/her obligations as a landlord. It must be made IN WRITING, signed by both parties and cannot be on the same paper as the rental agreement. Also, this agreement cannot be made if it will reduce or endanger the services to the other tenants. (A.S. 34.03.100)

tenant duties

These are the duties tenants must perform to keep their part of the rental bargain:

1. pay rent on time;
2. keep the place clean;
3. use the facilities properly (sinks, toilet, kitchen appliances, etc.);
4. do not disturb the neighbors;
5. do what is required by the lease, rental agreement or landlord's posted rules;
6. replace or fix anything damaged or broken because of an accident or carelessness;
7. do not destroy, damage or deface any part of the property.

If tenants do not uphold their end of the bargain, the landlord may be able to evict them. Eviction notices must be in writing and be specific about the problem in question. If the tenants were notified of a problem and remedied the problem within the time allowed, but the problem occurs again within 6 months, the landlord may evict the tenant using a 10-day written notice. The notice must specify the problem and the date of termination.

eviction

Landlords may evict tenants:

1. for failure to pay rent when it is due;
2. when the tenant has broken an important part of the rental agreement.

eviction . . .

Many people think that tenants cannot be evicted in the winter in Alaska or if they have small children. This is not true.

A 10-day written notice is required when a landlord is evicting because the tenant is behind in his/her rent. If the rent is paid before the 10 days are up, the tenant may stay. The notice must tell tenants they have the choice of paying or moving. Ten days notice is also required when the landlord is evicting because the tenant has refused reasonable requests to enter the dwelling or has broken the rental agreement more than once in a 6-month period.

A 20-day written notice is required when the landlord is evicting because the tenant has broken an important part of the rental agreement, such as using the place illegally, etc. If the tenant fails to maintain the rental unit with the result that the health and safety of others are endangered, the landlord may deliver a written notice to correct the problem within 10 days of the receipt of the notice, or the tenant will have to move within 20 days. If the problem is corrected, the tenant may stay.

A 30-day written notice is required when the landlord wishes to evict for general reasons. This notice must be delivered 30 days before the next rental due date.

Eviction notices must be in writing, and the landlord cannot harass the tenant by:

- shutting off utilities
- changing the locks
- taking the tenant's belongings

If the tenant refuses to move at the end of the notice period (10, 20 or 30 days), the landlord must go to court to evict. The court calls most eviction suits "Forcible Entry and Detainer" (F.E.D.) cases. Here is how F.E.D. works:

The landlord files his/her claim with the court. The tenant will receive a complaint and summons to appear in court and give his/her side of the story. The trial will be scheduled 2-4 days after the summons is served. Tenants must act quickly if they don't want to be evicted. See a lawyer.

Tenants may have legal defenses or claims against the landlord which could prevent an eviction. Again, see a lawyer. If the tenant loses at the trial, the judge will sign an order telling the State Troopers to remove the tenant from the dwelling. The tenant may also have to pay the landlord's attorney fees, but if the tenant prevails, the landlord may have to pay the tenant's attorney fees. F.E.D. cases are usually handled by district court. For more information on evictions, read A.S. 09.45.060-.160, Forcible Entry and Detainer. Information on preparing an eviction suit may be found in the Alaska Rules of Court, volume 2 - Civil Rules (read rules 1-5, 10, 76 and 85). The Rules of Court are available at the Alaska Law Library or your local magistrate's office.

retaliation

IF THE TENANT

1. complains to the landlord about repairs or failing to make repairs; OR
2. uses his/her rights under the Alaska Landlord-Tenant Law; OR
3. joins a tenant union or organization, OR
4. complains to a government agency about code violations or rent eviction controls:

THEN, THE LANDLORD CANNOT

1. raise the rent; OR
2. decrease services (such as shutting off utilities, etc.), OR
3. evict the tenant.

If the tenants feel illegal retaliation has occurred against them, they can move out or stay and sue for as much as 1½ times their actual damages.

An eviction is not considered illegal retaliation, if it is done because:

- the tenant is behind in the rent;
- the landlord must make repairs to meet code requirements or big changes that require a vacant dwelling;
- the tenant is using the place for illegal purposes;
- the landlord wants to use the place for something other than a rental dwelling for at least 6 months, or for personal purposes;
- the property is being sold.

Rent increases are not considered illegal retaliation if the landlord can show:

- a sizeable increase in taxes or cost of maintaining the property (not including the cost of repairing something because of a tenant's complaint);
- that similar dwellings are being rented for a higher rate, and in fact, the landlord has been undercharging;
- that the cost of major improvements made to the property are being passed on to all tenants fairly and equally. (A.S. 34.03.310)

276-7788 Pg. 1

MASTER SIGN-IN

NAME	ADDRESS AND ZIP CODE	PHONE NUMBER	RENTER	NON-RENTER	
Margaret Moore	1011 Hollywood Dr Bldg 31	277-3395 Apt. 643	Panoramic View		
Lori Rodriguez	777 Elm St. 99501	279-9224	Panoramic View		
[illegible] Vincent [illegible]	1140 E. Bluff Dr. Bldg 4-516 99501	277-5817	Panoramic View		
[illegible]	9322 Keku Bldg 2 99504	337-1071	Share [illegible]		
Betty Calhoun	821 Elm St - 20-425	272-4945	✓	☆	
Denise Perry	1020 E 1st Bluff 99501	276-7673	✓		
Gerald E. Welch	700 W. 26th Apt. 16 99503	277-9238	✓		
[illegible]	5350 Lake Otis	276-3734	✓		
[illegible]	310 W. 32 [illegible]	277-5469	✓		
José R Perez	601 W. 32 Apt 67	279-2046	✓		
[illegible] Valentine	1140 E. Bluff Dr. #510	278-2480	5✓	N	
[illegible]	814 [illegible] St. Apt. 586	No Phone	H		
[illegible]	[illegible]				
[illegible]	1537 Cordova				
Celestine Boyd	1140 E Bluff Apt. 515 24	279-1120	Panoramic View		
[illegible] Ferrara	P.O. Box 4-1511, Anch. 99509	276-8448	/		
[illegible]	900 W. 26th Ave. Apt [illegible]	277-4777	/		
Larry [illegible]	111 Muldoon	333-5666		3	
Mary Rhines	811 Elm apt 421 - Bldg 20	276-1945	✓		
Hazel A. Sofie	930 W 14th Ave	277-9154	/		
[illegible]	330 [illegible] Apt 102	274-9216	✓		
HAMEED AHMAD	1029 SAN FERNANDO #3	333-2657	✓		
Wendy Saritzer	434 W. Bragaw	276-7274	✓		
[illegible]	2204 ROOSEVELT #1	248-2245			
[illegible]	4135 Kingston Dr [illegible]	333-1638		✓	
[illegible]	2276 E. 20th [illegible]	278-1117	✓	☆	
[illegible] Morehouse	333 W 4th Ave	277-2481	☆	[illegible]	
Theresa Hamilton	1100 Hollywood	277-8200	✓		
[illegible] Gibson	4300 [illegible] #7 99503	272-2673			
[illegible]	4231 Laurel #303	272-8777			
[illegible] Johnson	" " #202	272-0814	✓		
[illegible] Hill	1050 [illegible]	272-9837	Pan	☆	
Bert Campbell	4114 Beta, P-3, 99504	337-1170			
[illegible] Compton	7831 E. 6th Ave	337-8541			
[illegible] W[illegible]	1150 E. Buff	278-1952	PAN		

MASTER SIGN-IN

NAME	ADDRESS AND ZIP CODE	PHONE NUMBER	RENTER	NON-RENTER
Edith Williams	746 E 73rd #2	344-4255	✓	✗
Mr & Mrs Brian Longfellow	[illegible] 99504	272-2276		
DEBORAH ADAMSON	3835 LYNN "A" ANC 504	337-1581	✓	
Janice Sheffield	4117 VANCE DR 99504	337-3922	✓	
Rochelle Torbett	#524 Bldg 24 1140 E. Bluff Dr. 99501	277-4427	✓	☆
Richard Stephenson	507- bldg 24 1140 E Bluff Dr. 99501		✓	
Roy BRUNS	1200 E. BLUFF 99501 Apt 551, BLDG 2[illegible]			
Mary Luttey	3605 Arctic #360-(03)		✓	
[illegible]	3401 Eureka Apt. 211	277-2079	✓	
Deborah M. Wilson	1515 E Tudor # 2	276-0801	✓	
ANDREA MOSBY	1130 E. Bluff Dr #487-23	272-7056	✓	
ANN THOMAS	BLDG 45 Apt. 2226	277-0181	✓	☆
Rosanne Clayton	337 Granville # 3	333-0712	✓	
Kay Bailey	1109 Medfra #3	276-4877	✓	
[illegible]	BLDG 24 APT 53	276 6270	✓	
Elizabeth M. Bend	Bldg. 32, APT 670, 777 Elm.	278-1295	✓	
Kay Dooley	Bldg 33 · 727 Elm St #672	272-5168	✓	☆
Elaine [illegible]	✓ ✓ – – 676	274-2883	☆	
Marilyn [illegible]	4416 [illegible] Dr.	337-7711	☆	
MR & MRS DARWIN Johnson	4231 Laurel # 213	278-3854	✓	
Freddy Black Crow	Bx 255 Eagle River 99577	277-8067	✓	
[illegible]	3801 W 79th Ave #2	248-1644	✓	
Sharon [illegible]	631 E. 22nd #C4	272-7157	✓	
Sarah DeMille	741 W 32nd # 3	277-1897	✓	
Chet Kurtz	4236 Reka	337-0362		
Linda Switzer	701 [illegible]	276-2761		
Lynelle Mueller	[illegible] 87 Elm	272-8400	Bad phone #	
David Mueller	727 Elm	272-8400		
[illegible] Malloy	Kenai Radio NKN			
W. Kirkpatrick	664 W 34th apt 426			
Harry Smith	PANORAMIC VIEW	277-7862	274-3551	bad #
Jewell HAll	1506 CACHE DRV	272-9431		✓
Bessie O'Rourke	319 Delaney St	272-9431	✓	☆
Wanda L. Modeset	841 Elm Bldg 26, Apt 440	272-0189	✓	☆

SIGN IN

NAME	ADDRESS AND ZIP CODE	PHONE NUMBER	RENTER	NON-RENTER
Harvey Harris	604 W 26th Rm 284		X	
D. Blair	283 Muldoon, Bx 79 04	—		X
L.L. Culton	3900 E. 9th #6 04	337-3556	X	☆
[illegible] Haltett	8040 Cranberry St	274-2541		X
[illegible] Hughes	3206 C 19th court	272-6848	☆	X
Bill Piotrowski	1303 W. 23rd	279-0220	X	☆
Mary Howard	105 E 4th	276 4162	x	☆
Cindy Liggett	1526 Karluk St.	278-9901	X	
[illegible] E. Wagner	425 E. 16th #3, Anch	—	X	
[illegible]	2815 Aspen Dr #8 Anch	248-5331	X	
[illegible]	5360 Lake Otis	279-5580	X	
[illegible]	631 E 22nd, Apt H-4, Anch.	274-8373	X	
[illegible]	111 Midland #2 Anch 99504	337-7774	X	
Jerry Gooch	735 N. Park #4 Anch 99504	—	X	
Randy Powell	1535 #1 N St Anch 99503	—	X	
Tammie Moore	840 Elm St. #440 Anch 995[illegible]	272-0182	☆	X
William Moore	840 Elm st. #440 Anch 995[illegible]	272-0182		X
[illegible]	4429 San Roberto #1 Anch.	337-2647		x
[illegible]	315 Casa Del Norte	274-6740	X	
Norma [illegible]	3112 W 33rd	none	X	
Beverly [illegible]	12020 E. Bluff St. [illegible]	279-6115	X	☆
Angela [illegible]	1020 E [illegible]	[illegible]	X	X
Don Daly	1343 E 27th Anch	343-6585	X	
Sue Bauer	SRA Box 416 Anch	345-1010		X
Paul Schmeisser	1100 E. Bluff Dr. Bldg 22 Apt 472 Anc.	276-6143	X	
Beth [illegible]	1036 Potlatch	279-5565	X	
Michael [illegible]	814 Ivy Bld 27 Apt 582	277-6138	X	☆
[illegible]	[illegible] D #11	274-9396	X	☆
[illegible]	727 Elm St - 227 B	276-6528	X	
[illegible]	1140 E. Bluff Dr #515	279-1120	X	☆
Alice [illegible]	P.O. Box 8966 Anch [illegible]		X	

SIGN-IN

NAME	ADDRESS AND ZIP CODE	PHONE NUMBER	RENTER	NON-RENTER
Terry Dumas	3605 Arctic #799	279-6196	✓	
Mary Millie	425 E 16th Apt 6	274 0846	✓	✓
J M Garrigues	Bx 10318 SoSta 99511	344-5455		
Don Mulligan & wife	5300 Lake Otis #5	344 5246	✓	
Eric Kuntz	P.O. Box 1820, 9810	344-4839	✓	
Marcella Moore	5350 Lake Otis #12	344-4839	✓	
Buddy [illegible]	735 N. Park #3	278-2760	✓	
C. Ramei	3820 Parsons #7	—		
Roy McGoldrick	res. 631 E 22nd 99501	279-3903	✓	
ZANDRA McGOLDRICK	MAILING Box 458 CHUGIAK, 99567	279-3903	✓	
MARY AFCAN	835 NELCHINA	277-3733		✓
WILLIE RATCLIFF	- - - - - -	- - -		✓
Mattie McCaney	- - - -	-	-	✓
G. R. Rudel	[illegible] 3605 Arctic #875	345-0987		✓
J.H. Losinski	Apt 598 Bldg 28 1209 Hollywood Dr.	277-1077	3 ✓	✓
R. Andrews	1340 W. 26th St. [illegible]	- - - - -		
[illegible]	1340 W. 26th St. Apt. 3			✓
Rick Kaminskis	3903 Seal[illegible]		✓	
Dixie Hadish	6620 Weimer	243-3073		—
Selina Metoyer	P.O. Box 8118, 99508	276-3371	✓	
Larry Hirsel	111 McCarrey #[illegible] 99504	333-5666	✓	
Mary Williams	230 W. 14th Ave. #324 99501	278-4945	✓	✓
[illegible]	AR Box 048 99502	345-3124		
Marcy [illegible]	434 N Bragaw	276-7274	✓	
FRANK LEE	1611 Juneau St.	272-1972		
Eileen Ondo	4306 Cope #7 99503	272-2673	✓	
Joe Joseph	1006 F	277-4419		
[illegible]	1019 San Fernando #7	338-5094		
Barbara [illegible]	1019 E 20th	277-9564		✓
T. N[illegible]	[illegible]	[illegible]		
[illegible]	P.O. Box 12[illegible]			
DAN WILLIAMS	1100 E BLUFF DR #464 99501	279-6239	✓	
[illegible]	[illegible]			
Bill [illegible]	530 [illegible] #2	278-9954	✓	
Mattie Parker	701 West 19th		✓	

SIGN IN

NAME	ADDRESS AND ZIP CODE	PHONE NUMBER	RENTER	NON-RENTER
Sally Morgan	3401 Eureka St. #314 99503	279-2079	✓	
Cheryl Wright	814 Icy Bldg. #27 #580 99501	276-4507	✓	✓
James Madrid	4382 Reka 99504	333-8515	—	
[illegible]	1007 Arabia Apt 2	272-2858	✓	
[illegible]	1576 Latouche #4	274-2404	✓	
Mary Mitchell	1353 W 27th	272-6786	✓	
Georgia Sage	1353 W. 27th	279-9986	✓	
Evelyn Yarber	5360 Lake Otis #10	344-2045 (AFTER 6P)	✓	
Judith Cobb	3323 Eide #5 99503	277-5291	✓	
Edmund [illegible]	Apt 543, Bldg 25, Govt Hill	none	✓	
[illegible]	[illegible]	none		
Juliet Robinson	318 E. 9th apt 2, 99501	274-1060	✓	
Freda Martin	2101 W. 36th Ave 99503	243-6115	✓	
Joan Rogers	3935 San Roberto #1	338-3921	✓	
Shirley Greer	624 Irwin #4	271-4640	✓	
Paul Larson	8020 Boundary Ave #1	333-4246	✓	
Neil Bennett	2815 Aspen #8 99503	248-5331	✓	
Tim Ohler	631 E 22 #C-7	279-4967	✓	
Scott Magnus	111 Muldoon #4	337-5620	✓	
Brian Blatchford	1400 W. 25th #6	—	✓	
Ralph Potter	601 W. 31st		✓	
[illegible]	3130 [illegible] #7	279-8237	✓	
[illegible]	221 Meyer		✓	
Margaret [illegible]	8010 Boundary Ave #333	337-3718	✓	
Virginia [illegible]	9501 [illegible] #13	243-1874	✓	
[illegible]	1201 Hollywood Drive #6		✓	
Eleanor [illegible]	510 E. 11th [illegible]		✓	
Kelly Fagundes	6827 Colonial Ct. #4 99502	243-2217	✓	

SIGN-IN

NAME	ADDRESS AND ZIP CODE	PHONE NUMBER	RENTER	NON-RENTER
[illegible]	1101 Hollywood Blvd Apt 623 [illegible]	2 [illegible]	✓	(★)
[illegible]	1903 W. 30th #2A Anc AK 99503	277-3375	✓	(★)
[illegible]	1150 Hollywood Dr Anch AK #537 Apt 25 Bldg	276-4125	✓	(★)
[illegible]	8040 E Boundary #9 City	337-5127	✓	
Robert S Wilson	P.O. Box 1518 Anch AK	876-5181		
[illegible] H [illegible]	8040 Boundary #9 City	337-5127	✓	
Clifford E Newby	Apt 564 1200 E Bluff Dr Anch 99501	274-2268	✓	(★)
Thurman W Brock	Apt 565 Bldg 26 1200 E Bluff Dr	279-3261	—	(★)
[illegible]	230 W. 14 #406	272-6701		(★)
Craig Doughty	1200 Eagle #4	272-6701		
Cora [illegible]	1200 Eagle #3	274-9352		(★)
[illegible] Nowak	2225 Arctic Blvd # 311	277-1780		
Walt [illegible]	511 Elm St apt 424-20	None		
[illegible]	230 W 14 #415	278-3382	✓	(★)
Laurie Terrall	SRA Box 2066C	344-5110	✓	
Barbara [illegible]	4117 Vance Drive	338-2038	✓	
Jessie [illegible]	apt 595 1209 Hollywood Dr	274-4281		
Barbara Doleman	1020 E. Bluff Rd #453-21 99501	276-8005	✓	(★)
[illegible]	E Bluff [illegible] Bl 24 #X 532			
Donald [illegible]	1105 Hollywood Dr Apt 613 Bl 20	274-9020	✓	(★)
[illegible] S Alexander	1101 Hollywood Dr Apt 621 Bl 20	276-2654	✓	
Elizabeth W. [illegible]	2912 W. 33rd #3	248-0385	✓	
[illegible]	1104 W 53	279 4130	✓	
[illegible]	303 E 15th #A-5	264-5329	✓	
[illegible]	[illegible] Blvd	277-8826		
Victoria [illegible]	2031 Elk #6	277-5210	✓	
David [illegible]	3911 72nd Court	349-1605	✓	
Katherine [illegible]	777 Elm Dr #667 Bldg 32	273-7216	✓	(★)
Mae Bell Colbert	PO Box 1746 - 99510 / 439 [illegible] apt 3	276-7801	✓	(★)
Eva Smallwood	2344 D St #3 99503	274-2107	✓	
[illegible]	" " " " " "	" "	✓	
[illegible] Jackson	716 N. Flower #2	277-5189	✓	
Thomas [illegible]	318 E 9th #2 99501	274-1060	✓	
[illegible]	1930 [illegible] 99504			
[illegible]	1020 E Bluff Dr 99501	272-1157	✓	

NAME	ADDRESS AND ZIP CODE	PHONE NUMBER	RENTER	NON-RENTER
[illegible]	1200 Hollywood Dr. #2101	272-2052	(✗)	2
[illegible]	631 E. 22nd # A-12	278-3827	3	
[illegible]	821 Elm St Bldg 20 # 427	2778838	2	
William Brown	2703 W. 34½ Ave.	243-8702	2	(✗)
Foxworth, Kathleen	1105 Hollywood Dr. Apt 617	278-1368	2	(✗)
KURT MARSCH	545 W. 11th Ave. 99501	272-9259	1	
Mark Merrick	1305 Birchwood St.	none	1	
Marye Reid	902 W 26th	none	2	
[illegible]	503 W. 25.	none	1	
DANILO HOLDER	Bx 3494 AK 99510	279-8147	1	
[illegible]	230 W. 14th Apt 307	278-1143	1	(✗)
Robt. Sanford	1701 DENALI #6	279-8290	3	
[illegible]	821 Elm St Apt 427	2778838		(✗)
[illegible]	821 Elm Apt 428	277-8257		
Alan Backford	1229 Cordova St. Apt. B 99501	278-8039	$25	(✗)
[illegible]	1200 E Bluff Dr. 561	2770355		(✗)
Carole Burkman	1200 E BLUFF DR 561	2770355		(✗)
Philip R. Vollard	617 "N" St #2 99501	276-5231		
Maria Fletcher	1106 W 15th 99501	277-2475		
[illegible]	3727 Richmond #1 99508	272-857	✓	
[illegible]	5740 Muldoon Circle 99504	337-1938	✓	
[illegible]	3631 W. 80th	2481617	✓	
[illegible]	7078 [illegible] Rd #7	243-5378		
[illegible]	" " " "	"		
Teavida Kirby	6019 E 12th 99504	338-0981		—
Danita Sheffield	" "			
Kitty Derby	4382 Reka 504	3338515		
Ken Brown	Panorama View 525	274-3125	✓	(✗)
Graeme	Panorama View 1009	none		
T.R. Green	Panorama View 609	None	✓	
STAFFORD Roy	Panorama VIEW HOLLYWOOD DR	276-5388	✓	
Susan Reesler	900 W. 36th Ave 99503	277-1095		
Carol Rico	4333 San Ernesto #301 504	NOT AT MEETING		

CHAPTER = 34.03
SECTION = 34.03.010
TITLE = 34

HEADINGS TITLE 34.
Property.
CHAPTER 03.
Uniform Residential Landlord and Tenant Act.
ARTICLE 1.
Purposes and Rules of Construction.

CITATION Sec. 34.03.010.

CATCH LINE
PURPOSES; RULES OF CONSTRUCTION.

TEXT (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 rental of dwelling units and the rights and obligations of landlord and 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.

HISTORY (Sec. 1 ch 10 SLA 1974)

END OF DOCUMENT

CHAPTER = 34.03
SECTION = 34.03.180
TITLE = 34

HEADINGS TITLE 34.
Property.
CHAPTER 03.
Uniform Residential Landlord and Tenant Act.
ARTICLE 5.
Tenant Remedies.

CITATION Sec. 34.03.180.

CATCH LINE

WRONGFUL FAILURE TO SUPPLY HEAT, WATER, HOT WATER OR ESSENTIAL SERVICES.

TEXT (a) If, contrary to the rental agreement of sec. 100 of this chapter, the landlord deliberately or negligently fails to supply running water, hot water, heat, sanitary facilities or other essential services, the tenant may give written notice to the landlord specifying the breach and may immediately

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

(2) recover damages based on 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 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 sec. 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.

HISTORY (Sec. 1 ch 10 SLA 1974)

END OF DOCUMENT

CHAPTER = 34.03
SECTION = 34.03.310
TITLE = 34

HEADINGS TITLE 34.
Property.
CHAPTER 03.
Uniform Residential Landlord and Tenant Act.
ARTICLE 8.
Retaliatory Action.

CITATION Sec. 34.03.310.

CATCH LINE
RETALIATORY CONDUCT PROHIBITED.

TEXT (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 sec. 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 sec. 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

(7) he has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser 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 sec. 160(b) of this chapter.

HISTORY (Sec. 1 ch 10 SLA 1974)

END OF DOCUMENT

CHAPTER = 34.03
SECTION = 34.03.360
TITLE = 34

HEADINGS TITLE 34.
Property.
CHAPTER 03.
Uniform Residential Landlord and Tenant Act.
ARTICLE 9.
General Provisions.

CITATION Sec. 34.03.360.

CATCH LINE
DEFINITIONS.

TEXT In this chapter

(1) "abandonment" means that the tenant has left the dwelling unit and his personal belongings in it and has been absent for a continuous period of seven days or longer without giving notice under sec. 150 of this chapter and has defaulted in the payment of rent;

(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 a premise or dwelling unit;

(3) "dwelling unit" means a structure or a part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and includes mobile homes, and if located in a mobile home park, the lot or space upon which a mobile home is placed;

(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 sec. 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

habitation, or the construction, maintenance, operation, occupancy, use, or appearance of a premise or dwelling unit;

(3) "dwelling unit" means a structure or a part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and includes mobile homes, and if located in a mobile home park, the lot or space upon which a mobile home is placed;

(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 sec. 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 sec.

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.

HISTORY (Sec. 1 ch 10 SLA 1974)

- Joe O'Connell will testify
- the Coalition will have 20 people!
- Janene Peep Legal Svcs - Juno

Alaska State
House of Rep

Committee m

February 21

Week of Februa
1:30 p.m., Room

Ms. Barbara Thorn
Alaska Legal Services
615 "H" Street, Suite #100
Anchorage, Alaska 99501

Monday, February 21

No meeting schedule due to the floor session.

Dear Ms. Thorn:

Tuesday, February 22

The House Judiciary Committee will be considering House Bill 1 on Wednesday, February 23, 1983 at 1:30 p.m. The bill proposes changes in the landlord - tenant act. I would appreciate it if you or another attorney in your office would plan to give testimony at the hearing. Your comments on the bill would aid us in our deliberations. Thank you.

** SSHB 10 An Act relating to imitation controlled substances.

Sincerely,

Wednesday, February 23

Representative Don Clocksin

HB 84 An Act relating to smoking in public places and vehicles.

DC:JR:blg

Thursday, February 24

HB 84 An Act relating to smoking in public places and vehicles. (Teleconference)

SSHJR 7 Proposing amendments to the Constitution of the State of Alaska relating to the election of attorney general and to procedures governing the election and term for state offices to be elected under the constitution

Friday, February 25

SSHB 1 An Act relating to landlord and tenants. (Teleconference)

ASHA Landlord Survey Results

The United States Housing Act of 1937 established a number of housing programs designed to provide low rent housing for low income Americans. The Section 8 Existing program under this act allows qualified individuals access to privately held rental units through a rental subsidy paid to the owner. This program is regulated by the U.S. Department of Housing and Urban Development (HUD) and managed in Alaska by the Alaska State Housing Authority (ASHA).

The purpose of this survey is to determine the number of housing units in Anchorage which are involved in and/or available to people in the Section 8 Existing program. We started with a list from ASHA of individuals or companies who have, or have had, a contract with ASHA for the subsidization of one or more tenants under this program. During July and August of 1983, Lourdes Dawag with some assistance called each person or company and contacted 622 of them (60% respondency rate). The results fall into four broad categories: Take/Have Section 8 Tenants, Don't Have Section 8 Tenants, No Rentals and No Responce.

HUD annually establishes a Fair Market Rent schedule for this program based on the levels below which fourty percent of the units' rents fall. In Anchorage, these levels are currently $375 for an efficiency, $442 for a one-bedroom apartment, $512 for a two-bedroom, $574 for a three-bedroom, and $638 for a four-bedroom apartment.*

To qualify for the subsidy under this program, someone who has received a certificate stating that s/he is qualified for the program must find a unit that falls below the Fair Market Rent (FMR) ceilings. Under the Take/Have Section 8 Tenants category, the survey results are further grouped based on this requirement and the rents quoted by our contacts.

Table I shows the general results of this survey. Table II only involves those property managers who are still in the business and the corresponding number of units in each group or category. Table III shows the Take/Have Section 8 Tenants category and the minimum number of units actually involved in the program. Tables IV shows vacancy rates by category and unit.

Table I - Total Property Managers with Current or Historic ASHA Contracts

Take/Have Section 8 Tenants	178	17%
Don't Have Section 8 Tenants	163	16
No Rentals	281	27
No Responce	418	40
TOTAL	1040	

We attempted to contact each individual twice at different times of the day before placing them in the No Responce category.

* Federal Register Vol. 47, No. 239, Monday December 13, 1982

Table II includes the subdivision of the Take/Have Section 8 Tenants category into three groups. This subdivision reflects the ability of the units in question to qualify for a new Section 8 Existing tenant based on the HUD Fair Market Rent (FMR) ceilings.

Table II - Property Managers and Units

	No./Percent Property Managers		No./Percent Units	
Take/Have Section 8 Tenants				
Below FMR	57	17%	1471	16%
Above FMR	72	21	3360	38
Unknown	49	14	532	6
Subtotal	178	52%	5363	59%
Don't Have Section 8 Tenants	163	48	3778	41
TOTAL	341		9141	

Table III reflects information extrapolated from the responce of our contacts. We have assumed that each 'yes' to the question 'Do you currently rent to someone with a Section 8?' means that one of the property managers units is involved in the program unless otherwise stated.

Table III - Units and Section 8 Existing Units (Percent of Total Units - 9141)

	No./Percent Units		No./Percent Section 8 Units	
Take/Have Section 8 Tenants				
Below FMR	1471	16%	68	.74%
Above FMR	3360	38	77	.84
Unknown	532	6	168	1.84
Total	5363	59%	313	3.42%

The Unknown group has not been included in Table IV due to lack of information. Also, some of the information has been extrapolated based on a similar assumption to the one above: All of the units of a property manager are said to be vacant, not vacant, or unknown based on the property manager's yes/no/unknown answer to the question 'Do you have any vacancies?'

Table IV - Vacancy Rates by Unit

	Have/Take Section 8 Tenants						Don't Have Section 8 Tenants		Total	
	Above FMR		Below FMR		Total					
No Vacancies	1351	92%	3304	98 %	4655	96%	3750	99.3%	8405	97.6%
Vacancies	56	4	51	1.5	107	2	18	.5	125	1.4
Unknown	64	4	5	.1	69	1	10	.3	79	.9
TOTAL	1471		3360		4831		3778		8609	

The above tables show that 17% of the property managers who have a record of involvement in the Section 8 Existing program are currently involved. 52% of the property managers still in the business have a current contract with ASHA, representing 59% of the units in question. 16% of the units managed by our contacts have rents below the 1983 Fair Market Rent ceilings set by HUD, and a minimum of .74% of these units are currently involved in the program. Vacancy rates reflect those compiled by the Housing Referral Office on Elmendorf Air Force Base which show that although there is an area wide vacancy rate of about 6%, it remains at about 2% for low rent housing.

To put this in perspective, we contacted people who manage about 12% of the estimated 77,915 housing units currently in Anchorage.* According to the 1980 US Census, 54.5% of the units at that time were owner occupied. According to HUD, this percentage has probably increased since the census to about 58% due to large scale condominium building and conversion. These percentages indicate that between 32,500 and 35,500 housing units are currently rental units in Anchorage. We talked to people who manage 27% of these units.

Assuming that the people we weren't able to contact are not currently involved in the Section 8 Existing program, 15 to 16% of the total estimated number of rental units are managed by people who have a current contract with ASHA. 4 to 5% of the units at their current rents fall below the Fair Market Rent ceilings established by HUD and are therefore qualified to house a new Section 8 Existing tenant if they are vacant. A minimum of 1% of the units are currently involved in the program.

3.5%

* Official 1983 Municipal Housing Stock Census, Municipality of Anchorage, Community Planning Department.

Comments included in responce to question #1, "Do you currently rent to People with Section 8's?"

-- "Don't want more, have problems with ASHA."

-- " No longer open to ASHA"

-- " Never interested again - tenant problems"

-- "Problems: damages - hard to collect payment from ASHA"

-- "Not any more. Too Much paperwork."

-- "No, off the market price"

-- "No, too low, #200 off the market"

-- "No, no, no, never"

-- "No! No! No!"

-- "No! Never again!"

-- "Only if meet standards; no 'roaches'"

-- "Too much trouble"

-- "Won't qualify" (rents much higher than HUD ceiling.)

-- "Bad experience in the past."

-- "Don't qualify" (rents too high)

-- "Have problems"

-- "Used to, never again -- had to replace refridgerator/carpets/curtains. No problem with payments."

-- "Sold all rentals. Section 8's were why we sold them"

-- "Had terrible luck with section 8's. Couldn't get people to pay their share."

NMHC Newsletter

National Multi Housing Council • Suite 306 • 1150-17th Street, N.W. • Washington, D.C. 20036 • (202) 659-3381

Vol. 4, No. 1 March 1983

SENATORS DOLE AND GARN ADDRESS NATIONAL MULTI HOUSING COUNCIL BOARD OF DIRECTORS AND ADVISORY COMMITTEE

Senator Robert Dole (R-KS), Chairman of the Senate Committee on Finance, expressed his support for current tax preferences for the production and ownership of multifamily rental housing at a meeting of the National Multi Housing Council, (NMHC) Board of Directors and Advisory Committee on February 28. In response to questions Dole stated that consistency in tax policy is essential to the economic recovery of the multifamily housing industry. The Finance Committee Chairman said that he did not foresee changes in current tax incentives which bring capital into the real estate market.

Senator Dole also indicated that he was not advocating any changes in the Accelerated Cost Recovery Schedule for new and existing properties. Dole's comments were enthusiastically received by the Directors and Advisory Committee members. Bob Sheridan, Co-chairman of NMHC said that: "we were impressed by Senator Dole's remarks and his sensitivity to the need for consistency and giving the 1981 ACRS changes time to work."

In the past months, representatives of the multifamily housing industry have expressed growing concern that the search for revenue to reduce federal deficits might result in changes to current tax incentives required to produce multifamily housing. Such change would have a devastating impact on the industry's ability to pull out of the housing recession according to Allen Cymrot, NMHC Vice-chairman.

Special luncheon guest, Senator Jake Garn answers questions on national housing policy from NMHC Directors and Advisory Committee Members.

Senator Bob Dole, Chairman of the Senate Finance Committee discusses possible changes in the federal tax code which might effect the multifamily housing industry with NMHC Board of Directors and Advisory Committee members.

At a later session, Senator Jake Garn (R-UT), Chairman of the Senate Committee on Banking, Housing and Urban Affairs reinforced Senator Dole's position saying he also did not anticipate changes to current tax provisions regarding multifamily housing.

Garn also stated he personally did not support lengthening the depreciation schedule for residential structures.

In addition to Senators Dole and Garn the members of NMHC Board of Directors and Advisory Committee had a chance to visit and discuss housing policy with Senator John Heinz, member of both the Banking and Finance Committees, Senator Walter "Dee" Huddleston, Ranking Member of the HUD Appropriations Subcommittee, Congressmen Henry Gonzalez, Stewart McKinney, Chairman and Ranking Member respectively of the Housing Subcommittee.

NMHC ELECTS NEW DIRECTORS

The NMHC is pleased to announce the appointment of its 1983 Board of Directors. Reelected as Co-Chairmen are PRESTON BUTCHER, Partner, Lincoln Property Company in Foster City, California and ROBERT SHERIDAN, Partner, Robert Sheridan & Partners in Chicago, Illinois. Reelected as Vice Chairman and Treasurer respectively are ALLEN CYMROT, President, Allen Cymrot & Associates, Palo Alto, California; and KELLEY BERGSTROM, President, JMB Property Management Corporation, Chicago, Illinois. Elected as Secretary is GEOFFREY STACK, President, Regis Homes Inc., Newport Beach, California.

(Continued on page 2)

NMHC Elects New Directors *(continued)*

Returning as Directors are:

TRAMMELL CROW
President
The Trammell Crow Co.
Dallas, TX

ERIC EICHLER
President
The Linpro Company
King of Prussia, PA

TED ENLOE
President
Lomas & Nettleton
Financial Corp.
Dallas, TX

RICHARD FORE
Partner
Lincoln Property Co.
Las Vegas, NV

NICHOLAS GOULETAS
Chairman
American Invsco Corp.
Chicago, IL

GARY HEDIGER
Executive Vice President
U.S. Shelter Corp.
Greenville, SC

WILLIAM KAPLAN
Executive Vice President
Libra Real Estate
Chicago, IL

W. PATRICK MCDOWELL
Executive Vice President
Fox & Carskadon Financial
Corp.
San Mateo, CA

HOWARD RUBY
Chairman
R&B Enterprises
Los Angeles, CA

RICHARD STEIN
President
Stein & Company
Chicago, IL

SAM ZELL
Chairman
Equity Financial &
Management Co.
Chicago, IL

Newly elected to the Board of Directors are WILLIAM ELLIOTT, ROBERT A. MCNEIL, GENE PHILIPS, AND ABE GELBER.

WILLIAM H. ELLIOTT, President and Director of the Managing General Partner of the Angeles Corporation in Los Angeles, California, became the Corporation's Chief Executive Officer in 1981 and has been a member of the Corporation's Board of Directors since 1971. He also serves as Chairman of the Board of Capital Real Estate Management Company; Chairman of the Board and Chief Executive Officer of First Diversified Investments, Inc.; Chief Executive Officer and Vice Chairman of the Board of First Pacific Advisors, Inc.; Chairman of the Board and Chief Executive Officer of MSW; and is an Allied Member of the New York Stock Exchange.

William Elliott, President, Angeles Corporation

ABE GELBER, President of Balcor Property Management, Inc., previously with Robert A. McNeil Corporation as Vice President, Real Estate. Prior to joining McNeil, Mr. Gelber was Vice President of First Office Management, Inc., management arm of Equity Financial & Management Company. From 1966 to 1977 Mr. Gelber served as Vice President of Arlen Realty Management, Inc. Mr. Gelber attended New York University.

Abe Gelber, President, Balcor Property Management, Inc.

Robert A. McNeil, Chairman, The Robert A. McNeil Corporation

ROBERT A. McNEIL, Chairman of the Board of the Robert A. McNeil Corporation, San Mateo, California, was Chairman of the California Real Estate Association Legislative Committee of the Real Estate Securities and Syndication Institute (RESSI) during 1972, served as Governor (through 1975), and is currently a member of RESSI's National Syndication Forum. Mr. McNeil is a member of the Board of Governors of the National Center for Financial Education, Inc.; serves on the Policy Advisory Board of the Center for Real Estate and Urban Economics, the President's Council of the American Institute of Management, and is currently Vice Chairman of the California Housing Council.

Gene Phillips, Chairman, Southmark Corporation

GENE E. PHILLIPS, Chairman and President of Southmark Corporation located in Dallas, Texas, was Chairman of the Board of Syntek Corporation from 1977 until joining Southmark Corporation in 1980. Mr. Phillips also serves as President of American Realty Trust, Chairman of Novus Property Company, Chairman of Dominion Mortgage, and President and Chairman of North American Mortgage Investors.

NMHC Director Gary Hediger (far right) and Advisory Committee member Ron Berger at breakfast in the U.S. Capitol with Senator "Doc" Huddleston (left).

Chairman of the U.S. House of Representatives Subcommittee on Housing, Congressman Henry Gonzalez with Larry Simons, NMHC Legislative Counsel; Jeff Stack and Preston Butcher, NMHC Secretary and Co-chairman respectively (left to right).

Appointed to the Advisory Committee are:

California

Parker Kennedy
First American Title Ins. Co.

Gerson Bakar
Gerson Bakar & Associates

Robert Duerr
TransAmerica

Mort Friedkin
Friedkin-Becker

Rich Paoli
Founders Title Co.

Jean Hargrove
The Hargrove Intervivos Trust

Connecticut

Ron Walker
Aetna Life & Casualty

Florida

Tom Mahaffey
Coquina Key Arms

Illinois

Ronald Berger
The Berger Realty Group, Inc.

New York

Herb Graff
Integrated Resources, Inc.

Thomas Gochberg
Smith Barney Real Estate

Michael Futterman
Eastdil Realty, Inc.

Charles Fox
Merrill Lynch-Hubbard, Inc.

Thomas E. O'Connor
Bear, Stearns & Company

William Moses
Community Housing Improvement Program

Daniel Rose
Rose Associates

Texas

Wayne Duddlesten
Wayne Duddlesten, Inc.

Harold Farb
Farb Investments

Robert Folsom
Folsom Investments, Inc.

Tom Freytag
Freytag, Marshall, Beneke, LaForce, Rubinstein & Stutzman

Harvey Huie
Huie Properties

Robert Utley
First Southwest Equity

Congressman Stewart McKinney (third from left) talking with Robert Miller, representing the Robert McNeil Company (far left), Ron Walker, of Aetna, and Senator John Heinz (right).

Happy Anniversary – Bob Sheridan, NMHC Co-chairman presents Steve Driesler, NMHC executive vice president a cake commemorating the completion of Driesler's first year at the Council.

NATIONAL MULTI HOUSING COUNCIL ADVISORY COMMITTEE APPOINTED

Co-chairmen Robert Sheridan and Preston Butcher and the National Multi Housing Council (NMHC) Board of Directors are pleased to announce the formation of the National Multi Housing Council Advisory Committee.

The Advisory Committee will add a new dimension to the legislative and policy making decisions of the National Multi Housing Council. We are indeed proud to welcome these dedicated individuals whose expertise and unique perspectives will greatly enhance the efforts of the Council explained Co-chairman, Preston Butcher.

Comprised of individuals and companies involved in all phases of the multifamily housing industry, the Committee will assist in drafting and promoting policies favorable to the multifamily housing industry at the federal, state and local levels, and opposing restrictive regulations on multifamily housing and condominium development.

The Advisory Committee had its first meeting with the Board of Directors in Washington, D.C. on February 28 and March 1. (See related story page 1)

In a recent court case in Massachusetts, another restrictive condominium ordinance was declared invalid. The case, CHR General, Inc. (a condominium developer) vs. the City of *Newton*, revolved around whether the City of Newton had the authority to regulate condominium conversions through its zoning authority. The City of Newton argued that its ordinance regulating condominium conversions was an extension of its independent zoning authority and, therefore, specific legislation from the state was not required.

CHR Inc. argued that regulation of condominium conversions does not fall within the scope of zoning powers because zoning effects, and is concerned with, the *use* and not the *ownership* of property. The court concurred with the argument of CHR Inc., and ruled that the condominium ordinance was an invalid exercise of the city's zoning power and that to regulate condominium conversion, a city must seek enabling legislation from the Commonwealth of Massachusetts.

This ruling makes very clear, the distinction between *use* and *ownership* and greatly clarifies the relationship between zoning authority and condominium conversions.

MISSOURI

HB 177, which is substantially similar to the UCA, was introduced December 1, 1982, by Representative Shear. It was reported as "do pass" out of the Civil and Criminal Justice Committee on February 16.

NEBRASKA

HB 433, the UCA, has been introduced into the Nebraska State Legislature and is presently assigned to the Banking Committee.

SOUTH CAROLINA

HB 2226 and its Companion SB 102 are currently in the House Labor & Industry Committee. No hearings are scheduled to date. These bills are modified versions of HB 5289 offered last year.

The main provisions are:

- tenants have 120 days (as opposed to the previous bill's 180 days) or until lease expires, to move out if they choose not to buy. (This modification made at request of local developers).
- tenants have 60 days to decide to buy or refuse.
- no provisions for moving assistance payments.
- no special provision for disabled, elderly, or low-income tenants.
- exempts motels and other transient quarters

RENT CONTROL UPDATE

CALIFORNIA

Officials in *STOCKTON* continue to oppose any form of rent control for the city. In December 1982, the Council rejected rent controls for the fourth time in 4 years.

Phase 3A: *Baker v. City of SANTA MONICA*. Los Angeles Superior Court Judge Richard A. Lavine issued a decision in December 1982, declaring the provision of the SANTA MONICA rent control law restricting the demolition of apartment buildings and related Rent Board regulations unconstitutional. The Judge stated that the injunction may be reconsidered if the Rent Control Board adopts new guidelines for determining general and individual rent adjustments for property owners.

DISTRICT OF COLUMBIA

The *D.C.* City Council approved a 90-day emergency measure in January 1983 that exempts owners of less than four condominiums used as rental units from the provisions of the City's rent control law. The legislation is expected to become law before the 90-day period expires.

GEORGIA

HB 594, was introduced into the Georgia's State Legislature in February 1983. The bill which would amend the Georgia Landlord and Tenant Law to provide that no county or municipal corporation may enact, maintain or enforce any ordinance or resolutions which would regulate rents had its second reading in the Judiciary Committee on February 15.

MASSACHUSETTS

On January 10, 1983, the Mayor of *BOSTON* signed into law a new rent control and condominium conversion ordinance that will remain in effect until December 1986. Under the rent control provisions, annual general adjustments in rents will be set by the Rent Grievance Board based upon the CPI and changes in property owner's operating costs; vacancy decontrol remains a part of the ordinance; individual rent increases must be approved by the Board. The new law also contains a "just cause eviction" provision.

Under the condominium provisions, property owners must notify tenants one year in advance of a conversion and pay relocation expenses of $750 per tenant. Elderly, low-income, and handicapped tenants must be given 2 years with an additional 2 year extension to relocate and $1,000 in relocation assistance.

The Board of Selectmen in *HOLYOKE* voted down a proposed rent control measure in January 1983.

MINNESOTA

SB 510 was introduced March 3, 1983, and is assigned to the Energy & Housing Committee with a hearing scheduled March 17, 1983. SB 510 would prohibit cities, counties and towns from adopting rent control.

HB 648 is the companion bill to SB 510. HB 648 was introduced by Jerry Schoenfeld 3-14-83 and assigned to the Local & Urban Affairs Committee, whose Chairman is Representative Glen Anderson. No hearings have been scheduled to date.

OREGON

HB 2563 introduced February 14, 1983, by the Housing Committee, would prohibit cities and counties from enacting or enforcing ordinances that limit rents which may be charged for dwellings. HB 2563 was assigned to the Judiciary Committee on February 18, and there are as of yet no hearings scheduled. Chairman of that Committee is Representative Hardy Myers.

SOUTH CAROLINA

HB 2049, introduced into the South Carolina Legislature on January 11, 1983, would limit rent increases on residential units to 10% in any 12 month period. This limitation would apply to owners of 5 or more units. HB 2049 is co-sponsored by Robert Woods and Theo Mitchell, and is presently in the Subcommittee on Real Estate of the Labor, Commerce and Industry Committee.

IS REAL ESTATE HIGH ON THE TAX INCREASE LIST?

Just when the multifamily housing industry is on the verge of economic recovery there are emerging those in Washington who seriously want to take "a few whacks out of the plentiful hide of the real estate industry sacred cow."

This quote was attributed to one Congressional expert in a recent *Washington Post* article by Ken Harney, one of the country's most respected real estate reporters. The Harney article emphatically points out that probable future actions on Capitol Hill could drastically affect real estate investment.

Just exactly what real estate tax changes will be proposed, and how serious their chances of passing remains to be seen. However, it is obvious that with the growing concern to reduce federal budget deficits there is increasing pressure to raise tax revenues.

Couple this growing pressure to raise revenues with the fact that there are those in the Reagan Administration as well as the Congress who sincerely, even if mistakenly, believe too much money is being invested in real estate at the expense of other forms of investment, and one has a sure formula for real estate tax "preferences" being high on the chopping block this year.

For example, the Joint Committee on Taxation has estimated more than $13 million could be raised in the next five years simply by extending the depreciation period for real estate from 15 to 20 years. Of course, this estimate does not mention the catastrophic effect such a change could have on real estate investment. Nevertheless, with members of Congress desperately looking everywhere for increased revenue this $13 billion looks extremely inviting.

Articles like Ken Harney's and the increasing rumblings from Capitol Hill clearly indicate 1983 will be a very pivotal year for the multifamily housing industry. All present indications are that our industry is likely to come under serious attack as Congress and the Reagan Administration scramble to raise additional revenue and reduce the deficit.

As the 98th Congress begins consideration of the FY 84 Budget those of us in real estate in general and multifamily housing in particular must be prepared to mount a major effort to defend our industry from what could be disastrous changes in the tax law.

NEW MORTGAGE-BACKED SECURITIES PROGRAM

The Government National Mortgage Association (GNMA) will introduce a new mortgage-backed securities program called the GNMA II MBS Program in July 1983. The GNMA II Program will take advantage of technological improvements that have occurred since GNMA securities were introduced 13 years ago. The program is intended to function in addition to, not in place of, the existing mortgage-backed securities program.

The Government National Mortgage Association, as an agency of the federal government, facilitates the pooling of FHA/VA mortgages so they can be sold as securities to investors, and then guarantees the payment of principle and interest on those securities. Funds which result from the sale of these securities through the secondary market are used to make additional FHA/VA insured mortgages.

The key factors of the new program include a central paying and transfer agent to reduce administrative costs of the program. Previously, individual issuers paid the investors. Chemical Bank of New York has been selected as the central paying agent and will make monthly payments directly to those who have purchased GNMA securities. This is designed to encourage greater participation by both lenders and investors. GNMA II will allow individual mortgages with different interest rates to be included in the same multiplier issuer pool. The original program required all mortgages in a pool to have the same rate. The new program will also allow the lender/issuer to package these loans in pools of less than $1 million which is the current requirement. This change enables smaller issuers to participate in the program. Another significant aspect of the new program is that investors will be paid on the 25th of each month.

The GNMA II program has some clear advantages over the already successful mortgage-backed securities program. Issuers should be able to more readily assemble mortgages to back securities because of the ability to include varying interest rates in the pool and the reduction of minimum package size.

STATUS REPORTS

CONDOMINIUM AND COOPERATIVE HOUSING

ARKANSAS

The Uniform Condominium Act (HB 298) introduced into the 1983 legislative session was assigned to the Judiciary Committee on February 17.

CALIFORNIA

San Francisco Mayor Dianne Feinstein vetoed a proposed moratorium on condominium conversions on January 4, 1983, but approved an ordinance that limits conversions to 200 per year. This limitation constitutes an 80% reduction in the number of conversions allowed under the ordinance previously in effect.

MASSACHUSETTS

STATE LEGISLATIVE UPDATE. Governor King, in the last days of his term in office, vetoed H6375 which would have granted to individual cities and towns the authority to promulgate their own local ordinances regulating condominium conversions.

CURRENT LAW AND LEGISLATIVE ACTIVITIES AFFECTING CONDOMINIUM AND COOPERATIVE HOUSING

STATUS AS OF OCTOBER 10, 1981

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INTRODUCTION

This report covers current laws and legislative proposals governing condominium and cooperative housing at the state and local levels as of October 10, 1981. The National Multi Housing Council welcomes comments on the accuracy of material contained in this report and information updating the status of condominium and cooperative housing activities around the United States.

In 1977 the National Conference of Commissioners on Uniform State Laws produced the Uniform Condominium Act (UCA) for consideration by all the states. This act is referred to in some of the state reports below. A summary of the UCA is provided at the beginning of this report for your information.

THE UNIFORM CONDOMINIUM ACT

The Uniform Condominium Act (UCA) is a comprehensive model statute drafted by the National Conference of Commissioners on Uniform State Laws in the mid-1970s, and approved at the annual meeting of the Conference in August 1977.

The laws governing condominiums in the 50 states are very diverse, and differ in their terminology, protection of tenants' rights, protection of the purchaser, and other provisions. It is to unify and modernize the various state laws that the Uniform Condominium Act was drafted.

As of August 1980, 3 states had passed the Act (West Virginia, Minnesota, Pennsylvania), Louisiana and Georgia adopted sections of it, and it was introduced in the legislatures of Vermont, Illinois, Massachusetts, and Missouri in the 1980 session. It was introduced in 10 state legislatures in 1981, but has not been favorably acted on in any of them.

The Act contains five Articles, the first containing definitions and general provisions applied throughout the Act.

Article 2 concerns the creation, alteration, and termination of the condominium, while also imposing some restrictions on the developer to protect the unit purchaser from potential harm.

Article 3 deals with the administration of the unit owners' association, covering such matters as the powers of and the tort/contract liability of the association.

Article 4 provides for consumer protection for condominium purchasers, requiring substantial disclosure by developers to potential buyers before conveyance of a unit, along with expressed and implied warranties of quality. The article also concerns conversion to condominiums and provides some protection to tenants by requiring necessary notice of conversion and right of first refusal.

Article 5 is optional and has not been included in the Act adopted by the three states that have passed the UCA. The article would establish an administrative agency to supervise a developer's activities.

ARIZONA

LEGISLATIVE UPDATE. Senate bill #1330, which would have enacted the Uniform Condominium Act, was held in the Senate Commerce and Labor Committee and thus killed for this legislative session.

CURRENT STATE LAW. In April 1980, a statute governing condominium conversions was adopted in Arizona. An owner of an apartment complex of four or more units who intends to convert to a condominium must now notify tenants of such planned conversion at least 120 days prior to the date the tenancy is expected to terminate. At some time within this 120 days, or after, the tenant is to have a 30-day period in which he has the exclusive right to contract for the purchse of his unit. The tenant has the right to remain in the unit for 90 days from the date the contract is received, or 120 days after the notice to convert, whichever is later.

CALIFORNIA

CURRENT STATE LAW. The conversion of residential property to a condominium project may not be approved until each of the tenants has been given 120 days' notice of intention to convert. Additionally, each tenant must have an exclusive right to purchase units on terms and conditions at least as favorable as those that such units will be offered to the general public. A property report concerning the location of schools and airports, as well as provisions for public utilities, must be provided to the Real Estate Commission, which then issues a Public Report to potential buyers based on this information. To protect low-moderate income housing, there are provisions for some state financial assistance for certain income level households.

In addition to the state law, nearly communities in California have adopted some form of conversion ordinances. Nearly all of the localities have tenant and buyer protection in mind, although many are also aimed at protecting the rental stock, and some are concerned with protection of low-moderate income housing.

ALAMEDA. According to an ordinance effected on August 1, 1980, developers must submit an application for conversion to the Planning Board containing information on the rental structure of units over the last 3 years including vacancy factors; names, addresses, and history of current tenants; a copy of the proposed covenants, conditions, and restrictions; proposed Homeowners' association fees, and proposed sales price range of units. Each dwelling unit must have separate utility meters except for water, and at least 100 cubic feet of enclosed, weatherproofed, and lockable storage for each unit, with an additional 50 cubic feet for each bedroom.

Tenants must be notified by the developer of the intent to convert and be provided with a copy of the proposed relocation assistance plan which must include a program for paying moving expenses and deposits as well as plans to assist tenants in obtaining new housing. The plan may include but is not limited to assistance such as extended or life-time leases and purchase assistance. For low- and moderate-income tenants, the plan may include special purchase assistance, extended leases at affordable rents, subsidized rents in other buildings, and assistance in qualifying for government housing programs. Tenants' rent may not be increased from the date of the notice of intent to convert until 6 months following the approval of the final map. Non-purchasing tenants have 120 days to relocate after the developer receives the Preliminary Suodivision Public Report. Tenants not in arrears of rental payments have a 60 day non-transferrable right of first refusal to purchase their units after receipt of a Public Report from the Real Estate Commission.

If the ratio of owner-occupied units exceeds 60% of the total number of dwelling units available, conversion of rental units to condominiums will not be permitted. Applicants for conversion permits must pay all costs of inspections and engineering reports required and performed by the Public Works Department.

ANTIOCH. According to an ordinance approved on March 24, 1981, and effective May 14, 1981, developers must first submit an application for a Use Permit in order to convert rental units to condominiums. The application must include a tentative map, a complete legal description of the property and boundary map, dimensioned schematic development plans, and information on sound insulation sufficient to meet requirements in the Uniform

Building Code. One and two bedroom units must be provided with at least two parking spaces, one of which must be covered. There must also be at least one parking space per each five units for guest parking. Gas, water, and electricity must be separately metered and all on-site and adjacent overhead utility service lines and poles shall be converted to an underground system. The developer must submit, prior to filing the final subdivision map, to the Director of Development Services, Director of Public Works, and City Attorney, a Declaration of Covenants, Conditions and Restrictions relating to the management of the common areas and facilities. Other reports to be filed by the developer include a property report describing the condition and estimating the remaining useful life of each element such as roofs, foundations, electrical and mechanical systems; a structural pest control report; a building history report; a rental history report; a rental availability report; and an improvement report. In addition, the Director of Development Services may request additional information or reports.

Tenants must be notified of the intent to convert at least 60 days prior to filing any application for a use permit and tentative map for a conversion. Tenants have the right of first refusal to purchase their units at a price no greater than the price offered to the general public. The right of first refusal will extend for at least 90 days from the date of issuance of the Subdivision Public Report or commencement of sales, whichever date is later. Nonpurchasing tenants not in default of lease agreements have at least 180 days from the date of receipt of notice of intention to convert to find substitute housing and to relocate. Rents may not be increased during the 180 days following the notice of intention to convert. The developer must provide a one-year full warranty to the buyer of each unit for dishwashers, garbage disposals, stoves, refrigerators, hot water tanks, heating units, and air conditioners that are provided.

When there is a rental vacancy factor of 4% or less, the City Council, before approving a conversion, will consider the demand and need for opportunity of homeownership that the conversion will provide, whether the conversion would serve to significantly upgrade otherwise deteriorating structures, and whether the amount and impact of displacement of tenants would be detrimental to the health, safety, or general welfare of the community.

The Planning Commission and City Council may impose varying conditions to alleviate unreasonable burdens on tenants forced to move, especially senior citizens and the handicapped, such as extending the time in which tenants have to relocate, providing continued rental housing availability in the converted condominiums, and allowing a rent credit to be applied toward moving expenses for such tenants.

ATASCADERO. A one-year moratorium on condominium conversions expired in November 1980.

BEVERLY HILLS. On October 27, 1980, the BEVERLY HILLS City Council approved an urgency ordinance requiring developers of condominium conversions to pay relocation expenses where rental units are converted or demolished. The law requires landlords to give a 1-year eviction notice and to pay fees of as much as $2,500 or to relocate tenants in comparable housing. A moratorium on demolition and conversion of apartments was lifted on November 19, 1980.

BURBANK. Developers in BURBANK must secure a Conditional Use Permit before a Tentative or Parcel map for a conversion will be approved. If a certificate of occupancy was issued to the building less than 2 years prior to the date of application for a Conditional Use Permit, the permit will not be issued. The application for a use permit must contain a property report describing the condition and estimating the remaining useful life of the elements such as foundations, roofs, stairways, air-conditioning, etc. The report must be prepared by an appropriately licensed civil engineer or an architect registered in the state. Information on tenants and rental rates and a schedule of proposed improvements must also be provided in applying for the use permit. The subdivider must correct all deficiencies in such items as fire protection systems, fixtures, appliances, etc., before consideration of the final map will be given. There must be at least one covered parking space for each unit converted. The Planning Board may increase this minimum, but it may not exceed two spaces per unit. Each

dwelling must be provided with a minimum of 60 cubic feet of lockable, enclosed storage space outside the dwelling unit.

Tenants' rights include a 120-day written notice of intention to convert, and the first option to purchase their units at a price no greater than the price and terms no less favorable than the terms offered to the general public for a period of 60 days after the issuance of the final public report by the California Real Estate Commission, unless the tenant gives prior written notice of his intention not to exercise the right. Tenants relocating shall be reimbursed for actual moving expenses by the subdivider at a maximum amount of $500 for each unit. The financial relocation provision does not apply to those tenants who were given notice of the intent to convert when rental agreements were signed.

BURLINGAME. On May 4, 1981, the Burlingame City Council adopted on a 3-2 vote, a restrictive ordinance on conversions. An application for conversion must now be approved by the City Planning Commission. Such application must contain a very detailed report on the condition of the building, including acoustical, pest control, soil, and other information. Details regarding rental history and household make-up must also be provided, and it must be shown that a majority of the tenants have consented to the conversion.

Among many other provisions, elderly and handicapped tenants are allowed to remain in their units with lifetime leases and specific rent ceilings. Tenants not purchasing their units may extend their leases for two years, with rent increases of only 5% allowed per year. If a tenant decides to vacate, the developer must pay actual moving expenses, provided that such expenses do not exceed four times the monthly rent.

CAPITOLA. Subdividers must apply for a Conditional Use Permit and Final Map. Units built before January 1, 1970, may not be converted. If a building permit was issued after the effective date of the condominium conversion ordinance, November 8, 1979, the building cannot be converted unless the project, prior to the issuance of the building permit, was one for which there was an approved tentative condominium subdivision map. Applications for tentative map for conversion must include a boundary map, a report describing the condition and estimate of remaining useful life of the structure, a structural pest control report, and a statement regarding current project ownership. All conversion projects must conform to the development standards among which are separately metered gas and electricity, sound insulation codes, and building and housing codes such as the requirement that fire detectors be provided in each unit.

Tenants have a 60-day right of first refusal to purchase their units. Tenants not purchasing units shall have at least 120 days from the date of receipt of notice to convert or from the filing date of the final subdivision map, whichever date is later, to find substitute housing and to relocate. Tenants' rent may not be increased from the time of filing of the Tentative Map until relocation takes place unless first approved by the Planning Commission. Non-purchasing tenants age 62 or older, handicapped, or with minor children in school shall be given an additional 6 months in which to find suitable replacement housing. The subdivider is also required to pay moving expenses of 1 1/2 times the monthly rent unless the tenant has given notice of his intent to move prior to receipt of the intent to convert.

CARLSBAD. On January 6, 1981, the CARLSBAD City Council unanimously voted to repeal a 1-month ban on condominium conversions; require a month's rent to any tenant displaced by conversion; and to extend from 60 to 90 days the time period in which tenants have exclusive right to purchase units being converted. Condominium converters also have to meet the same parking, design, and open space requirements that new developments must meet.

CHICO. A condominium conversion ordinance approved by the CHICO City Council on March 2, 1981, provides for tenant relocation assistance for low-income, elderly, and disabled tenants; requires developers to file site plans; and states that if a complex containing more than 5 units is converted, 10% of the units must be offered for lease to elderly or disabled tenants for a period of 3 years.

CHULA VISTA. In November 1980, the CHULA VISTA Planning Commission vetoed a proposal that would have granted renters a relocation allowance if displaced by condominium conversions. A 2-month moratorium on condominium conversions [illegible] ber 1980.

CLAREMONT. According to the use in the city's general plan, planners may turn down condominium conversion requests if the vacancy rate is below 3%.

CONCORD. This city, near Oakland, requires a 120 day eviction notice, 90 day right of first refusal period, and building code inspections and disclosure. Additionally, smoke detectors and fire walls must be installed and reports on pest infestation and dry rot must be disclosed. There are also design development standards which must be met.

The CONCORD City Council rejected a proposed section of the city's condominium conversion ordinance in February 1981, that would have placed a limit on the number of apartments that would be allowed to convert annually.

COTATI. Subdividers must file for tentative map approval and design review in addition to the Conditional Use Requirement. Each converted unit shall be in substantial compliance with current building standards for condominiums prior to occupancy as an owner-occupied unit. Applicants must show the Planning Commission that the conversion will not have a serious detrimental effect on the rental housing supply of the city. The proposed sales price of units shall be stated clearly as a range and shall not be exceeded for 24 months following approval. Preference for conversion is given to projects that address low- and moderate-income housing needs and those that incorporate plans to keep down-payment and resale prices to a minimum. Tenants must receive notice of hearings and it must be shown that the applicant has planned for the needs of the tenants adequately.

COSTA MESA (Orange County). COSTA MESA's ordinance has limited tenant protection, requiring only a 90 day right of first refusal. There must be building code inspections, smoke detectors, a pest report, a useful life report, and energy insulation.

CUPERTINO. CUPERTINO has limited tenant protection clauses, but requires building code inspection and compliance, disclosure of useful life, property or budget, and certain design/development standards.

DOWNEY. A condominium conversion ordinance adopted on December 23, 1980, states that residential properties developed under a building permit issued after December 1980, may only be converted to any form of multiple ownership housing within the first 3 years of that building receiving a certificate of occupancy, and provided the development meets all the provisions of a planned development unit. After the 3 year period expires, application can be made to the Planning Commission to convert.

An application for conversion must include a Tentative Subdivision Map or Preliminary Parcel Map and Conditional Use Permit, as well as a preliminary condominium conversion application consisting of tenant and rental information, schedule of proposed improvements, a request for inspection to determine any building code violations and conditions, and a report on the remaining useful life of all structures. After these requirements have been met, the applicant may, upon approval of the City Planner, file a formal application.

Tenants must be notified at least 20 days prior to the Planning Commission meeting regarding a Tentative Map for the project, and have 150 days written notice of intent to convert, exclusive right to contract to purchase their unit at equal or more favorable terms and conditions then offered to the general public not less than 20 days from the day of issuance of the Subdivision Public Report unless tenant gives prior written notice of his intention not to exercise the right. Tenants must be given written notice of the intention to convert by the owners or owner's agent at the time a rental or lease agreement is signed. If notice is not given, the subdivider must compensate tenants for their relocation expenses not to exceed $500 per residential unit to be paid at the time the notice of termination is presented. Tenants with children may not be excluded from purchasing

units being converted and may also be allowed to extend their lease to the end of the current school semester. Each tenant required to move shall be paid a relocation payment of $150.00.

Conversion of any structure requires a new certificate of occupancy signed by the appropriate City officials, which must be issued prior to receiving final acceptance of the tract map for relocation.

EL CERRITO. In January 1981, the EL CERRITO City Council adopted an ordinance governing construction of condominiums, but indefinitely postponed action on a section dealing with conversions. The ordinance addresses such issues as parking, storage, maintenance, and open space requirements.

FAIRFIELD. Tentative maps for conversion projects may not be received for filing unless they are accompanied by (1) a listing of tenants by name and showing any changes occuring in the previous one year period, and (3) a proposed tenant assistance plan. The condominium conversion ordinance was adopted on August 5, 1980. A declaration of covenants, conditions, and restrictions must be approved by the Director of Environmental Affairs before a tentative map may be approved. The Planning Commission or City Council may disapprove a tentative map if the apartment vacancy rate is equal to or less than 6%.

The tenant assistance plan must contain a statement of a method by which tenants will be assisted by the subdivider in finding comparable replacemunt rental housing within the area of the conversion. The subdivider must also provide that no tenant shall be required to move from his unit due to a proposed conversion until the expiration of the 2-month period for tenants' first right of refusal to purchase as provided for under the State Subdivision Map Act. A written notification of issuance of the final public report of the Department of Real Estate must be submitted to tenants before the 60 day first right of refusal provision commences.

Tenants relocating may be reimbursed for actual moving expenses of up to 2 times the monthly rent of the occupied unit. However, this reimbursement may be reduced by the amount incurred for any malicious damage caused by the tenant and any past due or delinquent rents. Tenants with spouses or dependent children in school at the time the notice of termination of tenancy is given must be granted an extension of tenancy to permit such persons to complete the school year, semester, or quarter, whichever is the minimum school term.

FOSTER CITY. In April 1981, the City Council in FOSTER CITY adopted a condominium conversion ordinance that bans conversions unless there is an equal number of vacant rental units in the city. The provision may be waived for small apartment complexes if all the tenants want to purchase their units.

HAYWARD. On May 7, 1981, the City Council did pass a new conversion ordinance on a 4-1 vote. Under the new law, the number of rental units converted to condominiums each year cannot exceed the number of non-subsidized rental units built in the previous year, as along as the apartment vacancy rate remains below three percent.

HERMOSA BEACH. Condominium conversions, community apartments, and stock cooperatives require a Conditional Use Permit from the Planning Commission, according to an ordinance approved by the City Council on December 18, 1979. The City Council may approve or deny a permit approved by the Commission. A report on the physical elements of all structures and facilities in the proposed conversion or cooperative must be submitted with the Conditional Use Permit to include a structural condition report, a statement of proposed improvements and repairs, and a current termite inspection report.

The building must comply with all requirements of state laws and regulations pertaining to building structure and safety to include sound transmission standards, and energy insulation standards, and the project shall have separate utility shut off systems for each unit. A notice of intent to convert shall be delivered to each tenant 60 days prior to application for a permit. Tenant assistance provisions include a 60-day right of first refusal, 180 day notice to vacate, reimbursement of actual relocation expenses by developer within 30 days with a maximum of 1 1/2 times the unit's monthly rent not to exceed $500. If tenants have school aged children, they

may be granted an extension of a lease to permit children to complete the school year, semester, or quarter, whichever is the minimum school term. A tenant's rent may not be increased for 1 year from the time of the filing of the request for permit until relocation takes place.

Any non-purchasing tenant 62 years of age or older or handicapped or with minor children in school shall be given at lease an additional 6 months in which to find suitable replacement housing. If the comparable replacement housing rent is greater than the existing unit rent, then the developer shall pay the differential up to a maximum of $100 for not more than 6 months.

*LA CANADA. A 4-month moratorium on condominium conversions was approved by the La Canada City Council in September 1981 to allow the Planning Director to prepare a city ordinance on conversions. The Planning Commission is also holding public hearings on the issue.

*LARKSPUR. A proposed ordinance introduced on October 7, 1981, would ban condominium conversions if the vacancy rate in rental units is less than 5%. If the vacancy rate increases to 5% and conversions are allowed, developers must set aside 15% of the units priced for low and moderate income tenants. Developers would also have to pay actual moving expenses incurred when a non-purchasing tenant moves 50 miles. The City Council will hold hearings on the proposed ordinance over the next few months.

*LOMPOC. According to an ordinance adopted by the Lompoc City Council on June 16, 1981, developers may file an application for conversion provided that (1) a certificate of occupancy has been issued at least 2 years prior to the conversion, and (2) the net vacancy rate is 7.5% or higher. The Community Development Director must review the number of new multifamily rental units built each year, including government assisted housing projects, and the total of units built each year will be the number that will be allowed to convert during the succeeding 12 months.

A request to the Community Development Department for conversion of rental properties to condominium must be accompanied by an approved development plan; an application for approval of a tentative map or parcel map; organizational documents; a property report, a prepared plan or written statement by the property owner or agent stating that certain requirements have been satisfied such as sound and energy insulation, parking requirements, storage units, open space and recreational amenities, and separate metering of utilities. At least 100 cubic feet of storage space with a minimum horizontal service area of 25 square feet of enclosed, weather-proof, lockable storage space must be provided for each dwelling unit in addition to that ordinarily contained within a unit.

LOS ANGELES COUNTY. In LOS ANGELES COUNTY, requirements include a notice of conversion, a 1 year continued tenancy during relocation effort, and a right to quiet enjoyment. The developer's main responsibility in tenant protection lies in relocation assistance, as there are payments of $500 per household in moving expenses and $1,000 per household in assistance payments. The sponsor must also provide tenants with an updated report of available rental housing. To protect the low-moderate income housing stock, 1% of the purchase price of each unit must be deposited with the County Housing Authority to develop low income housing.

LOS ANGELES CITY. In March 1981, a 3-justice panel of the Second District State Court of Appeals ruled that "an apartment house owner caught in the squeeze between rent control, inflation, and a restriction on his ability to convert to condominiums is entitled to a more reasonable analysis and explanation than that afforded (the owners of the building in question)." The ruling was in response to the denial by the LOS ANGELES City Council to allow a conversion permit to owners of a 193-unit apartment complex in Hollywood. The panel also found inadequate the Council's contention that removal of 193 rental units from the market would cause a negative impact on the tight housing market in the city. The case has been sent back to the City Council for "legally adequate findings."

In the city of LOS ANGELES, there is a 120 day notice of conversion; 1 year continued tenancy during relocation effort; relocation and assistance payments; and special protection for elderly (62 and over), handicapped, families with minor children, and residents of low and moderate income housing. Buyer protection reports are also necessary. For the protection of low-moderate income housing, the Sponsor must pay $500 per unit to the city in order to develop low and moderate income rental housing.

*LYNWOOD. Application for conversion must be made to the City Council, which will then hold a public hearing on the subject. A conversion may be disapproved if it would have "significant adverse effects" on the availability of rental units in the same market as the proposed conversion, or if the project is substandard in relation to the City Codes. If the conversion is approved, tenants shall have at least 120 days from the date they receive notice of conversion to decide whether or not to purchase. The same unit cannot be sold under different terms, without giving the tenant a first chance to acquire it, for a period of one year.

*MARTINEZ. Hearings are currently being held by the Martinez Planning Commission to revise tenant protection provisions in the city's 6 month old condominium conversion ordinance. One proposal would give lifetime leases to elderly tenants and require developers to provide a one year warranty on common property in developments.

Conversion of rental units shall not be approved when the vacancy rate within the city is equal to or less than 5%, according to an ordinance adopted by the City Council on February 4, 1981, and effective March 4, 1981. In addition to the State regulations on conversions, plans submitted to the Planning Director should include location of each common element, tenant information regarding current occupants, and rental history for each unit for the preceding 3 years, proposed programs for relocation assistance, pre-conversion inspection report, acoustical engineer report, and pre-conversion analysis of all structures by a licensed pest control operation. Units being converted must also meet certain design and construction standards such as sound transmission control requirements of the Uniform Building Code, smoke detectors for each unit, separate metering systems for gas and electricity, 1 1/2 off-street parking spaces (one covered) for each unit, and at least 150 cubic feet per unit of enclosed weatherproof and lockable storage space must be provided in addition to that ordinarily contained within each unit.

Buyer protection provisions include providing a statement granting each buyer a 1 year warranty on all appliances and granting to the homeowners' association a 1 year warranty on all structures in the project, a copy of the pest control report, a statement of estimated annual operating and maintenance costs for all common facilities and services for the next 3 years, and a copy of the Building Inspector's pre-conversion inspection.

Tenants must be notified of the intent to convert at least 180 days prior to filing an application and tentative subdivision map with the City. Tenants shall be given the right of first refusal to purchase their units for a period of 60 days after the issuance of the final public report or commencement of sales, whichever is later, on terms equal to or more favorable than the terms on which the unit is offered to the general public. The developer may be required to pay relocation expenses of 1 1/2 times the monthly rental rate in cases where a non-purchasing tenant has been requested by the developer to vacate a unit that has been sold.

MORAGA. In February 1981, the MORAGA Town Council placed a moratorium on condominium conversions until an ordinance establishing conversion guidelines is adopted.

NEWPORT BEACH (Orange County). In NEWPORT BEACH, 30% of the tenants must approve the conversion, and there must be a rental vacancy rate greater than 5%.

OAKLAND. Oakland tenants have a 120 day notice of conversion/eviction and 60 day right of first refusal. Elderly tenants are given lifetime leases. Property and building reports must be filed, utilities have to be metered separately, and tenants are to be given a list of comparable rental housing in the area. A provision of the rental stock protection aspect of the ordinance requires a sub-divider, if converting 5 or more units, to add one new rental unit for each unit converted.

ORANGE COUNTY. ORANGE COUNTY, neighboring Los Angeles County to the Southeast, has an ordinance which requires 120 days' notice of conversion and 90 day right of first refusal. A report on the condition of the building and an estimate of repairs is also necessary. In order to protect the rental stock, the vacancy rate must be greater than 5% before conversions are allowed.

PACIFICA. A 4-month moratorium on condominium conversions was allowed to expire in March 1981 PACIFICA, and developers must now seek Council approval to convert rental units.

PALO ALTO. PALO ALTO, in the San Jose area, has limited tenant protection clauses, but requires building code inspection and compliance, disclosure of useful life, property or budget, and certain design/development standards.

*PINOLE. Developers desiring to convert rental housing to condominiums in Pinole must submit a detailed application to the Planning Department. Condominium development standards must be met, including parking requirements, private open space and storage space for each unit, fire prevention provisions, and other standards. All units must be in compliance with Uniform Building Codes adopted by the City.

Tenants must be notified of the planned conversion no less than 7 days prior to the Planning Commission's meeting on whether to approve or disapprove the application. The City will take into consideration the effect of a conversion on the City's housing stock in making its decision, and will normally not approve conversions if the number of rental dwelling units is less than 15% of total available dwelling units.

If the rental vacancy rate is less than 5%, the developer must provide relocation information to displaced tenants. The developer must also pay each displaced household relocation costs as determined by the Planning Commission.

PLACENTIA. The city presently has a moratorium on condominium conversions until October 5, 1981, and is considering adoption of condominium conversion regulations.

PLEASANT HILL. The conversion of apartment units to condominiums may not take place if the conversion would lower the rental housing supply to less than 20% of all available housing in the city, according to a housing policy adopted by the PLEASANT HILL City Council in February 1981. The Council also adopted a provision that states that 10% of all apartments in a condominium conversion must be set aside for low- and moderate income persons.

*PLEASANTON. A conversion ordinance adopted by the Pleasanton City Council on June 23, 1981, covers the conversion of rental apartments to condominiums as well as the conversion of mobile home parks to projects in which the residential units or mobile home spaces are individually owned. Condominium conversion projects containing 4 or fewer units and condominium conversion projects in which the tenants representing 85% of the total units in the projects have consented to the conversion are exempt from City Council consideration. All condominium conversion projects not exempt must secure City Council approval prior to filing a subdivision map. Those exempt must apply for conversion approval according to the approval process.

Applications may be submitted for non-exempt condominium conversion projects to the City Council for review at any time during the year. The Council must hold a public hearing and approve, conditionally approve, or deny application for conversion. Projects receiving approval by the Council may submit subdivision applications pursuant to state and local ordinance requirements. Developers of condominium conversion projects qualifying as exempt projects shall submit applications at the same time applications are made for tentative map or preliminary parcel map approval at any time during the year. Developers must prepare applications and submit them to the Planning Division on forms prepared by the Planning Division. A fee based on the actual costs of reviewing and processing the application will be assessed to the developer.

Developers must give tenants 60 days written notice of intent to convert prior to the public hearing date before the City Council, Planning Commission, or Staff Review Board and 10 days notice of hearing on application to convert. Applications for conversions may not be approved if rents have been raised on any unit during the period 6 months prior to the date of approval of the condominium project. Once a conversion project has been approved, no rent increases may be allowed prior to actual conversion of the project and sale of the units.

Any elderly (62 years or older) and handicapped tenants who have occupied a dwelling unit or mobilehome space in a proposed conversion project for 18 months or more on the date of approval of the project shall have special leasehold rights. Elderly tenants shall have the right to lease their units for 9 years; handicapped tenants shall have the right to lease their units for 7 years. Rents for this special class of tenants may only increase at an annual rate equivalent to the Bay Area Consumer Price Index or 7%, whichever is less. Units occupied by this class with extended lease provisions must be refurbished at the expense of the developer in a like manner as those units to be sold as condominiums, and the unit must be adequately maintained for the duration of the lease.

If any tenant in a mobile home park does not wish to purchase their spaces they will be afforded relocation assistance provided by a professional property management agency at the expense of the developer in finding a comparable replacement rental unit; moving expenses paid for by the developer in an amount equal to the actual costs for any tenant relocating in the TriValley area or $500, whichever is less; and utility connection fees paid by the developer in an amount equal to actual expenses up to a maximum of $100. Mobile home park tenants shall have the right of first refusal, receive price reductions of $50 per month for every month a tenant has resided in the complex up to a maximum of $1000 from the price like units are offered to the general public; price reductions of $1000 for electing to purchase the unit in an "as is" condition; financing assistance including broker-type assistance in locating financing and completing applications, loan qualifying assistance by providing secondary financing, and providing out-of-pocket expense in the course of obtaining financing up to a maximum of $250.

REDLANDS. Planning Commission members in REDLANDS are studying condominium conversion ordinances from other cities to aid them in drafting an ordinance for the city that would protect renters from involuntary displacement and address reductions in rental housing that may occur from condominium conversions. The Commission is also in favor of the developer providing financial assistance for relocation of tenants who do not wish to purchase their units.

REDWOOD CITY. A condominium conversion ordinance in effect in REDWOOD CITY states that each unit within a project must have a separate meter for gas, electricity, and water. In applying for a condominium conversion permit to the Planning Commission, the following reports must be filed: (1) a property report describing the condition and useful life of structural elements; (2) a structural pest control report; and (3) a written statement from the owner or developer of the project that all tenants have been notified by certified mail that an application will be filed for a condominium permit. Developers must also file a report with the Building Department, Fire Department, and Zoning Administrator to ensure that the project complies with current provisions of the city's building regulations, fire codes, and the zoning ordinance. A non-refundable fee of $45.00 plus $30.00 per unit is assessed the developer for the inspection services to company with required reports. The developer must provide that 75% of the parking spaces must be off-street parking.

Tenants must be given the first option to purchase their units at the same price, terms, and conditions as would be offered to the general public. The right and option to purchase shall be effective for not less than 90 days after commencement of sales to the general public or issuance of the final report of the California Real Estate Commission as required by state law, whichever occurs first. Tenants may terminate any lease or rental agreement without penalty after notice of intent to convert is received provided the developer is notified in

writing by the tenant at least 30 days before actual termination date. If a tenant does not wish to purchase, he may remain in the unit for at least 120 days after notice to convert by the developer is received.

RIVERSIDE. The RIVERSIDE City Council placed a 4-month ban on condominium conversions in December 1980.

SAN BRUNO. An ordinance in effect in SAN BRUNO requires developers to apply for a conversion permit from the Planning Commission. Existing structures must conform to the General Plan and all applicable zoning regulations and city requirements. The application for a Use Permit must include a boundary map; statement of current ownership of all improvements; a copy of all documents submitted to the Department of Real Estate; a statement as to whether the developer will provide any capital contribution to the Association for deferred maintenance of common areas, and if so, the sum and date on which the association will receive said sum; the proposed organizational documents; and all proposed storage areas located within the common areas. In addition, a building history must be filed; a property report describing the condition and estimating the remaining useful life of each structure (i.e., foundations, roofs, mechanical systems, electrical systems, etc.); a summary of average rents for each bedroom type of rental unit along with a detailed unit history; a temporary displacement plan for puchasing tenants; and a list of those tenants approving the conversion; a copy of the form signed by those persons, as well as the method used in obtaining the names.

Projects may not be approved for conversion unless the Planning Commission has reviewed the effect the project would have on the community with respect to the overall impact on schools, neighborhoods, etc. A housing impact report on the housing stock in the city of SAN BRUNO must be filed for projects greater than 21 units but less than 101 and a housing impact report on the housing stock in San Mateo County must be filed for projects greater than 101 units. For each two bedroom unit there shall be two off-street covered parking spaces provided and for each studio apartment 1.5 parking spaces are required, one of which must be covered. In addition, guest parking shall consist of .1 spaces per unit. Gas and electricity must be separately metered for each unit. The developer shall provide an all cost warranty for all unit appliances for a period of one year from date of sale.

Tenants have an exclusive right to purchase their units according to state law. Non-purchasing tenants will be provided with relocation expenses equal to a minimum of four months rental, apportioned equally among the number of tenants in each unit. In addition, all security and cleaning deposits must be refunded to non-purchasing tenants. For tenants who are permanently disabled or senior citizens 62 years of age or older, the developer must provide a 5-year right of occupancy. During this 5-year period rental increases cannot exceed the proportional increases in the residential rent component of the "Bay Area Consumer Price Index." The rent to other tenants after the city and state approvals for conversion may not be increased in excess of the proportional increases in the CPI for a 2-year period or until 80% of the converted units are sold, whichever event occurs first.

There is no limit on the number of units that may be sold in projects of less than 21 units. There is no limit on the number of units that the developer may sell to tenants in projects of any size. However, the sale of remaining units shall be limited each year to the number of units equal to the average turnover rate and unsold units allowed to be sold but not sold for that year may be carried forward to the following year. No more than one conversion project of more than 500 units, or no more than 500 multiple-family rental units may be converted to condominiums, cooperatives, etc., in any given calendar year. Conversion by a single developer of less than 20 units, duplexes and triplexes are exempt.

SAN CARLOS. A condominium conversion ordinance passed in December 1980 by the City Council prohibits conversions until the vacancy rate in SAN CARLOS rises above 1%. The ordinance also gives renters 120 days to relocate with an extended period of time for senior citizens and a 60-day first right of refusal to purchase.

SAN CLEMENTE. If the vacancy rate for apartment units falls below 6%, conversions will be limited to one-half of the number of duplex and multiple dwelling units constructed during the two previous years according to

a City Council ordinance tentatively approved in December 1980. If the rental vacancy rate is 6% or higher, the city will place no restrictions on the number of conversions.

*SAN DIEGO. The San Diego City Council reduced tenant protection provisions of their condominium conversion ordinance on June 9. Tenants must now be notified 6 months in advance of conversion intents. If the vacancy rate exceeds 5% in San Diego, tenant protection provisions are lifted.

SAN FRANCISCO. An ordinance established in 1975 requires conformance to housing codes, tenant right of first refusal, 120 days' notice of conversion, and provisions for public hearings concerning conversions if there are more than 5 units involved. In addition, where any units planned for conversion are part of the low or moderate income housing stock, the purchase price may not exceed 2.5 times the highest low to moderate income level. If the price is not sufficiently low, the application for conversion may not be approved.

Other provisions govern displacement of elderly or disabled tenants. In July 1979, new amendments mandated that no more than 1,000 units may be approved for conversion each year, 40% of the tenants must either agree to purchase a unit or be eligible for lifetime lease, and the developer must pay up to $1,000 in relocation costs per unit and provide assistance in finding housing for those moving from a converted building.

SAN JOSE. SAN JOSE has limited tenant protection, offering no notice of conversion, 90 days right to continued occupancy, and 90 days right of first refusal from issuance of the Final Report. Building code inspection, compliance and disclosure, a building history report and useful life, property report and budget (in English and Spanish), and separate metering are also required.

SAN MATEO COUNTY. A one-year extension of a moratorium on condominium conversions in areas outside the city limits was approved by the Board of Supervisors in SAN MATEO COUNTY in October 1980.

SANTA ANA (Orange County). In addition to Orange County regulations in SANTA ANA, relocation assistance is necessary, and a developer may have to pay up to $500 a unit in moving expenses. Building code inspection and compliance is also required.

SANTA BARBARA. Conversions must be approved by the Planning Commission or by the City Council upon appeal and a conversion permit must be issued by the Chief of Building and Zoning. A certificate of occupancy must be issued more than 5 years prior to the date the owner files an application for the approval of a tentative condominium subdivision map. Each unit to be converted must contain not less than 600 square feet unless it is determined by the Planning Commission that at the time of approval other project amenities compensate for the minimum required enclosed area. Among the other requirements are: each unit must have a smoke detector, separate gas and electric meters; 1,200 cubic square feet of enclosed weather-proof and lockable private storage space, 1 1/2 off-street parking spaces per unit for one bedroom or efficiency units and 2 parking spaces for units with 2 or more bedrooms (this requirement may be modified if the developer can prove that additional parking is not needed); and physical elements having a useful life of less than 2 years must be replaced.

A development plan of the project; a physical elements report to include estimates of useful life of each element; a structural pest control report; and a building history must also be filed before a project will be accepted for conversion, along with necessary information concerning the covenants, conditions, and restrictions which would be applied on behalf of any and all owners of condominium units with the project. All residential buildings shall be in compliance with the Uniform Housing Code in SANTA BARBARA and those of the state of California.

Tenant protection clauses include notice of intent to convert; 60-day first option to purchase from date of issuance of the Subdivision Public Report or commencement of sales, whichever date is later; 180 days to vacate; rental increases are limited to one every 6 months and may not exceed a rate greater than the rate increase in the CPI for the same period of time; developer will pay moving expenses of 1 1/2 times the monthly rent to ten-

ants relocating unless the tenant has given notice to vacate prior to receiving the notification of intent to convert from the developer. An intent to convert may be rejected if the proposed conversion will displace a significant percentage of low and moderate income tenants, senior citizens, or tenants with children, and if the conversion will delete a significant number of low and moderate income rental housing units from the city's housing stock at a time when no equivalent housing is readily available in the area. The number of apartments allowed to convert to condominiums may be limited if a rental housing vacancy rate of 3% exists.

SANTA CLARA. Conversion criteria include separate meters for all utilities, fire wall regulations, and sound transmission criteria in the Uniform Building Code as adopted by the City. Prior to approval of a final map, organizational documents must be reviewed and approved by the City Attorney. If no action is taken by the City Attorney within 45 days after documents are submitted, the documents will be deemed approved. The organizational documents shall provide that the City, at its option, has the authority to veto any amendment to the organization documents that would adversely affect the long-term maintenance of the project structure or its common area. The organization documents must provide that any amendment shall not become effective until 60 days after notice of such proposed action is filed with the City Council and the Council has not vetoed the amendment.

In addition to California state laws governing condominium conversions, the city may also consider the size of the units, condition of the structure and major mechanical facilities, the impact of conversion on existing tenants (including the ability of tenants to find equivalent housing in the city with equivalent rent), the impact on the city's rental market, and the impact on the public school system. Where there are significant open spaces, recreational facilities and/or maintenance responsibilities, a conversion request shall be evaluated only if the apartment complex has over 25 units. Existing roofs less than 2 years old are exempt from required fire resistive material. If the city finds the proposed conversion unsuitable for community ownership, the rezoning application may be denied and the tentative map disapproved.

SANTA FE. A moratorium on condominium conversions adopted by the SANTA FE City Council in January 1980 was extended for another year in January 1981. The city's zoning regulations do not have any provision relating to condominium conversions.

*SOUTH SAN FRANCISCO. The Planning Commission in South San Francisco unanimously approved a condominium conversion ordinance that requires a minimum 3% vacancy rate for multifamily rental units before a conversion may take place. Life time leases are offered to low and moderate income tenants over 60 years of age and who are prime wage earners; other low and moderate income tenants are provided with 12 to 24 month leases, and rental increases may not exceed 6%. Developers must pay relocation expenses of $2,000 and may not seek rent increases during the conversion process. Developers must also pay a fee to the city equal to 10% of the resale value of each converted unit.

STANTON. A condominium conversion ordinance adopted May 27, 1980, requires developers to apply for a conversion permit for all conversions. The application is submitted to the City Council through the Department of Community Development and the Planning Commission. The application must be accompanied by a tentative map. An appraisal report describing the conditions of the structures and estimating the remaining useful life of foundations, exterior walls, fire walls, air-conditioning, etc., must also be submitted. Tenant and rental information on the units must be submitted to the Department of Community Development along with a time schedule for proposed improvements, structural pest control report, and all organizational documents. The filing fee for a conversion permit is $100 per each separate dwelling unit. No housing units may be converted to owner-occupied dwellings if such conversions are inconsistent with the City of STANTON's Land Use Element that states that 40% of the city's residential units shall be renter occupied.

In dwelling units of 4 units or less approval of a parcel map, precise plan of design, and a conditional use permit are required in order to proceed with the conversion. For residential condominium conversions, a minimum of 2 covered parking spaces are required for each dwelling unit. A storage space of at least 150 square

feet must be provided for each dwelling unit. Separate gas and electric services are also required for each unit.

Tenants must be notified by the City of the proposed conversion no less than 10 days prior to the public hearing before the Commission regarding the tentative map for the project. The developer must give tenants 120-days written notice of the intention to convert prior to termination of tenancy due to the conversion. Present tenants have a 60-day exclusive right to purchase their units at a price no greater than the price offered to the general public.

TURLOCK. An ordinance approved on August 5, 1980, requires developers to apply to City Council for conversion approval, and a conversion permit must be issued by the Planning Director before such conversion may take place. If an occupancy survey conducted by the Planning Director during the first two weeks in November of each year shows that there is a vacancy rate of from 0-5%, all applications for conversion will be denied. Fifty percent of the yearly average of apartment units constructed over the previous two years will be the number allowable for conversion. If the maximum number of units allowed to convert are not converted in a given calendar year, the surplus will not be carried over to the next calendar year.

In applying for a conversion permit, the developer must include a facilities plan prepared by an appropriately licensed California architect or registered civil or structural engineer, detailing the condition and estimated useful life of all elements of the existing building and other structures involved in the project such as roofs, built-in appliances, foundations, electrical systems, etc. The plan must also include the costs and schedule for replacement of any elements that do not meet current city standards or would have a useful life of less than 5 years. A development plan must also be included along with a schedule of completion for all physical development of common facilities proposed in the project, a maintenance plan including projected costs and method of payment for all physical development, a structural pest control report, and a building history. Gas and electricity must be metered separately for each unit, the building must meet sound transmission standards established by the state, and the developer must provide a one year unconditional consumer warranty guaranteeing repair or replacement of all appliances. One and one-half parking spaces must be provided for each unit.

Relocation payments to displaced tenants shall be provided at a rate of not less than 2 times the monthly rental of the unit. The developer must also actively seek alternative housing for families displaced by conversion. A sinking fund shall be established by the developer to cover all projected maintenance, utilities, or replacements projected for the first year. Each non-purchasing tenant not in default under the obligations of the rental agreement or lease shall have not less than 150 days from the date of filing of the notice to convert to find substitute housing and to relocate.

WALNUT CREEK. According to an ordinance effected on February 7, 1980, reports to be filed by the developer to the city for conversion include a physical elements report which must include a detailed report of the structural condition of all elements of the property, a structural pest control report, and a statement of repairs and improvements made by the subdivider. The project to be converted must conform to applicable standards of the City Housing Code and the City Building Code. Each unit must contain, among other items, smoke detectors; separate utility meters for gas and electricity; and at least 200 cubic feet of enclosed weather-proofed and lockable storage space. The number of conversions is limited to 5% of the city's potentially convertible rental stock in any one calendar year. This requirement may be changed if the Planning Commission finds that the developer will (1) provide for a significant increase in housing for low- and moderate-income households or senior citizen households, (2) provide for the construction of new rental housing, (3) donate an acceptable site or an acceptable amount of funds to the city for construction of new rental or senior citizen housing, or (4) that the need for low cost homeownership to be provided by the conversion will outweigh the detriment caused by further reduction of the rental stock.

Tenant provisions include a 60-day first refusal to purchase the unit occupied at a price no greater than the price offered to the general public; 120 days from the approval date of the Final Subdivision Map to relocate; rents cannot be increased for 2 years from the time of filing the receipt of the application by the Community Development Department of the Tentative Map until the unit is sold or until the subdivision is denied or withdrawn; non-purchasing tenants aged 62 or older or handicapped or with minor children in school must be given at least an additional 6 months to vacate; tenants living in units at a time prior to Tentative Map approval shall be paid moving expenses of two times the monthly rent; all tenant households in which the head of the household or spouse is 60 years or older at the time of the final map approval must be offered life-time leases with reasonable annual rent increases; at the time of final map approval, all tenant households that meet the income limits of the HUD Section 8 program are considered low- and moderate-income households and shall be offered, at minimum, a 3 year lease with reasonable annual rent increases.

COLORADO

LEGISLATIVE UPDATE. House Bill 1107, which would have enacted a Colorado Condominium Act patterned after the Uniform Condominium Act, was killed in the House Judiciary Committee on April 10, 1981.

CURRENT STATE LAW. Colorado legislation, passed in July 1979, provides for a 90-day written notice of conversion. A residential tenancy cannot be terminated before the existing lease expires, except with the consent of the tenant and developer, but in no event less than 90 days, without cause, unless the tenant consents and the developer pays all moving expenses or other agreed consideration.

BOULDER. Boulder requires a 120-day notice of conversion, plus a notice to indicate that low-income tenants over 62 may receive assistance from the Housing Authority to remain.

CONNECTICUT

CURRENT STATE LAW. The state's condominium law preempts any local regulations and provides that the landlord or developer shall give tenants at least 180 days' notice of the intent to create a conversion condominium. During the first 90 days of such 180 day period, each tenant shall have the exclusive right to purchase the unit he occupies. Any tenant not availing himself of this option is entitled to remain on the premises under the existing lease, or to cancel the lease by giving 30 days' notice. Lower-income tenants receive moving and relocation expenses equal to one month's rent or up to $500, as determined by the local government. The converter must also provide non-purchasing tenants with relocation information on the availability of alternative housing, financing programs, and governmental housing assistance.

Connecticut also provides for buyer protection, making it necessary for developers to file reports concerning the condition, useful life, and estimate of repairs for the building, along with property reports, budget, and warranties. There are provisions for the purchaser to cancel the contract within 15 days after its execution.

In November 1979, the state imposed a temporary measure that prohibits the conveyance of converted condominiums not having a separate heating plant, effectively prohibiting conversion of any centrally heated multi-family complex.

HARTFORD. The Mayor of HARTFORD submitted legislation to the City Council in late March 1981, that would require developers to pay relocation expenses of at least $1,000 for tenants in conversion projects if they have lived in the unit for at least 6 months. Developers would also be required to obtain conversion permits from the city and give tenants up to 18 months to relocate. Such requirements would remain in effect as long as the

city's vacancy rate for rental housing is less than 5%. When a similar proposal was introduced in January 1980, the City Corporation Counsel's office ruled that Connecticut state laws on condominiums prevent Hartford from adopting its own regulations. No action has thus far been taken.

DELAWARE

WILMINGTON. The condominium conversion ordinance in WILMINGTON went into effect on February 15, 1980. Under the law, developers must file an engineer's report detailing the present condition of all structural and major utility installations in the condominium to include the age and approximate remaining useful life and the approximate present replacement costs of all elements or components that need replacement including roofs, electrical wiring, plumbing, etc. The ordinance applies to conversions containing 5 or more units. Developers must pay a license fee of $50 per condominium unit to cover administrative costs to the city. If the vacancy rate for multifamily rental units is 4% or less, no conversions will be allowed unless 67% of the tenants in the proposed condominium project approve in writing the developer's plan to convert. Any apartment building being converted to condominium must meet all applicable provisions of the City Code with respect to housing, the Building Code, and the Fire Prevention Code. In addition, the developer must warrant all repairs and improvements made to each condominium unit and common elements for one year from the close of sale of the first unit.

Developers must notify tenants of the intent to convert within 7 days of the recording of a Declaration with the Recorder of Deeds. A report from a professional engineer licensed to do business in the state of Delaware stating the engineer's observations regarding the condition of the structure involved and the major mechanical components in the building, and a proposed operating budget for the condominium shall also be provided tenants with the intent to convert along with the list of tenants rights.

Tenants have the exclusive right to purchase their units for a period of 90 days, commencing with the receipt of the intent to convert notice unless the tenant signs a written waiver of the right during the 90 day period. If the tenant has not signed such a waiver, the developer may not show or offer the unit for sale to persons other than the tenant for a period of 45 days from receipt of the notice of intent to convert. After the 90 day first right of refusal, the non-purchasing tenant has an additional 90 days before his lease can be terminated by the building owner or developer. During the total 180 day period, non-purchasing tenants may not receive rent increases exceeding that most recently charged a tenant of a comparable unit in the same complex and in no event shall the increase exceed 10% of the tenant's rent. Tenants with more than 60 days remaining on a lease and who have received the intent to convert may terminate their leases with 60 days notice without penalty. Occupants of rental units slated for conversion aged 62 years or older or who are handicapped may not be evicted from their units for a period not less than 18 months from date of receipt of intent to convert.

DISTRICT OF COLUMBIA

The District government imposed a moratorium on conversions through repeated 90 day emergency legislative acts. The court overturned this process on the basis that it represented an improper use of emergency legislation. Subsequently, the District government imposed very strict conditions on condominium conversions. The new law, effective September 1980, provides that a building may not be converted to condominium or cooperative ownership without the approval of more than 50% of the tenants, imposes a 4% levy on the sale of condominium units, establishes a life tenancy for tenants 62 years of age and older with incomes of under $30,000 a year, and right of first refusal for the tenants' association on the sale of apartment buildings.

FLORIDA

CURRENT STATE LAW. The state of Florida has reserved the power to regulate condominiums. The law requires 270 days' notice of conversion to tenants of more than 6 months and 180 days' notice to tenants of less than 6 months. Counties may extend the tenant's right to occupancy for an additional 90 days if the county finds there is a 3% or less rental vacancy rate. A right of first refusal, extended only to tenants who were in occupancy

at least 6 months prior to the notice of conversion, lasts 45 days from the receipt of mandated purchaser information on the housing market, financing, and tax system. The converter may give a 6 month tenant 1 month's rent in exchange for reducing occupancy from 270 to 180 days.

A buyer of a condominium in Florida may cancel a contract by written notice within 15 days after receipt of statements and disclosures required of a conversion. The converter must issue a building report on the age and useful life of the building and its components (roof, electrical system, heating and cooling system, etc.); date and type of construction; and a property report, operating budget, and possible warranties to give assurances concerning the quality of the property.

SARASOTA. The City Commission in SARASOTA is studying information and data submitted by the SARASOTA Community Coalition on Housing calling for a moratorium on condominium conversions.

GEORGIA

CURRENT STATE LAW. A law passed by the state in the 1980 session greatly expands the condominium act approved in April 1975. The law states that no zoning subdivision, building code, or other real estate use law, ordinance, or regulation shall prohibit the condominium form of ownership or impose any requirement upon any condominium which it does not impose upon a physically identical development under a different form of ownership. Also, no subdivision law, ordinance, or regulation shall apply to any condominium c any subdivision of any convertable space or unit. The law specifies that a condominium converter shall deliver to each tenant a notice of the conversion at least 120 days before the tenant will be required to vacate the unit. Within 60 days after delivery of this notice, the converter shall deliver to e tenant an offer to convey the unit to the tenant at a specified price on specified terms.

Georgia also requires building code inspections, an architect's or engineer's report on the present condition of the building, a full property report disclosure, and an estimated or actual budget. A purchaser may void the contract within 7 days after disclosure.

ATLANTA. ATLANTA has a statute similar to the state with a 120-day notice of conversion and 60-day right of first refusal period. During the 120 days following the right of first refusal, the unit may not be offered at a more favorable price. The city has buyer protection disclosures like those of the state, although there is no purchaser's right to cancel the contract in Atlanta.

HAWAII

LEGISLATIVE UPDATE. Senate Concurrent Resolution 60, introduced into the state Legislature on April 23, 1981, requests a comparative study on condominium laws.

CURRENT STATE LAW. State law requires that an engineer's building report be filed with the Real Estate Commission, along with useful life and estimated cost of replacement reports. Prospective purchasers are entitled to full disclosure on the condition of the building and estimated maintenance and costs for each unit. Contracts are not enforceable until the purchaser has had "full opportunity" to read the Final Public Report, with the possibility of refund and release if such a report differs in a material respect from the Preliminary Report.

ILLINOIS

LEGISLATIVE UPDATE. The Uniform Condominium Act (H1887) was introduced into the state Legislature on May 1, 1981, and was sent to an interim study committee, killing any action on the bill in this session.

*In other legislative action, S.390, passed by the Legislature, was vetoed by Governor James Thompson in late August 1981. The bill has been put back on the calendar for possible further action. S.390 declares that condominium regulation is an exclusive state power or function.

*S.841, requiring that the payment of the purchase price for the initial sale of a condominium unit be held in an escrow account until title is conveyed to the purchaser, became public law on August 14,1981.

*H.1419 became a public act on September 15, 1981, and requires developers to pay a proportionate share of the common expenses for each unit not sold.

CURRENT STATE LAW. According to Illinois law, the tenant must receive 120 days' notice of the conversion as well as the right of first refusal within the same 120-day period. Under the "buyer protection" clauses, an engineer's report of the present condition of the building must be filed, along with useful life and estimated replacement cost reports. Purchasers must be aware of the actual budget for the two previous years, and have a detailed projected budget. There are provisions for a purchaser to void his contract if disclosure information is not provided at contract.

CHICAGO. Chicago imposed a moratorium on condominium conversions in March 1979, but the law was struck down as an unconstitutional restriction on property rights by a federal district court in March 1980. Still, the city requires that a notice of conversion be sent to tenants 120 days prior to filing a declaration of conversion. Elderly (over 65) and handicapped are granted lease extensions of 180 days. Tenants are given 30 days from the notice of conversion for the right of first refusal. Buyer protection in Chicago is similar to the state law.

EVANSTON. In Evanston there must be a 210 day notice of conversion and, for relocation expenses, either $300 or 1 month's rent, whichever is higher, payable to tenants within Section 8 housing limits. It is also necessary to file a building code assessment report within 60 days after the notice to convert, and provide warranties on mechanical equipment.

OAK LAWN. The OAK LAWN Board of Trustees voted down placing a moratorium on condominium conversions in February 1981.

ROCK ISLAND. ROCK ISLAND City Council members rejected a proposed condominium conversion ordinance on January 5, 1981. The measure would have required that developers give tenants 120 days notice of intent to convert, specifying the units to be sold and the price; 30 days first right of refusal; and a 120 day extension of leases allowing tenants moving time.

SKOKIE. Skokie's ordinance grants at least a 6 month lease extension from the date of filing the conversion declaration for the elderly, handicapped, and families with children. The law also calls for building code inspections, property, building, and budget reports, and warranties on the unit, common element, and appliances. The purchaser has 15 days to review documents and, if not satisfied, to rescind the contract.

INDIANA

There is no state law governing condominium conversions in Indiana.

INDIANAPOLIS. The city provides for 120 days' notice of intention to convert. For the handicapped and persons over 65, an additional 180 days lease extension may be imposed. Building code disclosures, building reports, a property report prepared by an engineer or architect, and an itemized estimate of expenses for each unit owner are also necessitated by law.

IOWA

LEGISLATIVE UPDATE. House bills 42 and 205 were both sent to the House Judiciary and Law Enforcement Committee in 1981. They were not reported out of the sub-committee before the legislature adjourned on May 22, but may be picked up in the next legislative session as carry-overs.

H42 would require developers to file an approved conversion plan with the Attorney General. Developers could not increase rents for senior citizens beyond ordinary rentals for comparable apartments during the period of their occupancy if they chose not to purchase their converted condominium.

H205 would prohibit for one year the conversion of residential dwellings to condominiums or cooperatives.

KENTUCKY

LOUISVILLE. A proposed condominium conversion ordinance in LOUISVILLE would require developers to notify tenants in writing of their intent to convert, give tenants 180 days to relocate, first right of refusal to purchase their units, and allow tenants who chose not to purchase to cancel their existing leases on 30 days notice.

LOUISIANA

Louisiana state law requires that building code compliance costs must be estimated and disclosed, and that an architect or engineer report on the present condition of the building and its estimated remaining useful life be filed. A property report, projected operating budget, and legal documents must also be disclosed to prospective purchasers who may rescind the contract if misleading or false statements were made in the offering material.

MAINE

LEGISLATIVE UPDATE. Senate Bill 112, the Maine Uniform Condominium Act, has been withdrawn from consideration for the 1981 session.

*PORTLAND. Portland officials are circulating a proposed ordinance that would require developers to notify tenants of a proposed conversion at least 4 months in advance, give the tenants the right of first refusal to purchase their units, and, in some cases, require developers to pay relocation expenses to tenants.

MARYLAND

LEGISLATIVE UPDATE. The governor of Maryland signed condominium legislation on May 7, 1981, that prohibits local governments from banning condominium conversions; requires developers to pay up to $750 in moving expenses for displaced tenants; requires developers to set up to 20% of the rental units in a conversion project for families with elderly or handicapped persons, and also for those with incomes of less than 80% of the area's median income who may remain as tenants for a period of 3 years with rental increases tied to the CPI; and allows local governments to purchase a building before it is sold to a developer for conversion. The government must operate the building as a rental property for at least 3 years when purchased. If local governments declare a housing emergency, the 3 year period for tenancy allowed special persons may be extended and could, in fact, establish life tenancies for some elderly and disabled persons.

The state condominium law requires 180 days' notice of intent to convert. A lease may be extended for 180 days on the same terms, or terminated on 30 days' notice. Prospective buyers must be shown property reports if the building is more than 5 years old, a projected operating budget, and certain legal documents. Some deposits on uncompleted units may have to be put in an escrow account, payable to the state. A prospective purchaser may rescind the contract within 15 days of receipt of disclosure information.

*MONTGOMERY COUNTY. Effective July 1, 1981 Montgomery County law allows extended leases to certain classes of citizens and gives the County Government the first option to purchase buildings slated for condominium conversion.

The County law is similar to the state's to some extent, although it adds a building report on condition, useful life, and estimate of repairs. More warranties are needed to cover the common element for . years and the unit for 1 year, with a reserve for appliance repair and maintenance also required.

In November 1980 the Maryland Court of Appeals ruled the provision of the MONTGOMERY COUNTY condominium conversion law requiring apartment owners to give a tenant association 120 days to purchase a building before it is converted invalid. Another section of the law requiring owners to pay $750 in relocation expenses was also invalidated. The Court ruled in a 5-2 decision that the two provisions conflict with a 1974 state law regulating condominium conversions.

MASSACHUSETTS

*LEGISLATIVE UPDATE. Nearly a dozen amendments were added to Senate Bill ' 01 on October 7, 1981. As originally introduced in May 1981, the bill would allow cities and towns to a pt ordinances to restrict and control the conversion of rental housing to condominiums or cooperatives. Cities with populations of 150,000 or more could not permit conversions unless the rental vacancy rate is more than 5%. Further action on the bill is expected in the immediate future.

There is no state law governing condominiums.

ACTON. The Massachusetts legislative approved on May 8, 1981, a bill to regulate condominium conversion in Acton. The Act stipulates that no rental housing be removed from the market for conversion unless a permit is issued by the City Board of Selectmen. The Board will grant permits if the landlord gives the tenants the right of first refusal, provides price concessions or financing assistance, or assists in trying to find comparable rental housing in Acton. Also, a 6-month notice is necessary, and the building must be certified as meeting all applicable building and health codes of the Town and the Commonwealth.

*AMHERST. In August 1981, the state attorney general struck down a town by-law that placed strict guidelines on condominium conversions.

*ANDOVER. Members of the ANDOVER Board of selectmen are supporting a condominium conversion ordinance that requires developers to apply for a special permit from the Zoning Board and give a 1 year otice to tenants before conversions can take place. The bylaw ws ruled illegal by the attorney general and is now under appeal by the town.

BOSTON. An ordinance approved on December 26, 1979, provides that no person may bring any action to recover possession of a housing accommodation for the purpose of a condominium conversion until the rental agreement expires or one year has lapsed since written notification of termination of tenancy is received, whichever is later. However, if a tenant is 62 years of age or older, handicapped, or has a total income of less than 80% of the median income for the area, a 2 year extension of occupancy is required. The ordinance will remain in effect until December 31, 1982.

BROOKLINE. According to the conversion ordinance in BROOKLINE that went into effect on June 16, 1980, no landlord or other person may remove from rental use any rental unit in a building of four or more residential units which is not controlled by the Rent and Eviction Control Bylaw without first obtaining a conversion permit from the Housing Conversion Board. In effect, the ordinance prohibits eviction for conversion purposes. This has been appealed to the courts.

CAMBRIDGE. Attempting to recover possession of a rent controlled apartment in order to convert an apartment to a condominium unit is not just cause for eviction according to the CAMBRIDGE rent control ordinance. When a rental unit is converted and sold as a condominium, the new owner may not seek to evict the present tenant and the unit is subject to the provisions of the rent control law. If the purchaser of the unit is the present tenant, the unit becomes permanently decontrolled.

On March 12, 1981, the Massachusetts Supreme Judicial Court upheld the 1976 ordinance that allows the Rent Control Board to prevent evictions from rental units that are converted to condominiums. Real estate owners filed suit against the ordinance claiming that it amounted to "an unconstitutional taking of their property" and eliminated an owner's right to take possession of his property. The Court stated that the ordinance does not prevent an owner from converting his controlled rental units into condominiums, but it does prohibit those units from being used for purposes other than rental housing. The Court also claimed that even though the ordinance prevents some owners from taking possession of their condominiums after purchasing them, it does not amount to an unconstitutional taking of that property since the owner will receive rental income from the unit.

*DEDHAM. The Planning Board in DEDHAM is forming a subcommittee to investigate regulating condominium conversions.

FRAMINGHAM. Enabling legislation is necessary from the state legislature before the town of FRAMINGHAM can implement a condominium conversion ordinance adopted in May 1980. The condominium bylaw requires a 9-month notice to vacate and gives the elderly, low-income, or handicapped 2 years to vacate apartments slated for conversion. FRAMINGHAM will ask Legislators to grant the town home rule powers.

*GLOUCESTER. A recently approved condominium conversion ordinance in GLOUCESTER that would have required a 6 month notice to tenants of an impending conversion by developers and provided relocation expenses, the first option to purchase or special financing assistance, has not been implemented because the State Legislature turned down the City's request for state enabling legislation to impose such an ordinance.

*HUDSON. House Bill 7169 was introduced into the State Legislature on September 23, 1981, requesting enabling legislation to protect tenants and purchasers of condominium or cooperative units in HUDSON.

LOWELL. On June 11, 1980, a condominium conversion ordinance was passed that requires owners to file an intent to convert with the Planning Commission one year prior to the execution or recording of a master deed, and owners must notify tenants of the intent. Tenants have at least 2 years from the date of the recording of the master deed to vacate units being converted and at least one year to purchase their units. Rent increases for the two year period are restricted to the percentile increase of the year previous to the filing of the master deed.

LYNN. The condominium conversion ordinance applies to dwellings containing 3 or more rental units which are to be or have been subsequent to April 17, 1979, converted to condominium ownership by the filing of a master deed. If rental units were used for residential purposes at any time since April 18, 1979, no action to recover possession of the property for the purpose of converting it to a condominium may be taken unless there is a rental vacancy rate in excess of 8%. Buildings purchased that were previously used for residential purposes but which have been vacant for a period of 3 months prior to the sale may request that the Planning Department waive the 8% vacancy rate restriction and may apply for a permit to convert. Reports to be filed with the City Clerk before recordation of condominium documents must include a copy of all documents to be recorded with the Registry of Deeds, a report of the present condition of all structural components and major mechanical systems of the building and their expected useful life, a list of all tenants of the building, and a statement ensuring that the developer has followed the provisions of the ordinance regarding tenant assistance and notification.

If a rental building is intended to be converted, tenants must be notified one year in advance before an attempt to recover possession can be made. Tenants 62 years of age or older or those whose total income for the

previous year was equal to or less than the qualification income for the Section 8 Housing Assistance Program shall be given 2 years notice of intent to convert before action can be taken to recover possession. However, persons not making the required rental payments or substantially violating the terms of the tenancy may be given less than a year's notice to vacate. Tenants have a 30-day first option to purchase their units. If the tenant does not contract to purchase the unit during the 30 day period, the developer may not offer the unit for sale for 180 days following the expiration of the 30 day period at a price or terms more favorable than the price offered to the existing tenant. Developers must pay maximum moving expenses of up to $300 or one month's rent, whichever is greater, within 14 days of receiving a receipted bill for the costs incurred for tenants whose total income for the previous year was equal to or less than the qualification income for Section 8 assistance.

If plans for conversion are abandoned after sending the notice of intent to convert, the developer or any subsequent owner of the property may not send notice to any tenant for a period of at least 18 months.

*MEDFORD. The MEDFORD City Council voted down a proposed moratorium on condominium conversions in September 1981.

*QUINCY. Although the QUINCY City Council turned down a tenant's request in August 1981 to impose a 9-month moratorium on condominium conversions, the Council may seek legislative permission and enabling legislation to adopt a moratorium.

ROWLEY. A zoning ordinance in the Town by-laws designed to prohibit the condominium form of ownership in ROWLEY was ruled an "invalid exercise" of the town's zoning powers in March 1981. The by-law states that all structures containing more than one unit must be retained under a single ownership, which is defined as a group or association of two or more individuals having common individual interests in a tract of land and all structures upon it. Judge Marilyn Sullivan stated that the bylaw makes an "illogical distinction between forms of property ownership that is arbitrary and unreasonable and rests on the type of ownership rather than the use of the property." In short, the Judge said "There appears to be no rational basis for the ban on condominium ownership in Rowley." New zoning amendments are expected to be presented to the Town Council.

*SALEM. In order to convert a rental unit to a condominium in Salem, a developer must receive permission by the Board of Appeals according to an amendment to the City Ordinance approved by the Mayor on March 25, 1981. Tenants must be notified of the intent to convert and such notice must include a copy of the amendment dealing with condominium conversions. Notice of the filing must also be given to the Board of Appeals and the Housing Authority in Salem.

*In determining whether or not to grant the petition for a special permit, the Board of Appeals must consider the relationship of the condominium or cooperative conversion to the Master Plan of the City; the impact on the neighborhood and its impact on the existing rental stock for families of low and moderate income and elderly people on fixed incomes; and the degree of hardship caused by the conversion on existing tenants and the steps taken by the petitioner to alleviate the hardship. In addition, in granting any special permit, the Board of Appeals must provide for a minimum of 6 months to lapse from the time of their action before the issuance of the permit and the beginning of any work on the conversion unless the building is vacant at the time of the filing.

SOMERVILLE. On October 28, 1980, the Mayor of SOMERVILLE signed condominium legislation requiring that developers obtain permits to convert rental apartments to condominiums. A 5-member condominium review board will review requests and consider tenant hardships, owner hardships, and the city's housing situation before approving or disapproving the conversion. If a conversion is approved, developers must give tenants 1 year notice and provide $300 or a month's rent, whichever is higher, to low-income tenants for relocation expenses. The law is expected to be in effect within 90 days, but is being challenged in court because state enabling legislation is required first.

*STONEHAM. House Bill 7195 was introduced into the State Legislature on September 24, 1981, requesting enabling legislation to require developers of mobile home park conversions to give existing tenants at least a 1 year notice of the conversion.

*WESTFIELD. Although condominium conversions appear to pose no problems in WESTFIELD, the City Council passed a conversion ordinance in August 1981 that provides for an adquate notice to tenants who must relocate due to the conversion process.

WOBURN. According to an amendment to the zoning ordinance approved in September 1980, conversions from apartments to condominiums require a special permit from the City Council. In considering an application for a special permit, the Council may set a minimum length of time which must pass before any unit can be converted, provided that the time set may not exceed one year.

MICHIGAN

*LEGISLATIVE UPDATE. The Uniform Condominium Act was introduced in the Michigan Senate as Bill #227 on April 1, 1981, and was referred to the State and Veteran's Affairs Committee. As of October 8, 1981, no action has been taken by the Committee.

CURRENT STATE LAW. A state law preempts local laws and provides a two-step process. First, converters may submit a non binding reservation of purchase of an apartment building for conversion purposes to test potential market. The second step is to request a permit to sell conversions, which requires a statement on the financial condition of the converter and a 120 day notice to the tenants. A prospective purchaser has 10 days after receipt of the required disclosure documents and "material information" about the property and budget to withdraw.

Michigan tenancy of persons 65 years of age or older and certain severely handicapped persons shall not be terminated without cause within 1 year receipt of notice of conversion. These persons may also qualify for an extended lease arrangement if they pay less than $450 monthly rent for a single bedroom unit or $500 monthly rent for a two or more bedroom unit. Depending on the age of the elderly or handicapped, leases must be extended from 4 to 10 years and rents will not receive an unreasonable increase beyond the fair market rent for a comparable apartment.

MINNESOTA

CURRENT STATE LAW. The state legislature adopted the Uniform Condominium Act in 1980 without significant revisions.

MINNEAPOLIS and WAYZATA have ordinances which provide for 120 day notices of conversion, and 180 day notices for elderly, handicapped, and families with children, along with a 60 day first right of refusal period.

MINNEAPOLIS. In MINNEAPOLIS there is a petition drive underway to place on a future ballot an amendment to the city charter providing both for rent controls and condominium conversion controls. The initiative, if passed, would prohibit the conversion of existing residential apartments to condominiums. Those in the process of conversion would not be prohibited.

ST. PAUL. The ST. PAUL City Council has proposed that if the city has a shortage of rental units it would impose a tax of not more than 4% of the purchase price on rental units converted to condominiums. The proposal states that the revenues would be used for programs to increase the number of housing units for low and moderate income persons.

MISSOURI

LEGISLATIVE UPDATE. House Bill 450, constituting the Uniform Condominium Act, failed to be reported out of the Civil and Criminal Justice Committee. It was, therefore, killed with the adjournment of the Missouri Legislature in June 1981.

CURRENT STATE LAW. State law requires only the filing by a converter of a declaration of intention to convert an apartment building.

BRENTWOOD. A proposed condominium conversion ordinance before the Board of Alderman in BRENTWOOD would require owners or developers to submit a plat review and occupancy permit with their conversion plans. The Mayor and Aldermen would have final approval in authorizing a condominium conversion.

FERGUSON. A 6-month moratorium on condominium conversions expired in October 1980.

KANSAS CITY. A Kansas City ordinance requires site plans, inspection of the condominium converted, and conformance with codes.

ST. LOUIS. St. Louis provides for a 90-day notice of intention to convert and code compliance.

UNIVERSITY CITY. In University City, there must be a 90 day notice, a building inspection, and a certificate of occupancy before the unit may be occupied. The ordinance also stipulates that separate gas and electric meters serve each unit.

WEBSTER GROVES. Webster Groves has a 180 day notice period, a 60 day right of first refusal period, and the purchaser's right to cancel a lease on 60 days' written notice. Other requirements include smoke detectors; a Condominium Code Assessment Report; an engineer's or architect's report on the present condition of the building's structure; a property report; and a 3 year actual budget and 1 year projected budget.

NEVADA

RENO. A condominium conversion ordinance passed by the RENO City Council in June 1980, requires that there be an apartment vacancy rate of at least 5% before apartments can be converted to condominiums. Developers must give tenants first option to purchase their units, a 90-day notice to vacate with an additional 60-day period for senior citizens, and payment of $350 for relocation expenses.

NEW HAMPSHIRE

LEGISLATIVE UPDATE. On April 7, 1981, bill #799 was introduced into the New Hampshire House of Representatives. This bill would have given tenants no less than 6 months to move when their rental complex is converted to a condominium, and the exclusive right to contract to buy their units. Elderly (60 years of age or older) or disabled tenants may also remain as renters for as long as they wish, and may not be evicted for refusing to consent to the conversion. The New Hampshire Senate has taken actions that effectively kill the legislation for this session.

CURRENT STATE LAW. There is a 90 day notice of conversion and 60 day right of first refusal. Reports on the condition of the building, its useful life, and estimation of repairs are to be filed. An actual budget of the past 3 years is required, as is a schedule of completion of improvements.

NEW JERSEY

*CURRENT STATE LAW. Governor Brendan Byrne signed S.3029 into law on July 27, 1981. The new legislation gives certain senior citizens and disabled persons the right to remain in their apartments for up to 40 years in the case of a conversion. Rents would also be regulated by prohibiting landlords from passing along the costs of the conversion "which do not add new services or amenities."

The bill covers persons over 62 and disabled tenants who have filed in their apartment at least 2 years before the conversion if their householdincome is no more than three time the per capita income for the county in which they live.

NEW YORK

CURRENT STATE LAW. A complex state law differs for rent controlled and rent stabilized apartments in regard to notices of eviction, continued occupancy, etc. The state's buyer protection provisions include reports on the building, building code, property, and budget, along with a detailed list of disclosures for prospective purchasers that includes reviews for the Attorney General and the tenants.

NEW YORK CITY. New York City and suburbs have a variety of laws, generally providing for 35% tenant approval and lifetime tenancy for persons 62 years or older with annual incomes of $30,000 or less.

NORTH CAROLINA

The State Legislature Drafting Committee is compiling recommendations to present to the next session of the North Carolina General Assembly to implement state laws regulating the conversion of condominiums and authorize temporary local moratoriums on conversions. A moratorium could be put in effect for a period of 6 months with a possible 6 month extension if it is found that conversions would cause severe financial and relocation problems to tenants or significantly reduce the low- and middle-income housing stock. If two-thirds of the tenants in a building agree to a conversion, the moratorium will not affect the conversion. Under tenant protection clauses, tenants would be notified and have the exclusive right to purchase within a 45-day period, a 75-day period to vacate if tenants do not want to purchase, and during that 75-day period rents may not be increased. The proposed law also provides for a 6-month period in which a developer may not offer the unit for sale at more favorable terms than the terms offered to the tenants if the tenant does not wish to purchase.

WINSTON-SALEM. The WINSTON-SALEM Board of REALTORS recommended in February 1981 that controls not be placed on condominium conversions. A study undertaken by the REALTORS found that the actual percentage of people adversely affected by conversions would be relatively low; most converted buildings are run down and rents would have to be raised to a much higher level to cover renovation costs; conversions meet the strong demand for homeownership; and conversions increase property values. No action has been taken by Aldermen.

OHIO

*LEGISLATIVE UPDATE. H555, introduced on May 20, 1981, would require developers to pay a relocation assistance allowance to eligible elderly tenants, permanently and totally disabled tenants, and certain other tenants who vacate before the expiration of the 120 day notification period or of the term of the rental agreement, whichever occurs later. As of October 8, 1981, no action has been taken on the bill by the Aging and Housing Committee.

CURRENT STATE LAW. The state law, which became effective October 1, 1978, provides for a 120 day notice to vacate, with a 90 day right of first refusal to purchase by the tenant. The law requires the disclosure of building code compliance, or failure to comply, to the purchaser; a report on the age, condition, and remaining useful life of the structure; estimated repair and replacement costs; a 2-year projected budget, revised biannually; and warranties on the structure, unit, and appliances.

LAKEWOOD and LYNDHURST, suburbs of Cleveland, have similar ordinances that go beyond the protections of the state law. Lakewood's ordinance was enacted in May 1979, after a 90-day moratorium on conversions, and, among other provisions, allows handicapped and elderly tenants up to 6 months to relocate.

A developer must file a schedule of completion and a report on the present condition of the building, along with an estimation of the useful life of all structural and major mechanical components. The Real Estate Com-

mission must issue a report to prospective purchasers on the building's condition, schedule of completion and useful life, the projected budget, and any legal documents necessary.

In addition, the law requires a 90-day notice to tenants to vacate, and provides for a 30 day period where the tenants have the right of first refusal.

OREGON

PORTLAND. On November 12, 1980, The PORTLAND City Council adopted regulations governing condominium conversions, although a controversial conversion ordinance proposed by the PORTLAND Planning Bureau was rejected earlier. The ordinance requires developers converting units to provide moving expenses to displaced low-income tenants and give tenants 120-days' notice to relocate. The earlier ordinance would have required developers to obtain a special permit before converting, given tenants a 10% discount on the sales price of units if they intended to purchase, and required developers to pay relocation expenses of tenants not purchasing their units.

PENNSYLVANIA

*LEGISLATIVE UPDATE. House Bills #1842 and 1843, amending Pennsylvania's Uniform Condominium Act, were introduced on September 22, 1981, and referred to the Committee on Business and Commerce. H.1842 would require that a declaration for a conversion be recorded on or before the date that notice of conversion is given. H.1843 would prohibit certain unfair conversion practices, require additional notices, and prohibit tenants from waiving rights or remedies of the bill.

*In the Pennsylvania Senate, action continues on S.81, which was laid on the table on September 14, and S.117, which was re-reported on October 5. When S.81 is removed from the table, it will be under second consideration; S.117 is currently on the Senate calendar for a second reading.

S.81 would insert a local option clause into the current Uniform Condominium Act, allowing municipalities to restrict condominium conversions. An amendment on the Bill would impose an eight-month ban on conversions in the Commonwealth.

S.117 would guarantee the right of a lifetime lease to tenants 62 years old or older, and blind or disabled tenants, who have lived in the apartment building for at least three years. The three years do not have to be spent in the same apartment unit.

CURRENT STATE LAW. The Pennsylvania legislature adopted a revised version of the Uniform Condominium Act in July 1980. The act preempts what was to have been an 18-month moratorium on condominium conversions in PHILADELPHIA by prohibiting discrimination against condominiums by local authorities. The moratorium expired on October 30, 1980, rather than the scheduled March 1981.

Pennsylvania's law differs from the UCA in several respects. Pennsylvania requires a 1 year notice of conversion and 6 month right of first refusal period; the UCA only calls for 120 days' notice and 60 days' right of first refusal. The Pennsylvania act adds sections that give tenants the right to cancel leases on 90 days' written notice, requires public hearings at least 30 days before a notice of conversion, and allows a 2-year lease extension to elderly (62 years or older), blind, or disabled tenants who have occupied their apartments for at least 2 years. Additional warrants against defects are also required.

RHODE ISLAND

LEGISLATIVE UPDATE. House Bill #5689, introduced March 3, 1981, was approved by the legislature and has become law in Rhode Island. The new law requires that tenants be given at least a 120 day notice in the case of conversions, and the first opportunity to purchase their units. Owners/developers shall not offer units for sale to the general public at terms more favorable than offered to the tenants.

Tenants who have attained the age of 62 must be given a one-year notice, and will have reasonable moving expenses and costs paid by the owner/developer if they move within a 50-mile radius.

The Uniform Condominium Act is currently in The Rhode Island Senate Committee on Corporations. The House failed to pass the UCA earlier in the session, passing a substitute resolution in its place.

SOUTH DAKOTA

A contract may be voided if the developer fails to notify the South Dakota Real Estate Commission in writing of the intention to sell offerings in a condominium project. Any deposit made with a reservation or contract must be held in escrow until the deed is delivered.

TENNESSEE

LEGISLATIVE UPDATE. The Uniform Condominium Act, introduced into both the House and Senate in February 1981, will not be dealt with until the new session opens in January 1982. The Tennessee Senate deferred action until next year; at the close of the 1981 regular session, the bill was still in the House Commerce Committee, and will be picked up again in January.

CURRENT STATE LAW. The state law provides for a 60 day notice to tenants of intention to convert, and for relocation assistance.

TEXAS

CURRENT STATE LAW. State law only requires a declaration of a condominium conversion be filed at the county clerk's office.

UTAH

LEGISLATIVE UPDATE. Senate bill S.1 was introduced into the state Legislature on January 12, 1981, providing procedures for the approval of condominium conversions.

VERMONT

LEGISLATIVE UDPATE. Before going out of session on May 5, 1981, the Vermont House of Representatives passed the Uniform Condominium Act. The bill is now in the Senate Judiciary Committee. No further action will be taken until the Legislature reconvenes in January 1982, when the bill will be taken up as a carry over in the Senate.

The Vermont House passed the Uniform Condominium Act early in the 1980 legislative session, but the Act was killed later in the Senate.

VIRGINIA

CURRENT STATE LAW. The Virginia condominium law requires that tenants be given 120 days' notice to vacate, and that they have the exclusive right to purchase the units they occupy within the first 60 days of that 120 day period.

The developer must also file a Public Offering Statement, which describes the present condition of the building; dates of construction and major repairs; expected useful life; expenditures of the past 3 years, with a proposed budget; and a 1 year warranty against structural defects in the common element and unit.

FAIRFAX COUNTY. The FAIRFAX COUNTY Board of Supervisors approved voluntary condominium conversion guidelines in March 1981, that will ease relocation for displaced tenants. Three major condominium developers have agreed to long term leases for elderly and handicapped tenants with financial assistance to tenants relocating. The developers will also assist in finding new housing for tenants and offer discounts to those tenants desiring to purchase their units.

WASHINGTON

CURRENT STATE LAW. The state's Horizontal Property Regime Act regulates the sale and ownership of condominiums. The law is designed to protect the buyer, offering no provisions concerning the tenants.

Several communities have devised ordinances of their own, in the absence of state regulations.

EVERETT. The conversion ordinance that became effective April 18, 1979, is similar to the other Seattle-area ordinances discussed below.

KING COUNTY. The KING COUNTY ordinance, covering the unincorporated parts of the county, was passed April 16, 1979, and is slightly more complex than that of Seattle. It requires relocation assistance equal to 2 months' rent, but not less than $350.

LYNNWOOD. LYNNWOOD requires notice of conversion and right of first refusal.

MERCER ISLAND. The Seattle suburb of MERCER ISLAND has a similar ordinance, although without relocation assistance.

REDMOND. In REDMOND, where between 50 to 75% of apartments have been converted to condominiums, an ordinance was passed that requires 120 days' notice, first right of refusal, and protection of tenants from evictions.

SEATTLE. SEATTLE's tenant protection includes the first right to purchase, 120 days' notice, and $350 in relocation expenses if a tenant chooses not to buy. There must be a building code inspection and compliance and disclosures that include estimated useful life, repair costs, property report, budget, and monthly expenses.

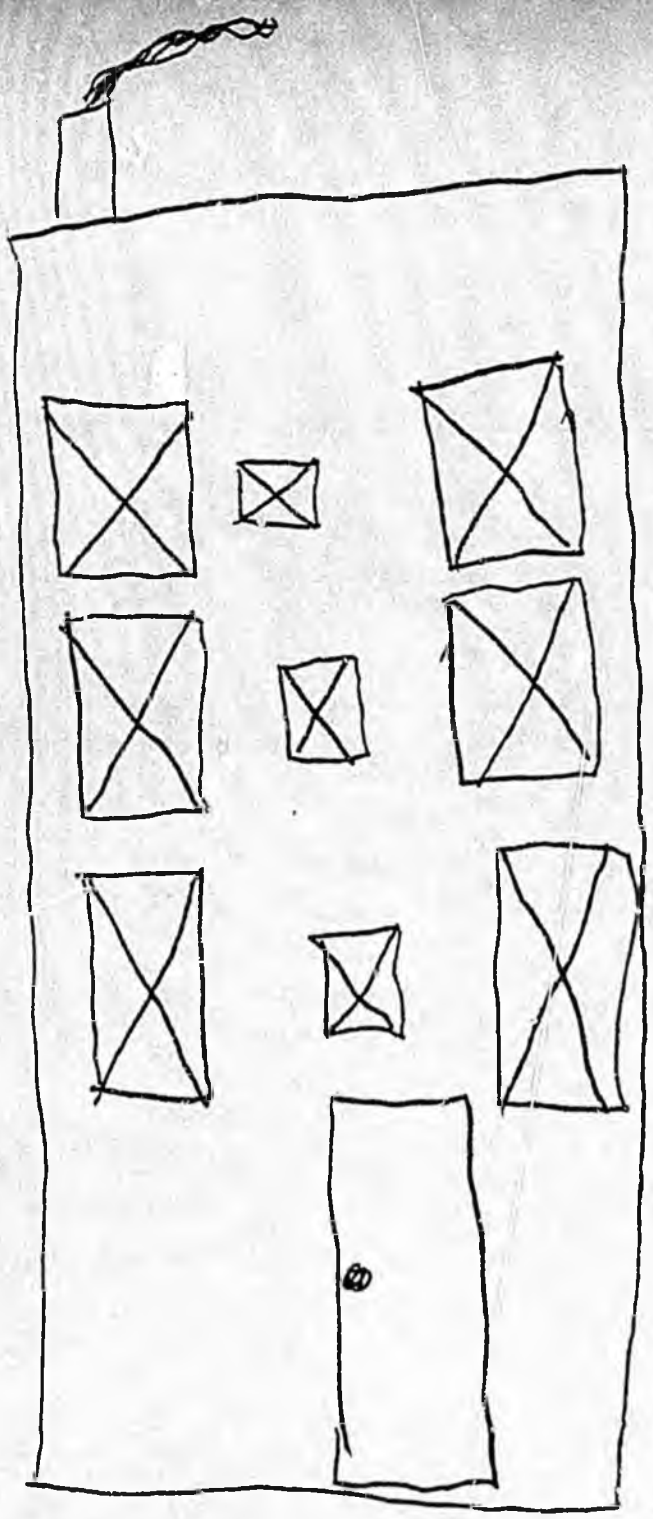
WEST VIRGINIA

The state legislature passed the Uniform Condominium Act in the 1980 session.

WISCONSIN

LEGISLATIVE UPDATE. Assembly Bill A.3, introduced into the state Legislature on January 8, 1981, which would permit counties and municipalities to adopt ordinances regulating the conversion of property to condominiums, was defeated in the Assembly by a 50-46 vote on May 14.

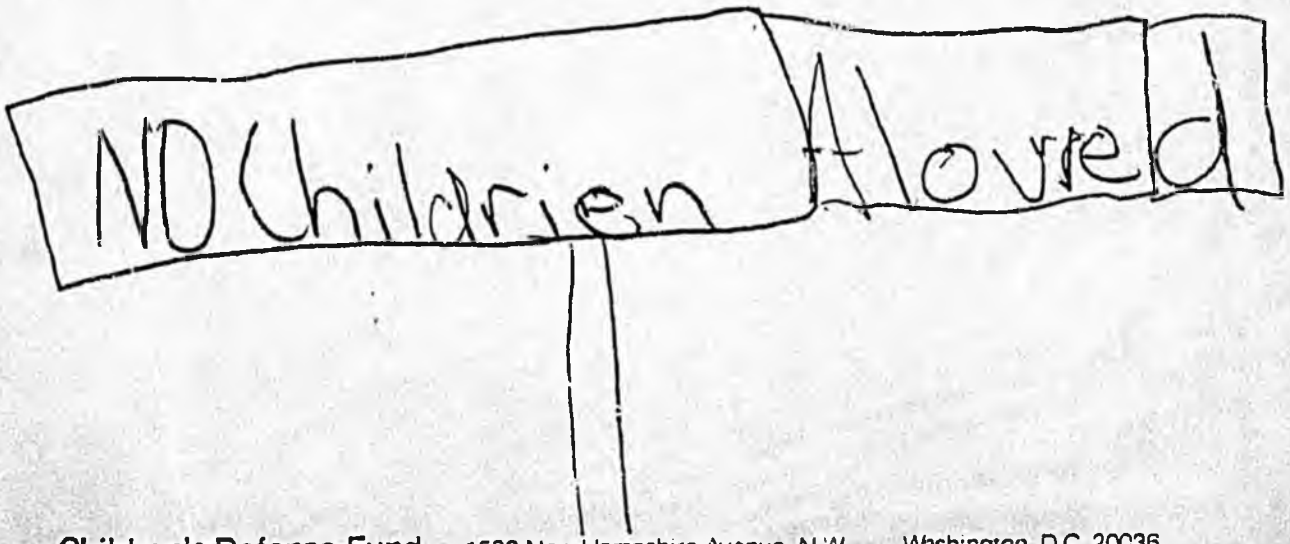
CURRENT STATE LAW. State law provides for a 120-day notice to vacate with exclusive option to purchase by the tenant within a 60 day period, and buyer protection in the form of disclosing an annual operating budget and certain legal documents to prospective purchasers.



A Brief Overview

Of Housing Discrimination

Against Families with Children



Children's Defense Fund 1520 New Hampshire Avenue, N.W. Washington, D.C. 20036

A BRIEF OVERVIEW OF

HOUSING DISCRIMINATION

AGAINST FAMILIES WITH CHILDREN

Children's Defense Fund
1520 New Hampshire Ave, N.W.
Washington, D.C. 20036

The Children's Defense Fund (CDF) is a national public charity created to provide a long-range and systematic voice on behalf of the nation's children. Through research, public education, technical assistance to state and local groups, community organizing, monitoring federal administrative and legislative policy and programs, and litigation, CDF seeks to change specific policies and practices resulting in the neglect or mistreatment of millions of children. Our goal is to place the needs of children and their families higher on the nation's public policy agenda.

CDF takes no government money and has no chapters. However, through our Children's Public Policy Network, we work closely with other state, local, and national groups, individuals, and parents. Those interested in participating in the network and receiving up-to-date information on a range of public policies affecting children should subscribe to our monthly newsletter, CDF Reports. The toll-free network number is (800) 424-9602.

CDF's focus is on institutional rather than individual neglect and abuse of children and on strengthening parents' roles in decisions of other institutions affecting their children. CDF's program areas are: child health and mental health, child welfare, child care and family support services, and education. In each area we have documented specific problems facing millions of children of all races and classes and tried to think through a range of specific strategies for alleviating those problems at the federal, state, and local levels and in the public and private sectors.

The increased involvement of individuals and groups on behalf of children throughout the nation is critically important. We hope each of you taking the time to read this booklet will:

- become more informed about the needs of children nationally and in your own area;
- talk to other parents, individuals, and groups in your community to gain strength from numbers to pursue local change for children;
- speak up to unresponsive policymakers and public officials who fail to protect children's interests well or provide them with needed services.

Over the past several years local groups formed to fight discrimination against children in housing have cropped up around the country -- in Los Angeles, Cincinnati,Dallas, Atlanta, and elsewhere.[1] Yet there is still very little public knowledge about the problem of housing discrimination against families with children. There are no available analyses of data on the numbers of inadequately housed children and little solid local information. Although the Department of Housing and Urban Development (HUD) annually collects data on the numbers of children indequately housed, the agency has not compiled and disseminated the information.[2]

Because of these factors and because we have seen the direct and indirect effects of scarce and inadequate housing on children in our four existing program areas,[3] CDF is sharing this brief overview with the goal of focusing more public and policymaker attention on the special and widespread discrimination faced by families with children. Through our child welfare work, for example, we have heard of children being

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[1]A list of groups is included on pages 21 & 22.

[2]The Annual Housing Survey is conducted by HUD and the Bureau of the Census. The information is based on samples of housing units. It includes questions on numbers of children by race, family income, public assistance, and family structure in housing characterized by tenure, cost, condition, and date of occupancy.

[3]These are: child welfare, child health, education, and child care and family support services.

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removed from their parents because of the inability to provide the basic essentials; housing is at the top of the list. Through our education program we have long fought against racially segregated schools. We know how residential segregation helps perpetuate segregated education. Now we are learning how housing policies that exclude children are used to help maintain racially segregated schools. We are also conducting a study of the unmet mental health needs of children and have heard about the stress suffered by families unable to find decent housing.

The Problem

- In Cincinnati a recently separated mother of a 17-month-old girl, expecting another child, was sent by the welfare department to a local housing group. Dependent now on Aid to Families with Dependent Children for her income, the mother had been unable to find housing for herself and her child. She was living with relatives who wanted her out. After several months of searching, the housing group has been unable to find her housing. She despairs at the thought of a second child without a home and considers giving her newborn up for adoption.
- In Los Angeles a young attorney and his wife have been evicted from their home of several years because they have a baby. Unable to afford a house, they seek suitable rental housing but are continually refused by landlords who do not accept families with children.

- John and his three brothers have been living for the past three years with their foster mother and her two children. Six months ago they were all evicted from their home. They have been staying with friends of their foster mother. John and his brothers fear they will be forced to leave their foster mother and return to their former child care institution because she cannot find housing for all of them.
- When Gary turned seven years old, the landlord told his mother to find another place to live because he was at a "troublesome" age.
- Belinda, her brother, and mother were evicted from their apartment in Cincinnati because the landlord sold the building. They moved in with their aunt and her two children because they couldn't find other housing in the city. Their aunt was evicted for allowing them to stay with the family. Now they all live with their grandmother. When Belinda's mother applies for housing, she is refused because there will be "no one at home to look after the kids while she is at work." Her aunt is considered inadequate because she is on welfare.
- JoAnn is blind. She attends a school in Dallas geared to her special educational needs. Her parents have three other children, of whom one other is blind. They were recently evicted from the house they rented for $300. Now her parents are frantic because they cannot find,

with their $14,000 yearly income, suitable housing near enough to JoAnn's school and are afraid she will have to leave it.

- Sara, 4 1/2, has five brothers and sisters. The oldest is 12. The children and their parents spent two-and-one-half months living on the Santa Monica Pier in their family station wagon because they couldn't find housing. After staying at a mission, in a one-bedroom apartment, and in an apartment which was frequently vandalized, the family found a two-bedroom house in a town which is a very long commute for Sara's father.

As more and more families are unable to buy housing, they must turn to the rental market. The crisis in the rental housing market has reached staggering proportions:

- About 26 million families -- 35 percent of all families - depend on rental housing.[4] The dramatic rise in selling price and home ownership costs is making an increasing number of families unable to afford home ownership. By 1976 mounting home ownership costs for a medium-priced new house were $465 monthly (mortgage, interest, insurance premiums, property taxes, utility costs, and repair and maintenance expenses).[5] National rental housing vacancy

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[4]U. S. General Accounting Office, Report to the Congress by the Comptroller General of the United States, CED-8011, "Rental Housing: A National Problem that Needs Immediate Attention" (Washington, D.C.: U. S. General Accounting Office, November 8, 1979) (hereinafter "GAO Report"), p. 1.

[5]GAO Report, p. 8.

rates during 1978 were about 5 percent and declined to 4.8 percent during the first quarter of 1979, rates HUD considers dangerously low.[6] The shortage of units affordable to large families was particularly acute; in some urban areas vacancy rates were estimated to be 2.8 percent.[7]

- While median rents have increased by an average of 9.6 percent annually from 1973 through 1977, renter income has only increased 5.6 percent annually.[8]
- About 11.9 million renters pay more than 25 percent of their income as rent; 7.4 million pay more than 35 percent. Of those paying more than 35 percent, 86 percent had annual incomes of less than $7,000.[9]
- Over 21 percent of black families lived in physically deficient units in 1976,[10] as did 20 percent of Hispanic families[11] and 12 percent of female-headed households.[12]

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[6]GAO Report, p. 5.

[7]GAO Report, p. 11.

[8]GAO Report, p. 6.

[9]GAO Report, p. 6.

[10]How Well Are We Housed?, HUD-PDR-333, "3. Blacks" (Washington, D.C.: U.S. Department of Housing and Urban Development, February 1979), p. 8.

[11]How Well Are We Housed?, HUD-PDR-333, "1. Hispanics" (Washington, D.C.: U.S. Department of Housing and Urban Development, September 1978), p. 8.

[12]How Well Are We Housed?, HUD-PDR-333, "2. Female-Headed Households" (Washington, D.C.: Department of Housing and Urban Development, December 1978), p. 8.

When children are present in families, tight rental housing markets become even tighter:

- A study of private rental units in Dallas, Texas completed by Jane Greene and Associates in December 1978 showed that 52 percent of the 432 apartment complexes surveyed refused to accept children, while 12 percent accepted children with specified restrictions.[13]
- In a 1979 study of 633 apartment complexes (total units, 48,235) in metropolitan Atlanta, 26.5 percent of total apartment units surveyed barred children; 25 percent of units accepted children with restrictions.[14]
- The California Fair Housing for Children Project found in a survey of six California cities that 70 percent of rental apartment buildings surveyed in Los Angeles, 50 percent in Fresno, 64 percent in San Diego, 67 percent in San Jose, and 12 percent in San Francisco had restrictions against children.[15]
- In Los Angeles, where the overall renter vacancy rate is 2.6 percent, the effective vacancy rate for families with children is less than eight-tenths of one percent. In

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[13]U.S. Department of Housing and Urban Development, unpublished contractor report: J G & Associates, "A Comparison of Vacancies and Rents on the Basis of Apartment Policies Regarding the Acceptance of Children," May 1979.

[14]U.S. Department of Housing and Urban Development, unpublished contractor report: Reid, Keating and Long, "Patterns of Discrimination Against Children in Rental Housing in the Metro-Atlanta Area," January 1979.

[15]U.S. Department of Housing and Urban Development, unpublished contractor report: The Fair Housing Project, 'The Extent and Effects of Discrimination Against Children in Rental Housing: A Study of Five California Cities," December 1979.

San Jose, where the renter vacancy rate is at a healthy level (5.4 percent), the effective vacancy rate for families with children is only 1.6 percent.[16]

Why the Housing Needs of Children Are Not Being Met

CDF's preliminary analysis shows multiple contributing factors:

- a decreasing and inadequate supply nationwide of housing for families with children;
- increasing numbers of families with inadequate incomes to purchase or rent suitable housing;
- increasing rent levels, causing more and more children to be housed in inadequate, overcrowded, and unsanitary dwellings;
- "no children" signs appearing on new rental units and units formerly occupied by children;
- powerful real estate lobbies arguing for "free choice" for renters and thwarting local advocacy groups' struggles to achieve and enforce prohibitions against "no children" policies;
- federal housing agencies failing to fulfill the oft-repeated congressional commitment to adequately house the nation's families and failing even to enforce their own regulations.

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[16]"The Extent and Effects of Discriminatio.. Against Children in Rental Housing."

These concerns are present in the private as well as the publicly owned and subsidized housing market. Some are discussed below.

A. The Landlord's "Right" to Exclude Children and the Market's Inability to House Children Adequately

Some landlords claim a right to exclude children, alleging that certain tenants do not want to have children around and that the market will respond to the housing needs of all. In fact, housing for families with children is not being produced. According to the Comptroller General:

> The proportion of multifamily rental construction starts which have been federally subsidized has increased steadily from 22 percent in 1972 to about 44 percent in 1978. HUD estimates that federally subsidized and/or insured units will account for about 75 percent of multifamily construction starts in 1979. If the current rental market conditions continue, there will be even greater reliance on Federal programs to deal with the rental housing market crisis, particularly as it relates to lower income households.[17]

Even when the government has stepped in to offer financial incentives for the development of family housing, private developers are reluctant to build or renovate housing for families with children. Federal housing programs disproportionately benefit the elderly, and much federally subsidized housing excludes children.

B. Unenforced and Ineffective Protections

Local, state, and federal prohibitions cover housing discrimination against families with children. Nine states have laws prohibiting housing discrimination against children,

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[17]GAO Report, p. 11.

and at least four cities have ordinances.[18] The enforcement record has been poor. Better enforcement of these provisions is important but will not alone cure the problems of low- and moderate-income families with children unable to afford available housing.

Similar problems exist in the public housing market. Federal laws prohibiting exclusion of families with children by landlords receiving federal mortgage assistance are unenforced.[19] HUD officials claim inadequate monitoring personnel. As a result, no enforcement or monitoring has been done to ensure that federal financial assistance does not go to those who discriminate against children.

C. An Unfulfilled National Commitment to Children

Despite congressional commitment since 1949 to provide decent housing for all families,[20] the housing needs of families with children have been neglected. Federally financed and subsidized housing has favored the elderly.[21] In 1977

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[18]State statutes exist in Arizona, Delaware, the District of Columbia, Illinois, Massachusetts, Minnesota, New Jersey, New York, and Wisconsin. Cities that have passed ordinances include San Francisco, Berkeley, Los Angeles, and Santa Monica, California.

[19]Rental Housing Insurance Program, 42 U.S.C. §1713, with implementing regulations in 24 CFR §§207.20(a)(1) and (2); 221.536(a); 236.65(a).

[20]Congressional Declaration of National Housing Policy, 42 U.S.C. §1441.

[21]We recognize and support the housing needs of the elderly. We simply believe there has to be a fairer balance in housing provisions for families with children.

the elderly constituted 32 percent of the low-income renter households but were (a) 45 percent of all families in publicly owned low-income housing, (b) 48 percent of all families certified for federal rental assistance payments under the Section 8 program of the National Housing Act, and (c) 51 percent of all families certified for occupation of newly constructed and substantially rehabilitated housing under Section 8. Although the federal Rental Housing Insurance program was "intended to facilitate particularly the production of rental accommodations, at reasonable rents, of design and size suitable for family living,"[22] in 1977 41 percent of all families certified for occupancy in federally insured rental housing were families with no minor children.[23]

D. Lack of Coordinated Planning for Housing Needs

When it comes to building or rehabilitating housing for families with children, everyone claims someone else is responsible. Real estate developers say it is not profitable to build or rehabilitate without some financial incentive. The federal government will supply the financial assistance but wants local communities to plan and choose appropriate housing priorities and sites. Local governments claim they

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[22]42 U.S.C. §1713.

[23]U.S. Department of Housing and Urban Development, 1977 Statistical Yearbook (Washington, D.C.: U.S. Government Printing Office, December 1978).

are unable to find any place to put housing for families or developers to build it.[24]

Federal law requires communities to assess their housing needs and to plan to meet them as a condition of receiving federal assistance.[25] In a Housing Assistance Plan (HAP), each community must assess the housing assistance needs of lower-income persons (families, large families, and the elderly), specify realistic goals for meeting these needs, and indicate locations of proposed housing to meet these goals.[26] The HAPs were seen by Congress as crucial to achieving a decent home for every family.[27] Congress recognized that federal housing programs for families would not be effective "without local governments providing adequate facilities and services and a healthy community environment for housing."[28] The coordinated assessment, planning, and performance, how-

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[24]For example, for years no publicly subsidized family housing was built in Cincinnati. Finally a citizens group demanded that provisions for family housing be put in the city's Housing Assistance Plan. The city agreed to set a construction goal of 410 new family units. Not one has been built. The city claims that there are no developers to build it; the developers claim there are no available sites for which zoning would allow construction.

[25]Housing and Community Development Act, 42 U.S.C. §§5301, et seq., as amended.

[26]42 U.S.C. §5304(c)(1).

[27]42 U.S.C. §5301(d) (3) & (4).

[28]As reported in House Committee on Banking and Currency, 93rd Congress, 1st Session, Housing and Urban Development Act of 1973, at 156 (Comm. Print 1973).

ever, has not occurred, and new housing construction continues to neglect children.[29]

E. Persistent Discrimination in Housing against Racial Minorities and Female-headed Households

Despite constitutional and statutory[30] guarantees against discrimination in housing, racial minorities and female-headed households still face extensive discrimination.[31] The forms of discrimination are becoming more subtle, but the effects of discriminatory practices are widely felt.

Several of the local studies of housing restrictions on children show a correlation between restrictions on children and racially segregated housing patterns. Limitations on the age of children and exlusion of children have been found in "white" areas of cities. The authors have suggested that the practices are designed to perpetuate, among other things,

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[29]To correct this, HUD issued new regulations in 1979 that required communities to propose housing assistance goals that will result in the provision of assistance in proportion to the assessed needs of three household types: the elderly, large families, and elderly individuals. In addition, communities that have met the goals or a substantial portion of its housing goals for the elderly but have not done so for families are required to meet goals for family housing before providing additional assistance to elderly households. (24 CFR §570.306 (c)(4)).

[30]Fair Housing Act, Title VIII of the 1968 Civil Rights Act, 42 U.S.C. 3601 et seq.

[31]U.S. Department of Housing and Urban Development, Office of Policy Development and Research, Measuring Racial Discrimination in American Housing Markets (Washington, D.C.: U.S. Department of Housing and Urban Development, April 1979); U.S. Department of Housing and Urban Development, Office of the Assistant Secretary for Fair Housing and Equal Opportunity, Women & Housing: A Report on Sex Discrimination in Five American Cities (Washington, D.C.: U.S. Government Printing Office, January 1976).

segregated school systems. The public association of public housing with black children and their families has often been cited as being responsible for community opposition to low-income multifamily housing.[32] Fair housing groups see restrictions on children as a new technique for keeping black and other minority families out.

What Needs to Be Done -- the National Network Agenda

In December 1979 groups from all over the country met in Washington, D.C. to share their ideas on how to confront the increasingly serious problem of discrimination against families with children. The groups included local fair housing organizations as well as national organizations concerned about the effect of the housing problem on children, women, and minorities throughout the country. The groups agreed upon the need to improve communication and coordinate their efforts and decided to form a National Network on Housing Discrimination against Families. To increase public awareness of the scope of the problem, the groups spurred HUD to conduct a nationwide study of the extent of housing discrimination against families with children. These studies showed that the problem was of serious nationwide proportions, present in suburban counties as well as urban centers, and causing personal tragedies for individual families.

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[32]See, for example, "The Scars of a SW Housing Struggle," The Washington Post (January 14, 1980), p. 1.

The national network aims to increase public awareness of this problem and its impact on families through extensive public education. You can help by joining the network. Write to: National Network on Housing Discrimination against Families, Children's Defense Fund, 1520 New Hampshire Avenue, N.W., Washington, D.C. 20036.

The network needs individuals to help with its public education campaign by distributing materials and keeping other participants informed of what is happening in their home town, city, county, or state. It also helps those seeking to take local action to combat the problem, as discussed next.

What You Can Do Locally

If you are concerned about the housing problems faced by families in your town, city, county, or state, there is much you can do.

1. Fair Housing Ordinances or Statutes

Only a few states, cities, and counties have laws prohibiting housing discrimination against families with children. Find out whether your state legislature, county commission, or city council has enacted such laws. If they have, get a copy and find out how the law is administered. Who is responsible for enforcement? What has been done to enforce it? How many complaints have been investigated? How many families have gotten homes as a result?

If your state or locale does not have a law, find out if any laws have been proposed by contacting the staff of your local state legislator or the clerk of your city council. If a law has been proposed but not enacted, you may wish to contact the state or local legislator who proposed the law and find out which groups are working for passage and what you can do to help.

If no such law is pending, you might find others concerned about the problem and collectively ask your local state legislator or city council to propose such a law.

2. Local Enforcement of Federal Fair Housing Laws

Federal law prohibits discrimination against families with children in housing with federally insured mortgages except where such housing is exclusively for the elderly. Yet many landlords receiving federal assistance discriminate against families. You can contact your local Housing Authority or regional HUD office (see list in appendix) to find out which landlords in your area are covered by this prohibition and help to inform families that these landlords are not allowed to discriminate against them. You can encourage families to contact HUD when they have been discriminated against even if they are not certain whether the landlord receives federal assistance.

Federal law also prohibits discrimination by private landlords against minorities and women. If a family believes that a "no children" policy is really a subterfuge for racial or sexual discrimination, they should file a complaint with

their local HUD office.

Fair housing laws do not create more housing, but they do help to ensure that existing housing is distributed more fairly. In order to attack the problem of the lack of desirable housing suitable for families, you may wish to try some of the other steps listed below.

3. Local "Housing Assistance Plans"

As recipients of federal funds under the Community Development Block Grant program, local governments are required to have a HAP -- a housing assistance plan. This plan is supposed to lay out the housing needs of the community and what steps are to be taken locally to meet those needs. For instance, it must show how many moderate- and low-income families reside or are expected to reside in the community, how large these families are, and whether they need rental or ownership property. The local government is to show how it will use available resources to meet these needs, including federal and state housing assistance, local zoning ordinances, and other community resources.

In the past many localities have failed to act in accord with their plan, thus ignoring the housing needs of the community, especially those of moderate- and low-income families with children.

Public participation in the planning process is mandated by law, and local groups throughout the country have used the

process to make local government more responsive to the housing needs of children.

Contact the clerk of your local government and ask for a copy of your community's HAP; find out when the next meeting will be to discuss the HAP. You can attend and raise the problem of inadequate housing for families with children.

4. Building Incentives

Some localities have used their zoning powers to encourage the development of more rental housing for families. For instance, some counties give zoning concessions or financial assistance to developers if they agree to create some housing for families and rent it at below market rates.

Community pressure, either through or independent of the HAP process, can move the local planning body to include such incentives.

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