ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

3076 SSA HB 1 (FILE 2) 8672

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for Appellant was mailed, postage prepaid, to Herman Miller, Esquire, Attorney for Appellee, 400 Fifth Street, N.W., Washington, D.C. 20001, on this 18th day of November, 1970.

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terest of vindicating statutory public policy. Some minor delay may be encurred in determining if plaintiff's motive was retaliatory; but as the Supreme Court has noted, "some delay, of course, is inherent in any fair-minded system of justice. . . . Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home." (*Pernell v. Southall Realty* (1974) 416 U.S. 363, 385, 94 S.Ct. 1723, 1734, 40 L.Ed.2d 198.) We therefore conclude that the defense presented in this case may be raised in an unlawful detainer proceeding.

[12] This conclusion is unaltered by the fact that in the present case the housing agreement between plaintiff and defendants specified that shelter was provided only for employees. To state that a landlord may evict a tenant who is not an employee adds little or nothing to the powers landlords already have. A landlord may normally evict a tenant for any reason or for no reason at all, but he may not evict for an improper reason; here, retaliation for the tenant's efforts to vindicate an important statutory right.[6]

The judgment is reversed.

WRIGHT, C. J., and McCOMB, TOBRINER, SULLIVAN, CLARK and RICHARDSON, JJ., concur.

[6] In addition to their valid claims based on the interest behind the federal act, defendants and amici curiae have raised a number of additional contentions in support of the second affirmative defense: (1) the use of the judicial system to effect eviction in this case constitutes state action abridging defendants' First Amendment right to litigate (see discussion in *Edwards v. Habib* (1968) supra, 130 U.S.App.D.C. 120, 397 F.2d 687, 699-700); (2) even if no state action is found, the purported evictions amount to an impermissible private infringement on defendants' right to petition the government, a right that emanates from the very creation of the Constitution (see *Id.* at pp. 690-699); (3) the eviction would violate the Unruh Act (Civ. Code, § 51), which could be arbitrarily discriminatory by a business establishment (see *In re Cox* (1970) 3 Cal.3d 205, 90 Cal.Rptr. 24, 474 P.2d 992); (4) plaintiff's actions not only tend to frustrate the purposes of the federal act, but are in direct violation of 7 U.S.C. § 2305, which prescribes discrimination against a person in retaliation for filing suit for just cause under the act. As defendants present for the reasons already stated, we need not decide the validity of these additional contentions.

Frank J. JAVOREK et al., Petitioners,
v.
The SUPERIOR COURT OF MONTEREY COUNTY, Respondent;

Jack Bradford LARSON, Sr., et al., Real Parties in Interest.

S. F. 23324.

Supreme Court of California.

Aug. 2, 1976.

Nonresident defendants in automobile accident case sought writ of mandate to quash service of summons for lack of jurisdiction. The Supreme Court, Sullivan, J., held that neither obligation of nonresident defendants' automobile liability insurer to indemnify the defendants nor its obligation to defend them was subject to attachment or garnishment so that those two obligations did not give rise to basis for establishing quasi in rem jurisdiction over the nonresident defendants; and that, since trial court had already determined that it lacked in personam jurisdiction over the nonresident defendants, defendants were entitled to have service of process quashed for lack of jurisdiction.

Writ of mandate issued.

Opinion, Cal.App., 122 Cal.Rptr. 18, vacated.

1. Appeal and Error ⇐⇒96
Mandamus ⇐⇒4(3)

Order discharging or refusing to discharge a writ of attachment is appealable and would not be reviewed on petition for writ of mandamus. West's Ann.Code Civ.Proc. §§ 904.1(e), 1086.

2. Courts ⇐⇒21

Theoretically and traditionally, exercise of "quasi in rem jurisdiction" depends entirely upon the presence of the property of the defendant in the forum; residence of the plaintiff is irrelevant; theory is that, because property is situated in the state, courts of the state have power over to determine the relative rights of the plaintiff and the defendant therein.

See publication Words and Phrases for other judicial constructions and definitions.

3. Garnishment ⇐⇒25

California law permits a garnishment of debts and other intangibles. West's Ann.Code Civ.Proc. § 543.

4. Garnishment ⇐⇒13

It is not necessary that garnishee have in his possession the actual money of the defendant; it is enough that he owe a debt to defendant; general test is whether the defendant has an enforceable claim against the garnishee. West's Ann.Code Civ.Proc. § 513.

5. Garnishment ⇐⇒42

For purposes of determining whether debt is too uncertain and continued to be subject to garnishment, distinction exists between situations in which the amount of liability is uncertain and those in which the fact of liability is uncertain, in the former situation the debt is not so contingent as to preclude garnishment whereas in the second situation it is too contingent to permit garnishment. West's Ann.Code Civ.Proc. §§ 517.1(r), 513.

6. Garnishment ⇐⇒42

Automobile insurer's obligation to indemnify insureds, who had not been held liable in court of law for any negligence in connection with the operation of their automobiles, was contingent upon more than just the determination of the amount of liability; it was in fact contingent upon the determination of the fact of liability and thus not subject to garnishment. West's Ann.Code Civ.Proc. §§ 537 et seq., 543.

7. Courts ⇐⇒21

There must be a determination of insured's liability before insurer's obligation to indemnify matures to the extent that it is subject to attachment for purposes of establishing quasi in rem jurisdiction over the nonresident insured; disapproving to the extent that it is inconsistent Turner v. Evers, 31 Cal.App.3d Supp. 11, 107 Cal.Rptr. 390.

8. Courts ⇐⇒21

Insurer's obligation to indemnify and defend nonresident insureds was so contingent and uncertain prior to any judgment being rendered against the nonresident insureds as to render the obligation not subject to garnishment in California so that it could not be used to establish quasi in rem jurisdiction over the nonresident insureds in action arising out of automobile accident. West's Ann.Code Civ.Proc. § 537 et seq.

9. Courts ⇐⇒21

Implied covenant of good faith and fair dealing in automobile policy did not make insurer's obligation to indemnify the insureds certain prior to the filing of suit and determination of insureds' liability so as to permit attachment of that obligation and use of that attachment to establish quasi in rem jurisdiction over the nonresident insureds. West's Ann.Code Civ.Proc. § 537 et seq.

10. Courts ⇐⇒21

Implied covenant of good faith and fair dealing in automobile policy could not be itself attached as basis for establishing quasi in rem jurisdiction over nonresident insureds.

11. Insurance ⇐⇒3142

Although insurer, in discharging its duty of good faith to the insured may on

dressee after he took delivery of package at post office and drove away in the vehicle in question was lawful and did not provide any basis for entrapment defense, and that forfeiture was not precluded on theory that the cocaine had ceased to be contraband when initially seized by the government or that government agents had failed to follow statute and regulations in failing to impound the unlawfully imported cocaine after initially finding it.

Affirmed.

FAIR LABOR STANDARDS: PUBLIC AGENCIES

Hamnette v. California Health and Welfare Agency
414 F.Supp. 312

Domestic workers employed to assist aged and disabled welfare recipients with basic daily chores brought action for wages, liquidated damages and declaratory relief against state and county agencies, seeking compliance with the minimum wage provisions of the Fair Labor Standards Act. On motions to dismiss for failure to state a claim on which relief could be granted, or for summary judgment, and on motion of one defendant for change of venue, the District Court, Oliver J. Carter, J., held that issues of fact precluding summary judgment existed as to who employed plaintiffs and whether they were within "companionship" exception of the Act, that defendants could be held as joint employers under the Act; that each defendant could be found to be an employer under the Act; that Congress did not exceed its power under the commerce clause in extending Act's coverage to domestic employees who work in households, that suit was not barred by [illegible] and that change of venue was not appropriate.

Motions denied.

CLASS ACTION

Lau v. Standard Oil Company of California 70 F.R.D. 526

Action was brought to recover for alleged discrimination in employment. Cross motions for determination of class action were filed. The District Court, Sweigert, J., held that suit would not be certified as class action since plaintiff failed to prosecute the action with reasonable diligence and, for such reason, would not fairly and adequately protect the class.

Defendant's motion granted; plaintiffs' cross motion denied.

VIETNAMESE CHILDREN

Nguyen Da Yen v. Kissinger
70 F.R.D. 456

Action was brought on behalf of three Vietnamese children in United States who allegedly had not been legally released for adoption and who had families desiring their return. The District Court, Spencer Williams, J., held, inter alia, that the action could not be maintained as a class action on behalf of all Vietnamese children in United States who had not been legally released for adoption and who had families desiring their return since the necessary prerequisites had not been met, but that there was federal question jurisdiction with respect to the suit on behalf of the three named plaintiffs.

Action dismissed as to absent members of class.

Order modified, 9 Cir., 528 F.2d 1194.

S. P. GINOCCHIO ASSOCIATION,
Plaintiff and Respondent,
v.
Nellie RODRIGUEZ et al., Defendants and Appellants.
L. A. 30585.

Supreme Court of California.
Aug. 10, 1978

Unlawful retainer proceeding was brought by farm labor contractor against farm workers who rented company-owned housing. The Municipal Court, Ventura County, Albert T. Blanford, J., entered judgment for contractor, and appeal was taken. The Superior Court, Appellate Department, Ventura County, affirmed the judgment. The Supreme Court, Mosk, J., held that it was not defense to unlawful detainer action that farm labor contractor sought possession of premises because farm worker tenants were on strike; but that defense that farm labor contractor instituted unlawful detainer action in retaliation against farm workers because of their filing of suit in federal court charging violation by contractor of the Farm Labor Contractor Registration Act was available.

Reversed.

Opinion, 126 Cal.Rptr. 868, vacated.

1. Labor Relations ⇐331

While right of employees to organize is expressly protected under the Labor Code, employers and unions alike are generally permitted to use any legitimate economic means at their disposal to achieve their ends, including replacement of striking employees. West's Ann.Labor Code, § 923; National Labor Relations Act, § 2(3) as amended 29 U.S.C.A. § 152(3).

2. Landlord and Tenant ⇐250(1)

Farm labor contractor had right to receive company-owned housing for non-striking farm workers; thus, defense that farm labor contractor sought possession of housing because farm workers who rented housing were on strike was not available in unlawful detainer action. West's Ann. Code Civ.Proc. § 1161.

3. Landlord and Tenant ⇐250(3, 8)

General rule is that because an unlawful detainer action is a summary proceeding designed to facilitate owners in obtaining possession of their real property, counterclaims, cross complaints and affirmative defenses are inadmissible. West's Ann. Code Civ.Proc. § 1161.

4. Landlord and Tenant ⇐275

A landlord may be precluded from evicting a tenant in retaliation for certain kinds of lawful activities of tenant.

5. Landlord and Tenant ⇐250(3)

In that a landlord has no right to possession when he seeks it for an invalid reason, a tenant may raise defense of retaliatory eviction in an unlawful detainer proceeding. West's Ann.Code Civ.Proc. § 1161.

6. Landlord and Tenant ⇐250(3)

In evaluating whether farm worker tenants raised valid defense of retaliatory eviction to unlawful detainer proceeding brought by farm labor contractor which leased company-owned housing to farm worker tenants, court would engage in balancing process and determine whether public policies furthered by protecting farm worker tenants from eviction outweighed interests in preserving summary nature of unlawful detainer proceeding. West's Ann.Code Civ.Proc. § 1161.

7. Courts ⇐489(1)

State court has concurrent jurisdiction to enforce a right created by federal law unless law excludes concurrent jurisdiction or is incompatible with such jurisdiction.

8. Courts ⇐489(8)

State court has concurrent jurisdiction to enforce rights created pursuant to the Farm Labor Contractor Registration Act. Farm Labor Contractor Registration Act of 1963, §§ 2 et seq., 15 as amended 7 U.S.C.A. §§ 2012 et seq., 2051.

8. Courts ⇐106(8)

Although the Farm Labor Contractor Registration Act prohibits discrimination against a worker who invokes the Act and prescribes remedies for such discrimination, state courts may impose their own sanctions. Farm Labor Contractor Registration Act of 1963, §§ 2 et seq., 15 as amended 7 U.S.C.A. §§ 2012 et seq., 2051.

18. Statutes ⇐184

Statutory public policy must be protected whether policy is enunciated by the legislature or by Congress.

11. Landlord and Tenant ⇐206(3)

Defense that farm labor contractor which leased company-owned housing to farm workers instituted unlawful detainer action in retaliation against farm workers because of their filing of suit in federal court charging violation by contractor of the Farm Labor Contractor Registration Act was available in unlawful detainer proceeding. West's Ann.Code Civ.Proc. § 1161; Farm Labor Contractor Registration Act of 1963, §§ 2(a), 12, 13 as amended 7 U.S.C.A. §§ 2011(a), 2050a, 2050b.

12. Landlord and Tenant ⇐276

A landlord may normally evict a tenant for any reason or for no reason at all but not evict for an improper reason such as retaliation for tenant's efforts to vindicate statutory right.

Stephen A. Harvey and Richard A. Weinstock for defendants and appellants.

David Lauter, Northridge, Cecily Nyonimkay, San Pedro, Richard A. Weiss, Long Beach, James Matteucci, Ceres, Richard Pearl, Delano, and Manuel Medeiros, Modesto, as amici curiae on behalf of defendants and appellants.

Hathaway, Clabaugh, Perrett & Webster and Paul D. Powers, Ventura, for plaintiff and respondent.

MOSK, Justice

At issue is the right of a corporate agricultural employer to evict farmworker tenants from company-owned housing in retaliation for their role in filing suit against the company under the federal Farm Labor Contractor Registration Act.

Defendants are lemon pickers who were employees of plaintiff, a farm labor contractor. Plaintiff, through affiliated companies, provides housing to many of its employees, including these defendants.

On February 25, 1975, defendants, members of a citrus pickers' association unaffiliated with any labor union, walked off their jobs in a dispute over implementation of a previous agreement with plaintiff. Three weeks later, defendants filed suit against plaintiff in federal district court, charging violation of the Farm Labor Contractor Registration Act. (7 U.S.C. § 2041 et seq.) Plaintiff immediately served defendants with eviction notices and, when defendants failed to leave the premises, filed unlawful detainer actions. (Code Civ.Proc., § 1161.)

In the consolidated unlawful detainer proceeding below, defendants sought to raise two affirmative defenses: (1) plaintiff was unlawfully seeking to evict them in retaliation for their strike; and (2) the evictions were in retaliation for the federal suit filed by defendants. The trial court granted plaintiff's motion to exclude evidence regarding both of the affirmative defenses, and entered judgment against defendants.

I

[1, 2] We dispose summarily of defendants' contention that the first affirmative defense should not have been excluded.[1] In the circumstances shown, it is no defense to an unlawful detainer action that plaintiff sought possession of the premises because defendants were on strike. While defendants have a right to strike, plaintiff may hire replacements and, as a corollary, may reserve company housing for those who are working.[2]

II

[3] The other proposed affirmative defense—that the unlawful detainer action was instituted in improper retaliation against defendants for filing the federal suit—presents a closer question. The starting point in evaluating the proposed defense is the general rule that because an unlawful detainer action is a summary proceeding designed to facilitate owners in obtaining possession of their real property, counterclaims, cross-complaints, and affirmative defenses are inadmissible. (*Union Oil Co. v. Chandler* (1970) 4 Cal.App.3d 716, 721, 84 Cal.Rptr. 756.)

However, several exceptions to this judicially created rule have been carved out, and tenants have been permitted to raise a number of defenses in unlawful detainer actions, ranging from promissory fraud (*id.* at pp. 727-729, 84 Cal.Rptr. 756) to a landlord's failure to maintain an apartment in tenantable condition (*Green v. Superior Court* (1974) 10 Cal.3d 616, 111 Cal.Rptr. 704, 517 P.2d 1168). Various attempts have been made to categorize the exceptions, culminating in the declaration of this court in *Green* that in an unlawful detainer proceeding a tenant may interpose a defense that relates directly to the issue of possession. (*Id.* at pp. 632-633, 111 Cal.Rptr. 704, 517 P.2d 1168.)

[4, 5] One such recognized defense is a plea that an unlawful detainer action amounts to a "retaliatory eviction." It is settled that a landlord may be precluded from evicting a tenant in retaliation for certain kinds of lawful activities of the tenant. As a landlord has no right to possession when he seeks it for such an invalid reason, a tenant may raise the defense of retaliatory eviction in an unlawful detainer proceeding. (*Schweiger v. Superior Court* (1970) 3 Cal.3d 507, 90 Cal.Rptr. 729, 476 P.2d 97; see also *Abstract Investment Co. v. Hutchinson* (1962) 204 Cal.App.2d 242, 22 Cal.Rptr. 309.)

[6] In evaluating whether defendants have raised a valid defense of retaliatory eviction, we must engage in a balancing process. We must determine whether the public policies furthered by protecting defendants from eviction outweigh the interests in preserving the summary nature of unlawful detainer proceedings. (*Union Oil*, supra, 4 Cal.App.3d at p. 726, 84 Cal.Rptr. 756.)

Defendants assert that to allow plaintiff to evict them in retaliation for filing suit under the federal Farm Labor Contractor Registration Act would frustrate the purposes of that act. An analysis of the history behind the measure lends support to defendants' contention. The act was enacted in 1963 in response to a Congressional finding that "the channels and instrumentalities of interstate commerce are being used by certain irresponsible contrac-

1. Defendants, in their petition for hearing before this court and in oral argument, have abandoned the first affirmative defense.

2. Until recently, the Legislature, except in a few limited areas, has maintained a strictly noninterventionist stance in labor relations. While the right of employees to organize is expressly protected under Labor Code section 923, employers and unions alike are generally permitted to use any legitimate economic means at their disposal to achieve their ends. (*Hagland v. Chavez* (1972) 6 Cal.3d 572, 581-585, 100 Cal.Rptr. 021, 500 P.2d 617; *Ford Chavez, Inc. v. Automotive Employees, etc., Local No. 88* (1940) 61 Cal.2d 159, 160, 2 Cal.Rptr. 470, 390 P.2d 704.) Thus, although the public policy behind section 923 prevents an employer from discharging his workers in retaliation for union organizing (*Gibson v. Chapman's Golden Gate Inn* (1961) 192 Cal.App.2d 205, 13 Cal.Rptr. 289), no California law prevents an employer from replacing striking employees. Even under the comprehensive administrative scheme embodied in the National Labor Relations Act—which expressly exempts farmworkers from its coverage (29 U.S.C. § 152(3))—an employer may lawfully replace workers who are striking for economic purposes. (*N. L. R. B. v. Hesher Aviation, Inc.* (8th Cir. 1965) 402 F.2d 170, 181.) The Agricultural Labor Relations Act (Lab.Code, § 1140 et seq.), patterned after the NLRA, was not yet in effect at the time the current dispute arose.

tors . . . who exploit . . . migrant agricultural laborers, and the public generally. . . ." (7 U.S.C. § 2011(a).) The statute requires farm labor contractors to disclose to each worker all relevant information about his prospective employment and to obtain a certificate from the Secretary of Labor. The secretary is empowered to refuse to renew a certificate if he finds, inter alia, that a contractor has given false information to workers or has failed to comply with his agreements. In the original version of the act, the only penalty for violation was a fine of $500.

But after a decade of experience with the law, testimony before Congress demonstrated that its original objectives had not been achieved. A report of the Senate Labor and Public Welfare Committee declared, "It has become clear that the provisions of the Act cannot be effectively enforced. Non-compliance by those who . . . activities the Act was intended to regulate has become the rule rather than the exception." (Sen. Rep. No. 93-1295, 1974 U.S. Code Cong. & Admin. News, at p. 6449, (hereinafter cited as Senate Report).) "It is quite evident," the report continued, "that the Act in its present form provides no real deterrent to violations." (*Id.*) Accordingly, the act was considerably strengthened by 1974 amendments, including a section providing for a private civil remedy (7 U.S.C. § 2050a) and another prohibiting discrimination against a worker in retaliation for filing suit under the act (7 U.S.C. § 2050b).

Thus, it appears that the federal act relies in large part on the initiation of private litigation for its effectiveness. If employer landlords are permitted to evict farmworker tenants from company-controlled housing in retaliation for such litigation, it can be anticipated that the enforcement of the federal act in this state may rapidly become constricted. Migrant workers, who often must rely on their employers for housing, will be understandably reluctant to risk losing possession of their homes by taking their landlords to court, regardless of how egregious the latter's violation of the federal law may be.

The injustice inherent in this not uncommon scenario has been increasingly recognized by courts in recent years. In the leading case of *Edwards v. Habib* (1968) 130 U.S.App.D.C. 126, 397 F.2d 687, the Federal Court of Appeals held that a landlord was not empowered to evict in retaliation for his tenant's reporting of housing code violations to the authorities. The court reasoned that the housing codes could not effectively be enforced unless tenants could report violations by landlords without fear of reprisals.

Edwards was followed by *Robinson v. Diamond Housing Corporation* (1972) 151 U.S.App.D.C. 17, 463 F.2d 853, in which a landlord brought a suit for possession against a tenant who, in a separate proceeding, had successfully invoked her right to refuse to pay rent on the ground that her apartment was uninhabitable. The court ruled in favor of the tenant, concluding that her right "would be shallow indeed if the landlord were free to penalize its exercise by eviction." (*Id.* at p. 861.)

In *Schweiger v. Superior Court* (1970) supra, 3 Cal.3d 507, 90 Cal.Rptr. 729, 476 P.2d 97, this court held that a landlord may not raise rent in retaliation for a tenant's exercise of his right under Civil Code section 1942 to make repairs and deduct their costs from his rent payments. We declared, "Whatever salutary legislative purpose induced the passage of section 1942, it cannot be achieved if tenants exercising the rights granted by the section may be punished with judicial approbation." (*Id.* at p. 513, 90 Cal.Rptr. at p. 732, 476 P.2d at 100.)

While the *Edwards-Schweiger* line of authority lends considerable support to defendants' position it is arguable that the present case is distinguishable in two respects. First, in each of the former cases a court sought to reconcile an unlawful detainer statute with another statute of the same jurisdiction, while here a state court is called upon to recognize policy underlying federal law. Plaintiff asserts that defendants are powerless to invoke the federal law in state court because exclusive jurisdiction to enforce the act rests in the federal courts and because the power to deal with an eviction in retaliation for invoking the act lies exclusively in the act itself.

[7-9] Plaintiff's contentions are both inaccurate and inapplicable to the present proceeding. It is well established that a state court has concurrent jurisdiction to enforce a right created by federal law unless the law excludes concurrent jurisdiction or is incompatible with such jurisdiction. (*Dowd Box Co. v. Courtney* (1962) 368 U.S. 502, 507-508, 82 S.Ct. 519, 7 L.Ed.2d 483; *Williams v. Horvath* (1976) 16 Cal.3d 834, 847, 129 Cal.Rptr. 453, 548 P.2d 1125; *McCarroll v. L. A. County etc. Carpenters* (1957) 49 Cal.2d 45, 59, 315 P.2d 322.) The federal act herein neither expressly nor impliedly excludes a state court from enforcing its provisions, and there is nothing inherent in the nature of the act, such as a comprehensive federal administrative scheme, which militates against concurrent jurisdiction. As for the provision of the act prohibiting discrimination against a worker who invokes the act and prescribing remedies for such discrimination, there is no indication that Congress intended state courts to refrain from imposing their own sanctions. To the contrary, section 2051 of the act provides, "This chapter and the provisions contained herein are intended to supplement State action and compliance with this chapter shall not excuse anyone from compliance with appropriate State law and regulation."

More relevantly, no state court in this proceeding is being called on to interpret or enforce federal law. All defendants ask is that state law be construed so as not to thwart the express purposes of a beneficial federal statute. The supremacy clause of the United States Constitution (U.S.Const., art. VI, cl. 2) commands no less, as was demonstrated by the Supreme Court in *Nash v. Florida Industrial Comm.* (1967) 389 U.S. 235, 88 S.Ct. 362, 19 L.Ed.2d 438. There a state unemployment compensation act had been applied to deny benefits to an employee solely because she filed an unfair labor practice charge with the National Labor Relations Board. The high court held the state act unconstitutional as applied, reasoning that its enforcement under the circumstances of the case tended to frustrate the purpose of the National Labor Relations Act: "Implementation of the Act is dependent upon the initiative of individual persons who must, as petitioner has done here, invoke its sanctions through filing an unfair labor practice charge. Congress has made it clear that it wishes all persons with information about such practices to be completely free from coercion against reporting them to the Board. This is shown by its adoption of § 8(a)(4) which makes it an unfair labor practice for an employer to discriminate against an employee because he has filed charges." (*Id.* at p. 238, 88 S.Ct. at p. 365.) The applicability of the foregoing rationale to this case is apparent. As in *Nash*, an attempt has allegedly been made to retaliate against persons under state law for seeking to invoke a remedial federal statute.[3] Also as in *Nash*, Congress has expressly declared that it desires to encourage persons to

3 It is significant that the remedy protected by the high court in *Nash* – filing an unfair labor practice charge – lies exclusively within the federal system, i. e., the National Labor Relations Board. (*San Diego Unions v. Garmon* (1959) 359 U.S. 236, 240, 79 S.Ct. 773, 3 L.Ed.2d 775.) But even though the state courts had no jurisdiction to entertain the employee's unfair labor practice charge, the Supreme Court held that the courts could not hinder the functioning of the NLRA by enforcing penalties against an employee for invoking the act. Similarly, in the present case, even if plaintiff were correct in asserting that the federal courts have exclusive jurisdiction over the [illegible] Labor Contractor Registration Act, state courts would still be charged with the duty of ensuring that [illegible] implementation of the act is not frustrated.

come forward with complaints charging violations of the federal act; not only do the 1974 amendments provide for a private civil remedy, but they also prohibit discrimination against a person in retaliation for filing suit under the act. Our duty to enforce the will of the state Legislature is equaled by our responsibility to insure that the intent of Congress is not ignored.

A second factor that arguably sets the present case apart from *Schweiger* and *Edwards* is that the statute which defendants claim they are being evicted for involving was enacted primarily to protect them as employees, not as tenants. It can readily be seen, however, that under these circumstances this is not a meaningful distinction. To begin with, the federal act recognizes housing as one of the major problems confronting a migrant farmworker. One of the motivating factors behind the act was the failure of many contractors to provide their workers with promised housing or to furnish them with sanitary residences. (Senate Report, supra, at p. 6142.) Accordingly, the act requires a contractor to disclose to prospective workers the housing to be provided to them, and, in the event a contractor controls the housing, he must post the terms and conditions of occupancy. As the framers of the act recognized, it is difficult to separate the role of employer from that of landlord and the role of farmworker from that of tenant.

Also, the holding of *Schweiger* cannot be limited to the narrow proposition that tenants are protected from retaliation only when they take action concerning the conditions of their tenancy. California case law has not been so restricted. In *Abstract Investment Co. v. Hutchinson* (1962) supra, 204 Cal.App.2d 24, 22 Cal.Rptr. 109, cited with approval in *Schweiger* and *Green*, a tenant contended that he was being evicted for racial reasons. Although such a complaint did not relate directly to the conditions of tenancy, the Court of Appeal held that a landlord may not permissibly invoke the power of a court to evict a person because of his color.

In a related area, a similarly broad conclusion was reached by the court in *Petermann v. International Brotherhood of Teamsters* (1959) 174 Cal.App.2d 184, 344 P.2d 25. There an employee was discharged after he refused to testify falsely before an assembly committee. Even though the statutes prohibiting perjury did not affect conditions of employment, the court reasoned that "in order to more fully effectuate the state's declared policy against perjury, the civil law, too, must deny the employer his generally unlimited right to discharge an employee whose employment is for an unspecified duration, when the reason for the dismissal is the employee's refusal to commit perjury." (*Id.* at p. 189, 344 P.2d at p. 27.)

[10] As we said in *Schweiger*, such cases "instruct us that one may not exercise normally unrestricted power if his reasons for its exercise contravene public policy." (*Schweiger*, supra, 3 Cal.3d at p. 516, 90 Cal.Rptr. at p. 731, 476 P.2d at p. 102.) At a minimum, *Schweiger* stands for the proposition that "the right not to be deprived in court of home and shelter because of the exercise of statutory rights is a 'broad equitable principle' as deserving of protection as the right to equal protection under the law." (*Id.* at p. 515, 90 Cal.Rptr. at p. 733, 476 P.2d at p. 101.) Statutory public policy must be protected, whether that policy is enunciated by the Legislature or by Congress. In a retaliatory eviction proceeding, the central question is not whether the statute is designed to aid tenants, but whether it depends for its effectiveness on private initiative and would thus be emasculated by allowing punitive eviction. In the present circumstances that question must be answered affirmatively. Unless it can be shown that the interests in preserving the summary nature of the unlawful detainer proceeding outweigh the interests in furthering congressional policy, defendants have raised a legitimate retaliatory eviction defense.[4]

In arguing that preserving the summary nature of unlawful detainer proceedings should control our determination, plaintiff relies exclusively on *Union Oil Co. v. Chandler* (1970) supra, 4 Cal.App.3d 716, 84 Cal.Rptr. 756, which involved an unlawful detainer action instituted by an oil company against a service station operator. In resisting that action, the lessee sought to demonstrate that the company was terminating the lease in retaliation for his refusal to accede to a gasoline price-fixing scheme that violated federal antitrust laws. The Court of Appeal held in favor of the company on this point, reasoning that, "When we weigh the complex and protracted nature of antitrust cases in the light of the adequate remedies and damages afforded an aggrieved party in such cases against the interest in preserving the summary nature of an unlawful detainer action, we believe the latter to be of paramount importance." (*Id.* at p. 726, 84 Cal.Rptr. at p. 763.)

But the present case differs from *Union Oil* in two major respects. The first is the burden that allowing an affirmative defense to be heard would place on the trial court. In *Union Oil* in order to decide whether the eviction was unlawfully retaliatory the trial court would have been compelled to undertake the weighty task of determining whether the company had in fact violated federal antitrust laws. In contrast, the trial court here has not been asked to construe federal law; its only duty is to determine whether plaintiff is seeking to evict defendants in retaliation for filing a suit under the federal act, a function that does not involve considering the merits of the prior suit and is thus no more burdensome than the task imposed on the courts in *Abstract Investment* and *Schweiger*.

Moreover, it must be remembered that *Union Oil* involved a commercial lease, while the present case concerns eviction from a residential dwelling. Like the lessee in *Union Oil*, defendants may file a separate suit to vindicate their business rights, but the existence of such an alternative provides small comfort to a residential tenant. As Justice Douglas puts it, "the home, even though it be in the slums, is where man's roots are. To put him into the street . . . deprives the tenant of a fundamental right without any real opportunity to defend. Then he loses the essence of the controversy, being given only empty promises that somehow, somewhere, someone may allow him to litigate the basic questions in the case." (*Lindsey v. Normet* (1972) 405 U.S. 56, 90, 92 S.Ct. 862, 882, 31 L.Ed.2d 36 (Douglas, J., dissenting).)

[11] In short, the present threat to the summary nature of unlawful detainer proceedings is no greater than that we faced in *Schweiger*, and, as in *Schweiger*, it must be balanced against the more important in-

4 Defendants do not invoke Civil Code section 1942.5, which prohibits retaliation against a lessee "because of the exercise by the lessee of his rights under this chapter or because of his complaint to an appropriate governmental agency as to tenantability of a dwelling . . . ." At least one commentator has maintained that under section 1942.5 which was enacted prior to *Schweiger* but went into effect after the opinion issued—a court may protect from retaliation only the tenant expressly specified in the statute. (Note, *Retaliatory Eviction in California: The Law Stares Blows the Door and Bounds Up the Windows* (1972) 46 So.Cal.L.Rev. 1184.) Another author has taken a contrary position, reasoning that section 1942.5 supplements, rather than precludes, the retaliatory eviction defense developed by the case law. (Note, *Retaliatory Eviction as a Defense to Unlawful Detainer—Alternative Approaches* (1971) 22 Hastings L.J. 1305.) We need not decide that issue because defendants herein rely on the policy behind a federal statute, rather than those underlying state law. Under the supremacy clause, a state statute cannot be applied to circumvent the will of Congress.

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-527-71

TROY HILLS VILLAGE, INC., a corporation of the State of New Jersey	:	Civil Action
Plaintiff-Appellant,	:	On Appeal from Order for Summary Judgment
vs.	:	of the Superior Court
BRUCE FISCHLER and BETH FISCHLER, his wife, and GEORGE F. KUGLER, JR., Attorney General of New Jersey,	:	of New Jersey, Law Division,
Defendants-Respondents.	:	Morris County
	:	Sat Below: Collins, J.C.C. T/A

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES — PAGES

STATUTES

Federal

State

ORDINANCES

OTHER SOURCES CITED

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For the past several years, judicial and legislative recognition of a critical housing shortage in New Jersey and the nation has produced judicial and statutory support for the doctrine of retaliatory eviction. The general acceptance of the prohibition against tenant reprisals makes the instant appeal challenging the constitutionality of N.J.S.A. 2A:42-10.10 et seq. surprising, for the questioned statute seems more constitutionally compelled than impermissible, as a protection of tenants' rights to freedom of speech and of assembly under the First and Fourteenth Amendments of the United States Constitution. Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968); Robinson v. Diamond Housing Corp., F.2d (D.C. Cir. 1972); Engler v. Capital Management Corp., 112 N.J. Super. 445 (Ch. 1970); E. & E. Newman, Inc. v. Hallock, 116 N.J. Super. 220 (App. 1971).

The disparity of bargaining power between landlord and tenant coupled with the short supply and overwhelming demand for adequate housing has created a need for an equalizing of positions to afford tenants greater leverage in enforcing their demands for better housing. Javins v. First National Realty Corp., 438 F.2d 1071 (D.C. Cir. 1970). New Jersey's Legislature and judiciary have responded to that need by consistently affirming the protections afforded tenants' activities in organizing and in reporting housing code violations by N.J.S.A. 2A:42-10.10 et seq. and its predecessor, N.J.S.A. 2A:170-92.1. Newman, supra;

Whaley, 107 N.J. Super. 89 (D.C. Hudson Cty. 1969); State v. Field, 107 N.J. Super. 107 (App. 1969).

Although landlords may chafe under legislative regulation of their retaliatory acts against tenants whom they may view as troublesome either for their membership and activities in tenants' organizations, or their reports of housing code violations to appropriate authorities, such regulation must be accepted as a reasonable exercise of the police power of the State. The attempt of a landlord to retain his favored economic status at the expense of his tenant must fall before the State's more compelling interest to promote the general health and welfare for the benefit of all its citizens. That interest cannot be served by restoring a less equitable relationship between landlord and tenant or by allowing the landlord a freer rein in intimidating his tenants, who may endure unhealthy, unsafe housing conditions in preference to no housing at all. Enforcement of remedial housing legislation will be made more difficult if landlords are no longer bound by the proscriptions of N.J.S.A. 2A:42-10.10 et seq., for tenants will be predictably reluctant to report housing code violations to appropriate enforcement agencies or to join tenant organizations in the face of a possible retaliatory eviction.

The following brief rebuts the appellant's constitutional challenge of N.J.S.A. 2A:42-10.10 et seq. and attempts to provide the Court with an overview of the status of the doctrine of retaliatory eviction throughout the United States.

The New Jersey "Landlord-Tenant--Reprisal Against Tenant Act"[1] is in tune with the many recent statutes, ordinances, regulations and cases which have begun to reform landlord-tenant law to conform to the needs of modern society. An increasing urbanization and an expanding population have multiplied the demand for city housing. More than 64 percent of America's 200 million citizens now live in metropolitan areas; an increase of 49 million city dwellers in twenty years.[2] Yet at the same time, the existing housing stock has dwindled at an alarming rate. Demolition for federal and federally assisted projects alone accounted for the destruction of 910,000 dwelling units during the same two decades, while the natural processes of deterioration, dilapidation and abandonment have eliminated hundreds of thousands more. The shortage of decent housing has become a national crisis. Almost 8 million American families--one in every eight--cannot now afford to pay the market price for standard housing.[4] Exacerbating the housing problem has been the urban migration which has ripped families free from the well-defined social relations of smaller communities and thrust them wholesale into isolated, multi-storied and multi-unit apartment houses.[5]

The natural consequence of these trends has been the development of an overwhelming disparity in bargaining power between landlords and tenants. As the Court noted in Javins v. First National Realty Corp. 438 F.2d 1071, 1079 (D.C. Cir. 1970):

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[1]N.J.S.A. 2A:42-10.10.

[2]Report of the President's Comm. on Urban Housing, A Decent Home, 1968, p.40.

[3]National Commission on Urban Problems, Building the American City, H.R. Doc. No. 91-34, 91st Cong., 1st Sess. (1968), p.82.

[4]Report, Op. Cit., p. 7.

[5]National Comm., Op. Cit., pp.2-5.

> mented. Tenants have very little leverage to enforce demands for better housing.... The increasingly severe shortage of adequate housing further increases the landlords' bargaining power and escalates the need for maintaining and improving the existing stock.

Responding to these problems, government at all levels, and by legislative as well as judicial action, has begun to alter the landlord-tenant relationship to reinstate the natural and desired balance of interests. As the law is coming to recognize, the relationship between landlord and tenant is an unusually sensitive one in which the leased premises is seen by the landlord as his property and by the tenant as his home.

The old common law doctrines designed for another era have been found insufficient to meet the new needs of the urban society. Thus, legislatures and courts have started to readjust a proper balance by adopting doctrines of retaliatory eviction, warranty of habitability, as well as rent control, receivership, repair and deduct schemes, and protections for tenants' right to organize. But the linchpin of these developments is the retaliatory eviction defense. Without it, all the other enactments are meaningless paper reforms which can be undermined by the whim of the landlord--by his uncontrolled discretion to evict tenants.

Thus, it is not surprising to find that New Jersey is not the first state to adopt a retaliatory eviction statute. Indeed, thirteen other states, California[1], Connecticut[2], Delaware[3], Hawaii[4], Illinois,[5] Maine[6], Maryland,[7] Massachusetts[8], Michigan[9], Minnesota[10], New York[11], Pennsylvania[12], Rhode Island[13] have already prohibited landlord reprisal

[1]Calif. C.C. §1942.5 (Supp.1971).
[2]Conn. Gen. St. Ann. §42-540a (Supp. 1969).
[3]Del. Ch. 25 §5917(Supp. 1971).
[4]Haw. Ch. 666 §43 (Supp. 1971).
[5]Ill. Rev. St. Ch. 80 §71 (Supp. 1971).

Nor are legislatures alone in upholding tenants' rights against retaliatory evictions. The courts of New Jersey have repeatedly validated such limitations on the landlord's power, particularly in cases involving tenant organizing. Alexander Hamilton Savings & Loan Assn. v. Whaley, 107 N.J. Super. 89; 257 A.2d 7 (1969); Engler v. Capital Manag't Corp., 112 N.J. Super. 445, 271 A.2d 615 (1970); E. & E. Newman, Inc. v. Hallock, 116 N.J. Super. 220, 281 A.2d 544 (1971); see also Silberg v. Lipscomb, 117 N.J. Super. 491, 285 A.2d 86 (1971). State and Federal Courts in California,[3] Florida,[4] Massachusetts,[5] New York,[6] Wisconsin,[7] and the District of Columbia[8] are in accord.

Cont.

6 Me. Rev. St. Title 14 §6001, 6002.

7 Md. Ch. 687 §9-10 (Supp. 1971)

8 Mass. Gen. Laws Ann. Ch.186 §18 (Supp. 1970).

9 Mich. Comp. Laws Ann. Ch. 600 §5646 (Am'd p.s. 1969).

10 Minn. Stat. Ch. 240 §566.03 (Supp. 1971)

11 N.Y. Uncon'd Laws §8609, §8590 (Supp. 1971).

12 Purdons, Pa. St. Am. Ch. 35 §1700-1 (Supp. 1971)

13 R.I. Gen. Laws Ann. §34-20-10 (1968)

1 Seattle Muni. Code 27.40.010

2 D.C. Code §2910. D.C. Ordinance specifically protects tenant organizing.

3 Aweeka v. Bonds, 20 Cal.App.3d 278, 97 Cal.Rptr. 650 (1971); Schweiger v. Bonds, 3 Cal.App.3d 507, 90 Cal.Rptr. 729 (1970).

4 Bowles v. Blue Lake Dev't Corp. (S.D. Fla. 1971) C.C.H. Pov. L. Rptr. ¶12,920

5 McQueen v. Druker, 317 F. Supp. 1122 (D.Mass. 1970)

6 Hosey v. Club Van Cortlandt, 299 F. Supp. 501 (S.D.N.Y. 1969).

of Home Builders Fair Practices Code:

> The occupant shall be given the right to renew the lease for an additional term, or continue in occupancy, unless he has been destructive of the building or has violated substantial obligations of the lease or occupancy, including chronic late payments, or if the Owner has had to resort to summary or legal proceedings on more than one occasion to collect rent. 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 atleast two months in advance. Retaliatory action shall not be used as a basis for denial of lease or continued occupancy. (National Association of Home Builders, "Fair Practices Code Gets Committee Backing," Scope, Volume 9 No. 42 October 22, 1971.

The NAHB has recognized that prohibition of retaliation is not only morally justified, but also is compelled by strong economic factors. The preamble to The Fair Practices Code states:

> Conscious of our responsibility to provide the American people with an adequate supply of decent rental housing within our system of economy which recognizes the necessity for a fair return on capital value to insure high standards of maintenance of our buildings, as well as to encourage construction of new apartments,
>
> And, at the same time, understanding the basic position our industry must take to help limit inflation, which threatens to engulf us,
>
> We, the builders, owners and managers of rental housing, voluntarily pledge to abide by the following Code of Fair Practices for Tenants in Occupancy:

Thus, the New Jersey statute here under attack, while certainly commendable, can hardly be deemed a startling innovation. Rather it is one of a common series of responses which increasing numbers of state legislatures and courts are adopting to deal with the urgent

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Cont.

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

Edwards v. Habib, 397 F.2d 687 (D.C.Cir. 1968); Robinson v. Diamond Housing Corp., _____ F.2d _____ (D.C. Cir. 1972)

RETALIATION IS CONSTITUTIONALLY PROSCRIBED

Protection against retaliatory evictions is essential to preservation of the tenant's interest in the enjoyment of his home and to the vindication of his other constitutional and statutory rights. Indeed, so fundamental is the objection to landlord reprisals that several courts have held that the First and Fourteenth Amendments of the United States Constitution compel the recognition of retaliation as a defense to an eviction action. In Hosey v. Club Van Cortlandt, 299 F. Supp. 501, 506 (S.D.N.Y. 1969), the court found that a retaliatory eviction defense was constitutionally required, stating:

> A retaliatory eviction would be judicial enforcement of private discrimination; it would require the application of a rule of law that would penalize a person for the exercise of his constitutional rights.
>
> Permitting retaliatory evictions would thus inhibit [the tenant] in the exercise of his constitutional rights or in the words of the Supreme Court have a 'chilling effect.'

McQueen v. Druker, 317 F. Supp. 1122 (D.Mass. 1970) specifically held that a tenant's right to organize was protected against landlord action under the First and Fourteenth Amendments. Under the principles enunciated in Hosey and McQueen this court should find that the Landlord-Tenant Reprisal Statute is not only constitutionally permissible, but indeed constitutionally compelled.

However, this court need not go so far to uphold the New Jersey act, for it is eminently clear that the rights protected by the law are of constitutional magnitude, requiring every possible interpretation in favor of the statute. In Edwards v. Habib, 397 F.2d 687, 690 (D.C.Cir. 1968) the court declined to reach the constitutional issue but read the retaliatory eviction defense into a housing

statutory construction." As the same court later explained in Robinson v. Diamond Housing Corp., _____ F.2d _____, _____; slip opinion, p. 15 (D.C. Cir. 1972):

> The widespread adoption of the [retaliatory eviction] rule by both courts and legislatures 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--a ground for decision suggested, but not relied upon, by the Edwards court itself.

The constitutional nature of the rights protected by the Landlord-Tenant Reprisal Statute should lead this court to make all inferences required to sustain the statute.

THE LANDLORD-TENANT REPRISAL ACT IS NOT UNCONSTITUTIONALLY VAGUE

The New Jersey retaliatory eviction statute here under attack is neither so vague nor so ambiguous as to violate due process. No unreasonable ambiguity is introduced into the law by its failure to further define the terms "lawful organization" and "substantial alteration;" nor does the act's failure to set a termination date for the rebuttable presumption of reprisal render the statute constitutionally suspect.

In assessing the Landlord-Tenant Reprisal Statute against the standards of due process, it is well to remember that:

> . . .few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently, no more than a reasonable degree of certainty can be demanded. Nor is it unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line. (Boyce Motor Lines v. United States, 342 U.S. 337, 340 (1952); cited in Papachristou v. City of Jacksonville, ____U.S. ____, 92 S.Ct. 839, 843 (1972).

A. Lawful Organization

Appellant's argument that the term "lawful organization" is vague must be rejected. Not only is the meaning of the term reasonably certain, but Appellant lacks standing to attack the act on this ground since he falls well within the term's defined perimeters.

Nor is the New Jersey statute unusually broad in this respect. Rhode Island, for example, has by statute proscribed landlord retaliation for "any other justified lawful act."[1] Such prohibitions do not overly burden landlords. While they may not evict tenants solely for exercising their First Amendment rights, landlords still retain the power to evict tenants who disturb the quiet enjoyment of other tenants or who damage the property.

Whether "any lawful organization" is interpreted to mean any lawful tenant organization, or construed to include all organizations not prohibited by law, the phrase is not unreasonably vague or ambiguous.

B. Substantial Alteration.

Once again Appellant strangely pleads another's case. Whatever ambiguity may be contained in the words "substantial alteration" surely does not prejudice Appellant in this case. Appellant's refusal to renew Appellee's lease, and his attempt, by this lawsuit, to evict Appellees, unquestionably constitute a "substantial alteration" of the terms of Appellees' tenancy. The statute specifically states: "Substantial alteration shall include the refusal to renew a lease or continue a tenancy of the tenant without cause." (Sec. 1(d)). Where a litigant 's activities fall squarely within the terms of a statute, he may not challenge it because in some other case it might be ambiguous. (Note, supra, 109 U.Pa.L.Rev. 66, 101.)

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[1] R.I. Gen. Laws Ann. §34-20-10 (C).

Appellant's argument that the relief granted by the trial court did not impose a sufficient burden upon him is even further from the mark. If anyone were injured by the lower court's failure to require Appellant to renew the two year lease, it was Appellee, not Appellant. Furthermore, the words "substantial alteration" are used in the statute to judge the conduct of the landlord, not to restrict the court in fashioning an appropriate remedy. The act in no way limits the courts' discretion to suit the relief granted to the severity of the landlord's violation:

> A landlord shall be subject to a civil action by the tenant for damages and other appropriate relief, including injunctive and other equitable remedies, as may be determined by a court of competent jurisdiction in every case in which the landlord has violated the provisions of this section.[1]

C. Time Limit for Presumption

Appellant's argument that the Landlord-Tenant Reprisal Statute must set a specific time limit after which the presumption of retaliation ceases is similarly without merit.

First, the lack of a time limit creates no ambiguity in the act. The absence of a time limit is as clear as the presence of a time limit.

Second, by objecting to the lack of a time limit, Appellant demonstrates his failure to see the purpose of the statute. The statute

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[1] N.J.S.A. 2A:42-10.10. See also the Pennsylvania Supreme Court considering the constitutionality of the Pennsylvania Rent Withholding Act. DePaul v. Kaufman 441 Pa. 386, 272 A2d 500, 505 (1971). The court upheld the statute finding that it did not require renewing of the lease, an act which might be disproportionate to the landlord's original motive for eviction.

is directed toward the motive of the landlord which may or may not change over time. Nothing in the act prevents the landlord from evicting tenants the very day after a complaint has been registered with a public authority, if the eviction is not an act of reprisal. Nor does the statute permit the landlord to evict a tenant four years after the filing of such a complaint if the eviction is for a retaliatory purpose.

Third, the New Jersey act cannot possibly be construed as creating a "perpetual tenancy." The most the law does is to create a rebuttable presumption of reprisal in certain narrowly defined circumstances. Even when the presumption operates, all the landlord need do is convince the court that his actions were not motivated by a retaliatory purpose. In considering whether the landlord has dispelled the presumption, courts will naturally consider the lapse of time after the act said to be the cause of retaliation, the landlord's knowledge of the act, or lack thereof, and all the other relevant circumstances of the case.

Finally, it is not a valid objection that the statute requires the landlord to show cause to evict after certain enumerated suspect acts have occurred. As the Marcus Brown[1] case, discussed below clearly demonstrates, it is well within the power of the New Jersey legislature to provide that no landlord may evict any tenant without establishing just cause--or even more narrowly defined causes--for such action. Just cause to evict is not a new notion in the law. Since

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[1] Marcus Brown Holding Co. v. Feldman, 256 U.S. 170 (1921). See page 21 of this Brief.

the Middle Ages innkeepers have been required to have just cause before they can evict guests. (Beale, Boston, W.J. Nagel, The Law of Inn Keepers and Hotels, Ch. IX, pp. 70-74 (1906). As at the time of the Marcus Brown case, New York rent control legislation still prohibits evictions without just cause.[2] Recently, California has forbidden eviction of tenants from mobilehome parks without cause.[3] The Supreme Court upheld similar requirements in relation to public housing. (Thorpe v. Housing Authority, 386 U.S. 670 (1966). The New Jersey legislation pales by comparison with these laws which have been validated repeatedly by the Supreme Court. The Landlord-Tenant Reprisal Statute is a laudable step in the direction of a "just cause to evict" provision; it remains far from the precipice of unconstitutionality.

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[2]Emergency Housing Rent Control Law, N.Y. Uncons'd. Title 23, Ch.3, §51 (Supp. 1971).

[3]C.C. §789.5.

THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT DOES NOT FREEZE LANDLORD-TENANT LAW AS IT STOOD IN 1800: NOR DOES IT GRANT A LANDLORD AN UNRESTRICTED RIGHT TO EVICT HOLDOVER TENANTS

At pages 34-36 of his Opening Brief, Appellant argues, albeit somewhat incoherently, that New Jersey's Landlord-Tenant Reprisal Statute violates the due process clause of the Fourteenth Amendment because it abrogates rights formerly held by landlords under the common law and under the dispossess statutes of New Jersey and interferes with their "right to free enterprise."

This argument attempts to revive the long-buried notion of substantive due process.

> The Court beginning at least as early as 1934. . .has steadily rejected the due process philosophy enunciated in the Adair-Coppage line of cases. In doing so it has consciously returned closer and closer to the earlier constitutional principle that states have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law. [Citations] Under this constitutional doctrine the due process clause is no longer so broadly construed that the Congress and state legislatures are put in a strait jacket when they attempt to suppress business and industrial conditions which they regard as offensive to the public welfare. [Para.] Appellants now ask us to return, at least in part, to the due process philosophy which has been deliberately discarded. (Lincoln Federal Labor Un. v. NorthWestern L & M Co., 335 U.S. 525, 536-537 (1949)).

To argue, as Appellant does, that common law rules cannot be changed by state legislatures is to ignore half a century of constitutional litigation. "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industry conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought. [Citations]" (Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 488(1955)). Indeed, as Judge J. Skelly Wright has written, "The Courts [and we would add the legislatures] have a duty to reappraise old doctrines in the light of the facts and values of contemporary life...." (Javins v. First National Realty Corp., 438 F.2d 1071, 1074 (D.C. Cir. 1970)).

The New Jersey Legislature has seen fit to regulate the landlord-tenant relationship--to alter the imbalance resulting from application of outmoded common law rules to urban reality. Even were the legislature's act unwise, as Plaintiff-Appellant appears to argue, the due process clause of the Fourteenth Amendment poses no barrier to effectuation of its will.

As Justice Holmes aptly stated in Lochner v. New York, 198 U.S. 45 (Holmes, dissenting) (1905):

> [A] Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of laissez faire. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar, or novel, and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States. (Id. at pp. 75-76).

* * *

The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics. (Id. at p. 75).

Moreover, far from being a dangerous move likely to cause violence and decay of a free and pluralist society as Plaintiff-Appellant suggests, the New Jersey Landlord-Tenant Reprisal Statute is a forward-looking response to the very serious problems of urban housing As discussed in Part I of this Brief, New Jersey has joined an ever-growing phalanx of states in restricting landlords' powers to evict tenants for exercising their statutory and constitutional rights. Due process does not stand athwart the road to progress.

THE NINTH AMENDMENT DOES NOT BAR REGULATION OF LANDLORD REPRISALS

Realizing, perhaps, the weakness of his substantive due process argument, Appellant seeks to achieve the same result by investing the Ninth Amendment with a purported guarantee of the "right to free enterprise." Raising laissez faire economics to the level of "natural and inalienable retained rights . . . endowed on the individual by his Creator" (Appellant's Opening Brief, p. 27), Plaintiff-Appellant asserts that "the right to manage one's business affairs in such a manner as to earn a profit for his investment is 'older than the Bill of Rights - - older than our political parties, older than our school system.' [Citation.]" (Id. at p. 30).

Aside from being factually incorrect, Appellant's argument bucks the overwhelming trends of the past century and attempts to saddle the Ninth Amendment with a burden it has never been thought sturdy enough to hold. As a simple factual matter never in the history of this nation have businessmen been totally free to manage their own affairs.[1] The laissez faire theory which Appellant asserts is older than time is in actuality a relatively new development. From the colonization of America through the 18th century and well into the 19th, the prevailing economic doctrine was one of mercantilism. Only with the rise of capitalism and the machine age in the 1840's and 1850's did the notion of a "right to manage one's business affairs" fully develop.[2]

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[1] First Inaugural Address of Thomas Jefferson, in the Inaugural Addres of the Presidents, compiled and edited by Renzo D. Bowers, St. Louis, Thomas Law Book Co., 1929, pp. 50-55, and particularly p. 53.

[2] Sidney Fine, Laissez Faire and the General Welfare State, University Michigan Press, Ann Arbor, 1956, especially Chs. I, IV, V.

developing, it was quick in succumbing to the realities and necessities of the modern, complex society which has arisen in the twentieth century. From 1900 to the present day there has been an increasing trend toward regulation of all businesses to promote the common good.[1] Most recently this trend has begun to affect the nature of landlord-tenant affairs. Rent receivership, rent escrow and rent abatement schemes have blossomed in nine states.[2] Security deposits have been brought within the scope of regulation in eleven states.[3] Rent control has been enacted repeatedly at federal (Economic Stabilization Act of 1970 as amended in 1971) and local levels (The Emergency Housing Rent Control Law, N.Y. Uncons'd., Title 23 (Supp. 1971)). And, as discussed above, at least 14 states now prohibit retaliatory evictions. Even the National Association of Home Builders agrees that some regulation of landlords' powers is essential to preservation of the common

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1 Thomas C. Cochran and William Miller, The Age of Enterprise, MacMil. Co., New York, 1949, especially Chs.IX-XII.

2 (See Keating and Heskin, Rent Withholding, Recent Legislative Develments, 5 Clearinghouse Review 728 (1972)); Conn.Gen.Stat. §19-347(a)-(r) Ill.Ann.Stat. Ch. 23 §§11-23; Ind.Ann.Stat. §48-6144; Mass.Gen.Laws Ann. §§ Ch. 239 §8A and Ch. Ill §127 C-K; Mich.Comp.Laws Ann. §§125.530-536; Mo.Ann.Stat. §§441.570, et.seq.; N.Y. Real Prop. Actions Law §755 and §§769-782 and N.Y. Mult.Dwell. Law §302 and §309; Pa.Stat.Ann. Title 35 §1700-1; R.I.Gen. Laws Ann. §§45-24.2-11 and 45-24.3-19.

3 (See Keating and Heskin, State Security Deposit Legislation, National Housing and Economic Development Law Project Bulletin, Vol.II, Issue 3 (1972), pp.7-8); West, Cal.Civ.Code §1950; Colo.Rev.Stat.Ann. Ch. 5 §§1-26-28; Del. Code Ann., Title 25 Ch. 51 §5912; Fla.Stat.Ann. Civil Practice and Procedure Ch. 83 §83.261; Ill.Stat.Ann. Ch. 74 §§91-93; Md.Ann.Code Art. 53 §§41-43; Mass.Gen.Laws Ann. Ch. 186 §15B; Minn.Stat. Ch. 504.19; N.J. Rev.Stat. §2A:46-8; N.Y. Gen. Obligation Laws §§7-103 and 7-105; Pa.Stat.Ann. Title 68 §250.512.

good. In the teeth of this onslaught of history, Appellant raises the slim reed of the Ninth Amendment, expecting that it will miraculously preserve the unrestricted power of landlords when it has failed to prevent regulation of every other variety of business in the United States.

Needless to say, the Ninth Amendment was not intended, and has never been thought, to protect "the right to free enterprise." The cases cited by Appellant, themselves, demonstrate that the Ninth Amendment has been thought to protect only the most basic personal rights--the right to marital privacy,[1] the right to use one's own body,[2] the right to engage in political activities.[3] By contrast, courts have uniformly rejected assertions that the Ninth Amendment protects rights of businesses.[4]

It is simply ludicrous to maintain, as Appellant does, that "the right to free enterprise" is "[s]imilar to the right to marital privacy." (Appellant's Opening Brief, p. 30). Mammon has not yet been elevated to such a position in the American pantheon.

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[1] Griswold v. State of Connecticut, 381 U.S. 481 (1965); Loving v. Virginia, 388 U.S. 1 (1967).

[2] People v. Belous, 80 Cal. Rptr. 354, 458 P.2d 194 (1969); Reichenbe v. Nelson, 310 F. Supp. 248 (D. Nebraska 1970).

[3] United Public Workers v. Mitchell, 330 U.S. 75 (1947).

[4] Commonwealth and South Corp. v. Securities and Exchange Commission, 34 F. Supp. 747 (C.C.A. 3d 1943), right of public utilities to control their common stock can be regulated; U.S. v. Painters Local Union No. 481 79 F. Supp. 516 (D.Conn. 1948), right of people to keep control of government by free elections can be controlled; Br[illegible]n v. N.J., 175 U.S. 172 (1899), state control through "struck jury" does not violate right to trial by jury; Velazquez v. Thompson, 321 F. Supp. 34 (S.D.N.Y. 1970), right to housing is not violated by N.Y. eviction procedure; U.S. v. Cco 311 F. Supp. 618 (W.D.Pa. 1971), Military Selective Service Act does not violate right to one's own life.

THE LANDLORD-TENANT REPRISAL STATUTE DOES NOT IMPAIR THE OBLIGATIONS OF CONTRACTS

As part of his attack upon New Jersey's Reprisal Act, Appellant urges that it interferes "with the exercise of the rights conferred upon the landlord by the contract voluntarily made by the parties" (Appellant's Opening Brief, p. 34), and thereby violates Article 1, Section 10 of the United States Constitution. This contention, like the rest of Appellant's attack, falls wide of the mark.

Contrary to Appellant's view, contracts between private parties are not sacred, immutable documents impervious to change by state legislation designed to deal with the exigencies of modern life. Rather, as the Supreme Court has reiterated:

> It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which, in its various ramifications, is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contracts between individuals.
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> * * * * *
>
> One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them. The contract will carry with it the infirmity of the subject matter.

* * * * *

> Similarly, where the protective power of the state is exercised in a manner otherwise appropriate in the regulation of a business, it is no objection that the performance of existing contracts may be frustrated by the prohibition of injurious practices. (Home Building & Loan Ass'n. v. Blaisdell, 290 U.S. 398, 437-438 (1934), cited with approval in City of El Paso v. Simmons, 379 U.S. 497, 508-509 (1965)).

In conformity with these general pronouncements, the Supreme Court has repeatedly validated laws controlling the landlord-tenant relationship despite the argument that such statutes impaired the lease obligations. In Marcus Brown Holding Co. v. Feldman, 256 U.S. 170 (1921), the Supreme Court dismissed a challenge to a New York rent control statute which forbade the maintenance of any action to recover possession of real property except one on the grounds that the person was an objectionable hold-over tenant, or for the purpose of recovering possession for the immediate occupancy of the owner and his family or for demolition and construction of a new building. (Id. at p. 197). Clearly, the New York statute placed a far greater burden upon the contractual rights of the landlord than does the present New Jersey retaliatory eviction law, yet the Supreme Court stated:

> The chief objections to these acts have been dealt with in Block v. Hirsch [256 U.S. 135 (1921)]. In the present case more emphasis is laid upon the impairment of the obligation of the contract of the lessees to surrender possession and of the new lease which was to have gone into effect upon October 1, last year. But contracts are made subject to this exercise of the power of the State when otherwise justified, as we have held this to be. [Citations.] (Id. at p. 198; see also Edgar A. Levy Leasing Co. v. Siegel, 258 U.S. 242 (1922).)

by the housing crisis which is apparent to all and was judicially noticed by the court below. The above-quoted Supreme Court cases clearly demonstrate that Article I, Section 10 of the Federal Constitution does not immunize contract rights against interference by reasonable state regulations designed to deal with present crises and prohibit injurious practices. The emergency found to justify the statute in Marcus Brown, Block and Levy Leasing cases has been found by the trial court to be present in this case (Appellant's Opening Brief, p.8) and even the National Association of Home Builders admits that the practices prohibited by the New Jersey law are injurious. (National Association of Home Builders, "Fair Practices Code Gets Committee Backing," Scope, Volume 9, No. 42, October 22, 1971).

Recent attacks on landlord-tenant statutes affirm the Supreme Court rulings: De Paul v. Kaufman, 441 Pa. 386, 272 A.2d 500 (1971) (rent withholding statute); Department of Buildings of the City of New York, 14 N.Y. 2d 291, 200 N.E.2d 432 (1964) (receivership statute); Stoneridge Apartments Co. v. Lindsay, 303 F.Supp. 674 (D.N.Y. 1949) (rent control ordinance); Community Renewal Fd. Inc. v. Chicago Title and T. Co., 44 Ill. 2d 500, 255 N.E.2d 900 (1970) (receivership); Deary v. Keith, 326 N.Y.S.2d 823 (1971) (attorney fees for tenant implied).

In light of the clear precedent cited above, Appellant's claim of interference with his right to contract is wholly without foundation.

CONCLUSION

The prohibition against retaliatory eviction is a nationally accepted doctrine. The New Jersey Landlord-Tenant Reprisal Against Tenant Act is valid expression of that doctrine. The New Jersey Act protects the free exercise of tenants' constitutional rights and as such it should be given every favorable inference. It is not vague, particularly not so as against Appellant. The Act does not violate the Due Process Clause, the Ninth Amendment, nor Appellant's freedom of contract. The Constitution does not, as Appellant would have it, adopt an economic theory nor has it frozen the common law of landlord and tenant so as to prevent legislative change in light of modern conditions.

Respectfully submitted,

NEWARK-ESSEX JOINT LAW
REFORM PROJECT

By: _____
RICHARD E. BLUMBERG, ESQ.

_____
MICHAEL D. LANG, ESQ.

Landlords & Tenants (termination of tenancy)

CS FOR SS FOR HOUSE BILL NO. 1 (JUDICIARY), (see pages 25; 91;186;336;385). Reported back to the House April 20 by Rules recommending it be replaced with the Judiciary substitute (see page 336), and with a majority having no recommendation. Concurring: Fuller, (Chairman), M. M. Miller, Larson, Phillips, Koponen, and M. W. Miller. Not concurring: Barnes, Tischer, and Hayes recommend do pass.

On April 21 the Judiciary substitute was adopted and the bill passed the House, 26-10-4. Nays: Clocksin, Davis, Duncan, Goll, Malone, McBride, M. M. Miller, Szymanski, Vaska, Zharoff. Excused: Bettisworth, Cato, Flood, Wendte. Rep. Malone gave notice of reconsideration, but it was not taken up and the bill was sent to the Senate for its consideration.

Insurance Laws (repeal of certain)

HOUSE BILL NO. 48, (see pages 43;132;488;563). Passed the House April 18, 38-1-1. Nay: Malone. Excused: Cato.

Vital Statistics (disclosure of records)

CS FOR HOUSE BILL NO. 91 (JUDICIARY), (see pages 57;299;542; 563). On April 19 the Judiciary substitute was adopted (see page 542), and the bill passed the House, 38-1-1. Nay: McBride. Excused: Cato. The effective date clause was adopted.

Public Schools (emergency closure days)

HOUSE BILL NO. 125, (see pages 95;300;542;563). Passed the House April 21, 35-1-4. Nay: Martin. Excused: Cato, Bettisworth, Flood, Wendte.

Homesteads

CS FOR HOUSE BILL NO. 130 (FINANCE)(AM), (see pages 97; 426;542). On April 19 Rep. Tischer asked that her name be added as co-sponsor. On April 21 the Finance substitute was adopted. Amendment 1 was offered by Rep. Uehling, and subsequently withdrawn. Rep. Uehling offered amendment 2, and the bill and pending amendment were held one day.

Amendment 2 states that tentatively approved land located within the boundaries of an organized borough or city may not be designated for homestead entry.

On April 22 Amendment 2 by Uehling was withdrawn. 3 by Uehling was offered and it states:

> "Sec. 38.09.080. LAND WITHIN MUNICIPALITIES. (a) If a municipality has filed a selection of state lands under AS 29.18.201 - 29.18.213 with the commissioner, the state lands selected may not be designated for homestead entry; if the commissioner determines that land selected by a municipality is not available for patent to the municipality under AS 29.18.210 - 29.18.213, the state land is available for designation by the commissioner for homestead entry under AS 38.09.010."

Amendment 3 was adopted by unanimous consent. The bill then passed the House, 21-13-5-1. Nays: Adams, Clocksin, Davis, Duncan, Goll, Grussendorf, Herrmann, Hurlbert, Koponen, Malone, McBride, M. M. Miller, Vaska. Excused: Bettisworth, Cato, Flood, Martin, Wendte.

Appropriations (special) (water, sewer & solid waste)

CS FOR SENATE BILL NO. 150 (FINANCE)(AMENDED), see pages 200;370;459;538). Reported back to the House April 20 by Community & Regional Affairs with the committee recommending it be replaced with Community & Regional Affairs Committee Substitute and reported back as follows: Lacher (Chairman), Phillips and Fritz recommend do pass; McBride, Szymanski and Clocksin have no recommendation. To Finance.

The House C&RA substitute makes several changes in the bill:

—Deletes a $161,600 water & sewer facility construction grant, through the Dept. of Environmental Conservation, to election district 1 for the Ketchikan Public Utility/Fairview-Jackson water project. Adds, under grants to municipalities for natural resource management, a $354,950 appropriation for the Ketchikan - Jackson Utility Fairview - Jackson water project.

--adds, under grants to municipalities for natural resource management, a $35 million appropriation to Anchorage for the Eklutna Water Project.

--deletes , under grants to municipalities for natural resource management, two appropriations to Wasilla: $185,000 for septic treatment; and $1,178,500 for a wastewater facility. Adds, under the same section, a $3,121,500 appropriation to Wasilla for a wastewater facility.

—deletes a $480,000 appropriation, under grants to municipalities for natural resource management, made to Delta Junction for land fill improvements.

—Adds, under grants to unincorporated communities for natural resource management, a $225,000 appropriation for the Dot Lake water system.

--changes the amount of an appropriation to Igiugig, in the Bristol Bay - Aleutian Islands district, from $838,000 to $250,000 (also under grants to unincorporated communities).

--changes total amount of funding to $103,083,650 (was $66,975,300).

Landlords & Tenants (term. of tenancy)

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 1, (see pages 25;91; 186;336;385). Reported back to the House April 20 by Rules with the committee recommending it be replaced with Judiciary Committee Substitute and majority signed no recommendation. Concurring: Fuller (Chairman), M.M.Miller, Larson, Phillips, Koponen and M.W.Miller. Not concurring: Barnes, Tischer and Hayes recommend do pass. To Rules.

Judicial Retention Elections

HOUSE BILL NO. 8, (see page 27). Reported back to the House April 19 by Judiciary, recommending it do pass. Concurring: Bussell (Chairman), Barnes, Liska and Hayes. Representative Wendte signed no recommendation. To Finance.

SENATE BILLS RECEIVED IN THE HOUSE

Assault (police, fire fighters & emergency responders)	CS FOR SENATE BILL NO. 24 (JUD)(AM), (see pages 8;88;242; 318). Received in the House March 21 and referred to Judiciary.
Minors (presence of in rest. that serve alcohol)	CS FOR SENATE BILL NO. 88 (JUDICIARY), (see pages 82;279; 373). Received in the House March 25 and referred to Judiciary.
Emergency Guards/Dept. Pub. Safety	CS FOR SENATE BILL NO. 116 (STATE AFFAIRS), (see pages 138; 280;373). Received in the House March 23 and referred to Judiciary.
Guide Board (co[illegible]uing / licensing)	CS FOR SENATE BILL NO. 138 (RULES), (see pages 194;315; 373). Received in the House March 25 and referred to Resources.
Appropriations (special & supplemental) (capital projs.)	CS FOR SENATE BILL NO. 162 (RULES), (see pages 263;315; [illegible]3). Received in the House March 23 and referred to Finance.

COMMITTEE REPORTS (House)

Landlords & Tenants (term. of tenancy)	SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 1, (see pages 25;91; 186;336). Reported back to the House March 23 by Finance as follows: Bettisworth, Ward, Hurlbert, Grussendorf and Martin recommended do pass. Adams (Chairman), Flood, Zharoff, Duncan and Pestinger had no recommendation. To Rules.
Pregnant Women (prenatal services for)	HOUSE BILL NO. 39, (see pages 39;337). Reported back to the House March 23 by Finance recommending it do pass. Concurring: Pestinger, Ward, Zharoff, Duncan, Grussendorf and Martin. Not concurring: Lindauer and Bettisworth recommended do pass with amendments. Adams (Chairman) and Flood had no recommendation. To Rules. On March 25 Rep. Lindauer was added as a co-sponsor.
Motor Fuel Tax (repeal of)	SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 40, (see pages 40; 149). Reported back to the House March 23 by Transportation as follows: Cato (Chairman) and Abood recommended do pass. M. W. Miller and Davis had no recommendation. McBride, Herrmann, Lacher and Phillips recommended do not pass. The committee attached an amendment that would delete section 2 of the bill. Sec. 2 made the Act retroactive to January 1, 1983 and provided for the adoption of regulations by the Department of Revenue for refunds of motor fuel taxes collected after December 31, 1982. To Finance.
Municipal Roads (state aid)	HOUSE BILL NO. 41, (see pages 40;161). Reported back to the House March 23 by Transportation recommending it do pass. Concurring: Cato (Chairman), Phillips, Lacher, Szymanski,

Landlords & Tenants (term. of tenancy)

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 1, (see pages 25;91; 186). Reported back to the House March 16 by Judiciary recommending it be replaced with a Judiciary substitute and that it do pass. Concurring: Bussell (Chmn.), Liska, Hayes, and Barnes. Not concurring: Clocksin had no recommendation. To Rules. On March 18, at the request of the Finance Committee Chairman, the Speaker added a Finance referral. Taken from Rules and sent to Finance.

The Judiciary substitute adds new section amending AS 09.45.085 (Code of Civil Procedure, Actions relating to real property): "Enforcement. A judgment for the restitution of real property rendered in an action for forcible entry or detention may be enforced by the plaintiff without further judicial action and the plaintiff may not be required to obtain a writ of assistance or other order to enforce the judgment."

Adds language to section amending AS 34.03.270 (Uniform Landlord and Tenant Act, Remedy after termination) stating that failure by the tenant to provide the required notice when terminating a tenancy is presumed to be wilful and not in good faith. Provides a month to month tenancy must be terminated by written notice by either party at least 30 days before the specified termination date (as is currently on the books), rather than 45 days as was specified in the Labor & Commerce substitute.

Amends AS 34.03.310(a) (Landlord & Tenant Act. Retaliatory conduct prohibited), providing a landlord may not retaliate by terminating the rental agreement or providing notice of termination (currently prohibits retaliation by increasing rent or decreasing services) if the tenant complains of maintenance violations, has tried to enforce his rights, has organized or become a member of a tenant's union, or has complained to a government agency responsible for enforcement. Adds language presuming a landlord has violated retaliation provisions if he terminates the rental agreement or provides notice of termination.

Makes technical correction in section 4.

Commercial Fishing Loans

HOUSE BILL NO. 15, (see pages 31;105;296). Reported back to the House March 18 by Finance recommending it be replaced with a Finance substitute and that it do pass. Concurring: Grussendorf (Acting Chairman), Bettisworth, Hurlbert, Ward, Pestinger, Flood, Lindauer, and Zharoff. Rep. Duncan had no recommendation. to Rules.

The Finance substitute adds a new section amending AS 16.05.050 (Powers and Duties of Commissioner of Fish & Game). Gives the Commissioner the power to ". . . (13) sell or lease a state hatchery facility."

Changes language in new section added to AS 16.10 (Fisheries and Fishing Regulations) relating to the allocation of loans. Provides the Department of Fish and Game ". . . shall allocate at least ten percent of the money that is appropriated to make loans . . ." (former version provided the department allocate 10 percent of the

SENATE BILLS RECEIVED IN THE HOUSE

Arson (definition)

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 13 (JUD), (see pages 4;118;147). Received in the House February 14 and referred to Judiciary. The Senate Judiciary letter of intent accompanied the bill (see page 118).

US/Canada Salmon Interception Treaty

COMMITTEE SUB. FOR SENATE JOINT RESOLUTION NO. 10 (RES), (see page 84;178). Received in the House February 17 and referred to the House Special Committee on Fisheries, then to Resources.

COMMITTEE REPORTS (House)

Department of Corrections (creation of)

EXECUTIVE ORDER NO. 54, (see page 70). Reported back to the House February 14 by Health, Education & Social Services recommending it do pass. Concurring: Tischer (Co-Chairman), Fritz (Co-Chairman), Goll, Koponen, Davis, and M.W. Miller. To Judiciary.

Landlords & Tenants (term. of tenancy)

HOUSE BILL NO. 1, (see pages 25;91). Reported back to the House February 15 by Labor & Commerce recommending it be replaced with a Labor & Commerce Substitute and that it do pass, and attaches a letter of intent. Concurring: Furnace (Chairman), Malone, Ringstad, Cowdery, Uehling and Wendte. To Judiciary.

The Labor & Commerce Substitute adds a new section amending AS 34.03.270 (Uniform Residential Landlord and Tenant Act, Remedy after termination), providing for recovery of damages by the landlord if the tenant terminates the rental agreement and fails to give the required 14 days notice for a week to week tenancy or the required 45 days notice for a month to month tenancy (this bill changes the current 30 day notice to 45 days). Provides the landlord may recover an amount not to exceed one and one-half times the actual damages.

The Substitute also makes language change in section dealing with periodic tenancy and holdover (AS 34.03.290). Would read that if the tenant remains in possession without the landlord's consent and his holdover is "wilful or not in good faith, the landlord, may recover an amount not to exceed one and one-half times the actual damages. . . ." (original language stated "If the tenant's holdover is wilful and not in good faith. . .").

The Labor and Commerce Committee letter of intent reads:

LETTER OF INTENT FOR
CSSS FOR HB 1 (L & C)

The Legislature recognizes that an increase in rent by the landlord may constitute a form of termination, in that it terminates the rental agreement then in existence and offers a new rental agreement at different terms. The tenant, however, should be given ample time to locate a new dwelling and to move. Upon receipt of a notice of rent increase a tenant should have the full 45 days to vacate provided under this bill if he chooses no to accept the higher rent. The tenant would be under the obligation to inform the landlord of his intention to vacate within the 45 day period if the tenant does not intend to pay the higher rent.

Landlords & Tenants (term. of tenancy)

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 1, by Rep. Abood. Identical to original bill (p. 25)--just deletes reference to a nonexistent statute contained in Sec. 1. (Deleted from proposed addition to AS 09.45.090, "Unlawful Holding by Force".)

Introduced January 28 and referred to Labor & Commerce and Judiciary.

Cert. of Need Program (repealing)

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 19, by Reps. Fritz, Hayes, Zharoff, Cato, Lindauer and Szymanski. Identical to original bill (p. 32), but corrects references to federal statutes contained in Sec. 1 of bill (amendment to AS 18.07.021, duties of the state's health planning and development agency).

Introduced January 24 and referred to Health, Education & Social SErvices and Finance.

Property Tax Exemptions (municipal)

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 21, by Lindauer. Decreases proposed $100,000 residential property tax exemption contained in the original bill (p. 34). Under SSHB 21, those under 65 could receive "at least $10,000 in assessed value and not more than $50,000 in assessed value of the real property owned and occupied as a permanent place of abode."

Introduced January 26 and referred to Community & Regional Affairs and Finance.

Prison Terms

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58, by Lindauer, Barnes, Abood, Pestinger, Liska and Uehling. Basically identical to original bill (p. 47), but changes wording of paragraph (b) of new section on "Service of Full Sentence." Original (b) read: "If the court orders a sentence to be served in full in accordance with this section, good cause shall be shown in all proceedings under this section. The prisoner is entitled to be represented by counsel in all proceedings under this section."

New (b) would read: "If the court orders a sentence to be served in full, good cause shall be shown in all proceedings under this section. The prisoner is entitled to be represented by counsel and may not be released, paroled, or furloughed pending any proceeding."

Introduced January 26 and referred to Judiciary and Finance.

Minors (prosecution as adults)

HOUSE BILL NO. 109, by Pestinger, Furnace, Uehling, Flood, Barnes and Bussell. Would allow the courts to prosecute a minor as an adult if it finds at a hearing on a petition ". . . (1) that the minor was 16 years of age or older at the time of the offense and that there is probable cause to believe that the minor has committed an unclassified felony or a class A felony; or (2) that the minor is not amenable to treatment under this chapter and there is probable cause to believe that the minor is delinquent." (AS 47.10.060(a), Delinquent Minors and Children in Need of Aid, Waiver of Jurisdiction, rewritten in this bill, now provides "(a) If the court finds at a hearing on a petition that there is probable cause for believing that a minor is delinquent and finds

Landlords & Tenants (termination of tenancy)

HOUSE BILL NO. 1, by Abood. Amends the Landlord Tenant Act, (AS 34.03) to provide a landlord or tenant may terminate a month to month tenancy by giving written notice 45 days in advance of specified termination date (law currently provides notice must be given 30 days before specified rental due date). Provides it is unlawful to remain in possession of dwelling unit after expiration of tenancy. Provides landlord may bring action for possession and recovery of actual damages (underlined language added to current law) if tenant remains in possession without landlord's consent.

Adds new language to the Landlord and Tenant Act prohibiting a landlord from increasing rent, decreasing services or threatening to bring an action for possession within 60 days after a tenant has complained of violations, availed himself of rights and remedies granted under the Act, organized or become a member of a tenant's union, or complained to a governmental agency responsible for enforcement of governmental housing, wage, price or rent controls.

Does not provide for an effective date (effective 90 days after Governor's signature).

Introduced January 17 and referred to Labor & Commerce, then to Judiciary.

Handguns (use of armor-piercing ammunition)

HOUSE BILL NO. 2, by Hayes, Flood and Lindauer. Establishes penalties for crimes in which the defendant uses or carries a handgun loaded with armor-piercing ammunition. Provides for a five year term of imprisonment for the use of that type of ammunition, in addition to any other sentence imposed for the crime itself. The additional five year sentence may not be suspended or otherwise reduced, and may not be served concurrently with other terms. Does not provide for an effective date (effective 90 days after Governor's signature).

Introduced January 17 and referred to Judiciary, then to Finance.

Appropriation (supplemental) (school districts)

HOUSE BILL NO. 3, by Duncan, Grussendorf, Clocksin, Zharoff, Wendte, Koponen, Malone, Vaska, M.M. Miller, Goll, Davis, McBride, Larson and Szymanski. Makes a supplemental appropriation in the amount of $33,746,700 to the Department of Education for payments to school districts under the Public School Foundation Program for the fiscal year ending June 30, 1983. Provides Act takes effect immediately. (See SB 16, page 5, identical. Also see SB 22, HB 35 and HB 73, this report, identical).

Introduced January 17 and referred to Health, Education & Social Services, then to Finance.

Construction Insurance (state construction projects)

HOUSE BILL NO. 4, by Martin, Furnace and Grussendorf. Provides state departments or agencies may not require a contractor to obtain workers' compensation, general liability, or other required insurance from a particular insurer, agent or broker when that department or agency is requesting bids or awarding contracts. In addition, the department or agency may not

Dear Senator Fischer:

You currently have HB 1 "An Act relating to landlords and tenants" in your committee on State Affairs for consideration.

From the way that I read the bill, the changes are minimal and are mainly made to make the law somewhat more specific. If I am incorrect please explain to me what affect the changes will incur.

Being a long time resident and tenant of this State, I see no reason why this bill will have a problem being passed and made into law, supporting it whole heartedly.

My first impression on seeing another revision being proposed to the landlord-tenant act was, of course, that the rights of the tenant were being whittled away at once again and upon carefully reading of the bill, it seems to me that this is not the case and sigh relief.

Thank you for your time.

Very truly yours,

Amy Garrett
C/O 3761 Winterset Dr
Anchorage Ak 99508

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.

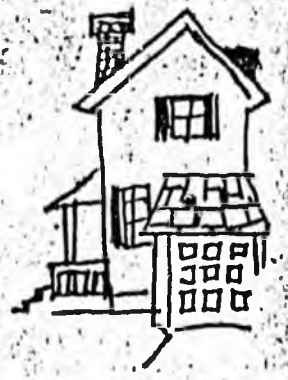
While the law does not cover every problem a landlord or tenant may have, it was written to protect the rights of both parties.

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.

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

Legal Examples		Illegal Examples	
#1:	$ 375 first month's rent	#1:	$ 375 first month's rent
	$ 375 last month's rent		$ 375 last month's rent
	$ 375 security deposit		$ 400 security deposit
	$1125 total to move in		$1150 total to move in
#2:	$ 325 first month's rent	#2:	$ 325 first month's rent
	$ 150 cleaning deposit		$ 300 cleaning deposit
	$ 175 security deposit		$ 200 security deposit
	$ 325 last month's rent		$ 325 last month's rent
	$ 975 total to move in		$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

rules and regulations

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)

get rid of the belongings or is going to throw or give them away, it

Protection (264-4000)

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)

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**).

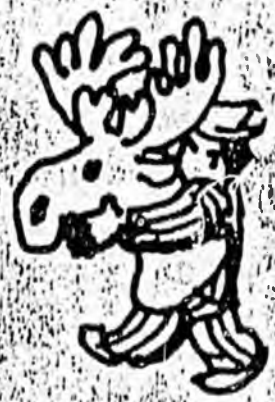
Also, tenants who do not give proper written termination notice, the proper number of days before they move out, may have to wait 30 days after the move to get their security deposit refund (with proper notice, the refund must come back in 14 days).

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" how to locate the tenant.

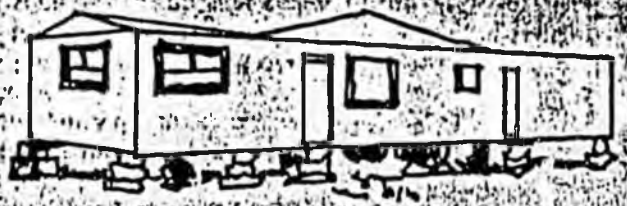
(These are some new amendments, effective 7/19/82.)

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)

washable paint on the walls, water leaks staining walls, etc.).

or landlord's posted rules;



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 8/18/82)

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)

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.

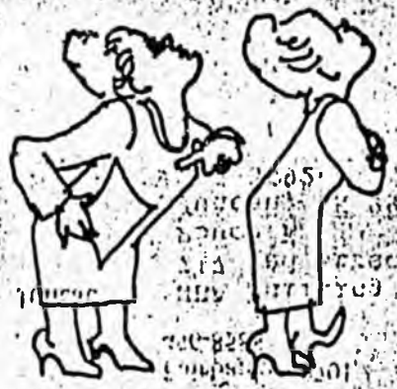
Anchorage 840 K Street
Anchorage 99501
276-4011

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".



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 no. 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

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 leave 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

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

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.

TABLE OF CONTENTS

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

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

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

sessed without legal process is entitled to maintain action for forcible entry and detainer, 45 ALR 323.

Forcibly entry and detainer as remedy for interference with right of way, 47 ALR 556.

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

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

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

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

55-
HB-1
Sec. 1

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

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

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

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

Section defines detainer article is designed to prevent.—This section of the forcible entry and detainer act suggests the character of the detainer which the statute was intended to prevent. Steil v. Dessmore, 3 Alaska 392 (1907).

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

Where entry was without force and under claim of title, article is inapplicable. — Where defendant en- with the consent and under of a prior claimant, the he entryman, and entered under verse claim of title, and will mitting the title or possessio plaintiff, under such facts he be summarily removed by th ble entry and detainer act, bu titled to have his title tried Steil v. Dessmore, 3 Alas (1907).

Sec. 09.45.100. Requisites of notice to quit. A notice to qu be in writing and shall be served upon the tenant or person session by being delivered to him or left at the premises of his absence from the premises, or the notice may be s registered or certified mail, in which case an additional thre shall be added to the 10 days. (§ 17.05 ch 101 SLA 1962)

C.J.S. reference. — 36 C.J.S. Forcible Entry and Detainer §§ 23 to 25.

Sec. 09.45.110. Period between service of notice and brought. An action for the recovery of the possession of the ises may be maintained in the cases specified in § 90(2) chapter when the notice to quit has been served upon the or person in possession for the period of 10 days before th mencement of the action unless the leasing or occupation is purpose of farming or agriculture, in which case the notice s served 90 days before commencement of the action. (§ 17.06 SLA 1962)

Sec. 09.45.120. Summons and continuance. Summons in a for forcible entry and detainer shall be served not less th nor more than four days before the date of trial. No conti shall be granted for a longer period than two days unless t fendant applying for the continuance gives an undertaking adverse party, with sureties approved by the court cond to the payment of the rent that may accrue if judgment dered against the defendant. (§ 17.07 ch 101 SLA 1962)

Sec. 09.45.130. Action against persons paying rent in ad The service of a notice to quit upon a tenant or person in sion does not authorize an action to be maintained against h the possession of the premises until the expiration of the for which that tenant or person may have paid rent for the ises in advance. To authorize an action against a tenant or in possession who has paid rent in advance, a notice must be at least 10 days before the date the rent is due again in cas month-to-month tenancy or at least three days before in th of a week-to-week tenancy. (§ 17.08 ch 101 SLA 1962)

Sec. 09.45.140. Agricultural tenant. When the leasing or

Municipality of Anchorage

BOROUGH
P.O. BOX 196650, ANCHORAGE, ALASKA 99502-0650
(907) 264-4342
(TTY) 279-4725

TONY KNOWLES
MAYOR

EQUAL RIGHTS COMMISSION
620 East 10th Ave.

February 23, 1983

Hugh Malone, Representative
State of Alaska
Pouch V
Juneau 99811

Dear Mr. Malone:

The following information is provided in response to an inquiry from your office.

The Anchorage Equal Rights Commission is an administrative agency which is charged with enforcement of the municipal discrimination ordinance. This ordinance is found in the Anchorage Municipal Code, Section 5, a copy of which is enclosed.

In 1982, the Equal Rights Commission opened 97 investigations of alleged discriminatory practices. Of this total, 20 cases or 21%, were filed in the category of housing. Of these housing cases, 9 were filed on the basis of parenthood, which by definition is included under sex discrimination (see Section 5.20.010). This represents 9% of the total cases filed with the agency.

Additionally, the Equal Rights Commission received numerous inquiry calls regarding housing discrimination against parents with children. These callers generally sought clarification of our jurisdiction and were from both property seekers and property owners.

It is significant that prior to 1982, no cases had been filed with the Commission on the basis of parenthood. These 1982 filings are attributed to the severe shortage of rental units in the Anchorage area. With a vacancy rate that at times stood at 1%, parents found it extremely difficult to obtain rental units.

As the problem continued to accelerate throughout the year, the Equal Rights Commission took steps to alert the community to the requirements of the local ordinance. Advertisements were placed in the local papers which spelled out the Commission's jurisdiction. A public forum on Housing Discrimination and meetings were held with property owners and interested public, to discuss the situation and the method in which the Equal Rights Commission would handle complaints. These actions were of particular importance in raising the awareness level of property seekers and in reassuring property owners that each allegation resulting in a complaint, would be reviewed on a case-by-case basis.

In 1983, we will continue in our efforts to prevent and eliminate alleged discrimination and aggressively enforce Title 5 of the Anchorage Municipal Code.

If I can be of further assistance, please do not hesitate to call me.

Sincerely,

PAUL L. CONNERTY,
Executive Director
Anchorage Equal Rights Commission

jf
Enc.

Chapter 5.10

COMMISSION ESTABLISHED

Sections:

5.10.010 Prohibition.

The public policy of Anchorage is declared to be equal opportunity for all persons. The Assembly finds that invidious discrimination in employment, housing, public accommodations, education and financing practices based upon race, color, sex, religion, national origin, marital status, age, or physical handicap adversely affects the welfare of the community. Accordingly, such discrimination is prohibited. (Charter, §§17.01 and new).

5.10.020 Establishment.

Pursuant to the provisions of the Charter, there is established an equal rights commission of nine persons, which shall be known as the Anchorage Equal Rights Commission. (Charter, §17.02).

5.10.030 Appointment.

The mayor shall appoint members of the commission, subject to confirmation by the Assembly, to three-year terms. Of those members first appointed, three shall be appointed for a term of one year, three for a term of two years, and three for a term of three years. A member chosen to fill a vacancy other than by expiration of a term shall be appointed for the unexpired term of the member whom he/she is to succeed. A member of the commission shall be eligible for reappointment. (Charter, §§17.02 and new).

5.10.040 Powers and duties.

The commission may:

A. Hold public hearings and issue orders under Sections 5.30.030 and .050 of this title;

B. Administer oaths and affirmations, certify its official acts, issue subpoenas duces tecum, and other legal process to compel the attendance of witnesses and the production of testimony, books, records, papers, accounts, documents or things in any inquiry, investigation, hearing or proceeding before the commission; the commission may petition the superior court of the State of Alaska having jurisdiction to enforce its subpoenas, subpoenas duces tecum, and other legal process;

C. Intervene in any court proceeding brought under this title;

D. Enter into agreements with counterpart agencies at all governmental levels to promote effective and efficient enforcement of the law;

E. Grant relief described in Section 5.30.050 of this title;

F. Develop programs designed to bring about the prevention and elimination of discrimination;

G. Hire, subject to approval of the mayor, an executive director who shall serve at the pleasure of the commission;

H. Delegate to the executive director all powers and duties given it by this title, except the power to hold hearings, issue orders, and hire the executive director; and

I. Adopt procedural and evidentiary rules necessary to fulfill the intent of this title. (new, CAC 2.64.330, and Charter, §17.02).

Chapter 5.20

UNLAWFUL PRACTICES

Sections:

5.20.010 Definitions.

As used in this chapter:

A. "Age" is not intended to conflict with the provisions of AS 23.10.325-.370, or any other laws relating to the rights and activities of minors.

B. "Blockbusting" means any discriminatory practice by real estate brokers, real estate salesmen or employees or agents of a broker or other individual, corporation, partnership or organization for the purpose of inducing a real estate transaction from which any such person or its stockholders or members may benefit financially, to represent directly or indirectly that a change has occurred or will or may occur from a composition with respect to race, religion, color or national origin of the owners or occupants of the block, neighborhood or area in which the real property is located, and to represent directly or indirectly that this change may or will result in undesirable consequences in the block, neighborhood or area in which the real property is located, including, but not limited to the lowering of property values, an increase in criminal or antisocial behavior or decline in the quality of the schools or other facilities.

C. "Commission" means the Anchorage Equal Rights Commission.

D. "Discrimination" means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial or any other act or practice of differentiation or preference in the treatment of a person or persons because of race, color, religion, national origin, age, sex, marital status or physical handicap, or the aiding, abetting, inciting, coercing or compelling thereof.

E. "Educational institution" means any day care center, nursery, kindergarten, elementary or secondary school, academy, college, university, extension course, or nursing, secretarial, business, vocational, technical, trade, or professional school.

F. "Employee" means an individual employed by an employer, but does not include an individual employed in the domestic service of any person.

G. "Employer" means an employer, public or private, of one or more persons.

H. "Employment agency" means any person undertaking to procure employees or to procure for employees opportunities to work.

I. "Financial institution" means commercial banks, trust companies, mutual savings banks, cooperative banks, homestead associations, credit unions, bonding companies, surety companies, or other commercial institutions which extend secured or unsecured credit or offer insurance.

J. "Labor organization" means any organization which is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

K. "Marital status" means any differential treatment because of a person's marital status or change in marital status. This includes differential treatment shown toward a person because he/she is not married, a person because he/she is married, a person because

he/she is widowed or divorced, a person because he/she is a parent and unmarried, or a person because she is pregnant and unmarried.

L. "National origin" includes ancestry, persons not citizens, their descendants, persons naturalized, and their descendants.

M. "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, employees, employers, employment agencies, labor organizations, joint apprenticeship committees or other legal or commercial entity.

N. "Physical handicap" means any physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including diabetes, epilepsy, and including any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, or other remedial appliance or device.

O. "Public accommodation" means any place in or through which any business or professional activity is conducted that is open to, accepts or solicits the patronage of or caters or offers goods or services to the general public. This includes, but is not limited to, a public inn, restaurant, eating house, day care center, hotel, motel, soda fountain, soft drink parlor, tavern, night club, liquor establishment, roadhouse, place where food or spiritous or malt liquors are sold for consumption, trailer park, resort, campground, mobile home, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company and all other public amusement and business establishments, subject only to the conditions and limitations established by law and applicable alike to all persons.

P. "Real property" means a housing accommodation, unimproved property, a building or a portion of a building, whether constructed or to be constructed, structures, real estate, lands, tenements, leaseholds, interest in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein, a mobile home, which is or will be used as sleeping quarters of its occupants, or a trailer park.

Q. "Sex discrimination" means differential or preferential treatment shown toward a person because of one's sex, pregnancy, or parenthood. (AS 23.10.325-370 and new).

5.20.020 Unlawful practices in the sale or rental of real property.

Except in the individual home wherein the renter or lessee would share common living areas with the owner, lessor, manager, agent or other person, it is unlawful for the owner, lessor, manager, agent or other person having the right to sell, lease, rent or advertise real property:

A. To refuse to sell, lease or rent the real property to a person because of race, religion, age, sex, color, national origin, marital status or physical handicap;

B. To discriminate against a person because of race, religion, age, sex, color, national origin, marital status or physical handicap in a term, condition or privilege relating to the use, sale, lease or rental of real property;

C. To make a written or oral inquiry or record of the race, religion, age, sex, color, national origin, marital status or physical handicap of a person seeking to buy, lease or rent real property;

D. To offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or sources in connection therewith because of a person's race, religion, age, sex, color, national origin, marital status or physical handicap;

E. To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, or to refuse a person the right to inspect real property, because of the race, religion, age, sex, color, national origin, marital status or physical handicap of that person or because of any person associated with that person;

F. To engage in blockbusting;

G. To circulate, issue or display, make, print or publish, or cause to be made or displayed, printed or published, any communication, sign, notice, statement or advertisement, with respect to the use, sale, lease or rental of real property that indicates any preference, limitation, specification or discrimination based on race, religion, age, sex, color, national origin, marital status or physical handicap. This shall not be construed to apply to publishing companies which accept advertising in the ordinary course of business. (Adapted from CAC 8.36.090 and new).

5.20.030 Unlawful financing practices.

It is unlawful for an insurance company, a financial institution or other commercial institution extending secured or unsecured credit, upon receiving an application for financial assistance or credit for the acquisition, construction, rehabilitation, repair or maintenance of a housing accommodation or other property or services, or the acquisition or improvement of unimproved property, or upon receiving an application for any sort of loan of money, or upon receiving an application for insurance to permit one of its officials or employees during the execution of his/her duties:

A. To discriminate against the applicant because of race, religion, age, sex, color, national origin, marital status or physical handicap in a term, condition or privilege relating to the obtainment or use of the institution's financial assistance, insurance or credit, except to the extent of a federal statute or regulation applicable to a transaction of the same character;

B. To make or cause to be made a written or oral inquiry or record of the race, religion, age, sex, color, national origin, marital status or physical handicap of a person seeking the institution's financial assistance, insurance, or credit unless the inquiry is for the purpose of ascertaining the applicant's creditworthiness or insurability;

C. To refuse to extend credit, issue a credit card, insure or make a loan to a single, divorced, pregnant or married person who is otherwise creditworthy, if so requested by the person;

D. To refuse to insure or to issue a credit card to a married person in that person's name, if so requested by the person, provided, however, that the person so requesting a card may be required to open an account in that name if so requested by that person. (Adapted from CAC 8.38.020 and new).

5.20.040 Unlawful employment practices.

It is unlawful for:

A. An employer to refuse employment to a person, or to bar him/her from employment, or to discriminate against him/her in compensation or in a term, condition, or privilege of employment or to discharge, expel, reduce, suspend or demote him/her because of his/her race, religion, age, sex, color, national origin, marital status or physical handicap unless the reason for the discrimination is a bona fide occupational qualification;

B. A labor organization because of a person's race, religion, age, sex, color, national origin, marital status, or physical handicap to exclude or to expel him/her from its membership or to discriminate against one of its members or employer or employee;

C. A person, employer or employment agency to broadcast, publish, print, circulate or cause to be broadcasted, published, printed or circulated a statement, advertisement in connection with prospective employment or to use a form of application for employment which expresses, directly or indirectly, a limitation, specification, preference or discrimination as to race, religion, age, sex, color, national origin, marital status or physical handicap;

D. A person to discriminate in the payment of wages as between sexes, or to employ a person of one sex in an occupation at a salary or wage rate less than that paid to a person of another sex for work of comparable character or work in the same operation, business or type of work in the same locality. (Adapated from CAC 8.40.040).

5.20.050 Unlawful practices in places of public accommodation.

It is unlawful for a person, whether the owner, operator, or agent or employee of an owner or operator of a public accommodation:

A. To refuse, withhold from or deny to a person any of its accommodations, advantages, facilities, benefits, privileges, services or goods of that place on account of race, religion, age, sex, color, national origin, marital status or physical handicap;

B. To publish, circulate, issue, display, post or mail a written or printed communication, notice, or advertisement which states or implies:

1. that any of the services, goods, facilities, benefits, accommodations, advantages or privileges of the public accommodation will be refused, withheld from or denied to a person of a certain race, age, religion, sex, color, national origin, marital status or physical handicap; or

2. that the patronage or presence of a person belonging to a particular race, religion, age sex, color, national origin, marital status or physical handicap, is unwelcome, not desired, solicited, objectionable or unacceptable.

C. To make a written or oral inquiry concerning the race, religion, age, sex, color, national origin, marital status or physical handicap of an individual in connection with the solicitation, reservation, booking, sale, or dispensing of accommodation, advantage, facility, benefit, privilege, service or good. (Adapted from CAC 8.40.020).

5.20.060 Unlawful practices in educational institutions.

A. It is unlawful for a person operating or assisting in the operation of an educational institution:

1. to refuse to admit or otherwise to discriminate against an individual with respect to the terms, conditions, accommodations, advantages, facilities, benefits, privileges, or services of that institution on account of race, religion, age, sex, color, national origin, marital status or physical handicap;

2. to make or use a written or oral inquiry or form of application for admission that elicits information concerning the race, religion, age, sex, color, national origin, marital status or physical handicap of an applicant for admission;

3. to require or cause to be required that a photograph of an applicant for admission be submitted with an application for admission;

4. to publish, circulate, or display, or cause to be published, circulated or displayed, a written, printed, oral or visual communication, advertisement, catalog, or any other form of publicity relating to admission that expresses or indicates a preference, limitation, specification, or discrimination on account of the race, religion, age, sex, color, national origin, marital status or physical handicap of an applicant for admission;

5. to establish, announce, or follow a policy of denial or limitation of education opportunities for members of a group on account of race, religion, age, sex, color, national origin, marital status or physical handicap;

6. to use in the recruitment of potential applicants for admission, a service or agency that discriminates against individuals on account of race, religion, age, sex, color, national origin, marital status or physical handicap.

B. Discrimination is lawful for a religious or denominational institution or organization, or an organization operated for charitable or educational purposes which is operated, supervised or controlled by or in connection with a religious or denominational institution or organization, limiting admission to, or giving preference in, its accommodations, advantages, facilities, benefits or services to persons of the same religion or denomination, or for making a selection of applicants or individuals that is reasonably calculated to promote the religious principles for which it is established or maintained.

Such organizations otherwise remain subject to the provisions in this title with regard to race, color, age, national origin, sex, physical handicap or marital status. (Adapted from CAC 8.40.030).

5.20.070 Unlawful practices by the Municipality of Anchorage.

It is unlawful for the Municipality of Anchorage or any public agency thereof:

A. To refuse, withhold from or deny to a person any local, state or federal funds, services, goods, facilities, advantages or privileges because of race, religion, age, sex, color, national origin, marital status or physical handicap,

B. To publish, circulate, issue, display, post or mail a written or printed communication, notice or advertisement which states or implies that any local, state or federal funds, services, goods, facilities, advantages or privileges of the office or agency will be refused, withheld from or denied to a person of a certain race, age, religion, sex, color, national origin, marital status or physical handicap or that the patronage of a person belonging to a particular race, religion, age, sex, color, national origin, marital status, or physical handicap is unwelcome, not desired or solicited. (new)

5.20.080 Lawful practices.

Notwithstanding any provision of this chapter, it shall not be unlawful for a person in connection with employment, housing, financing or insurance, public accommodation, education, or governmental service to make or keep records identifying the race, religion, age, sex, color, national origin, marital status, or physical handicap if the purpose of the record is to comply with federal or state equal opportunity laws or regulations or in furtherance of a program designed to ensure compliance with this title. (new).

Chapter 5.30

ENFORCEMENT

Sections:

5.30.010 Complaint.

A person who believes he/she is aggrieved by any discriminatory conduct prohibited by this title may file a written complaint with the commission within 120 days from the date of the alleged discriminatory conduct, stating the name and address of the person alleged to have engaged in discriminatory conduct, and the particulars of the act. In like manner, the executive director may file a complaint when an alleged discriminatory act against an individual or group of individuals comes to his attention. (Adapted from CAC 8.36.020).

5.30.020 Investigation and conciliation.

The commission shall investigate promptly and impartially the matters set out in the filed complaint. If it determines that the allegations are supported by substantial evidence, it shall immediately attempt to eliminate the discriminatory act or practice by conference, persuasion and conciliation. The commission shall in any event make findings of fact within 180 days after the filing of the complaint. (Adapted from CAC 8.36.040).

5.30.030 Public hearing.

If the commission determines that the efforts to eliminate the alleged discrimination are unsuccessful, the commision shall serve written notice, together with a copy of the complaint as it may be amended, requiring the person, employer, labor organization or employment agency charged in the complaint to answer the allegations of the complaint at a public hearing before the commission. The time and place of the public hearing will be specified in the notice. The case in support of the complainant shall be presented before the commission by the executive director or his/her designee, provided that such designee does not concurrently represent the complainant. The complainant may be represented by counsel.

The person charged in the complaint may file a written answer to the complaint and may appear at the hearing in person or by counsel and submit testimony. The complainant has the power reasonably and fairly to amend the complaint, and the respondent has the power reasonably and fairly to amend his answer at any time up to and including the time of hearing. Any person may obtain a transcript upon payment of reasonable costs thereof. (Adapted from CAC 8.36.050 and new).

5.30.040 Injunctive relief--Temporary restraining order.

At any time after a complaint is filed under this title or in cases of noncompliance with a lawful commission order, the commision may file a petition in any superior court of the State of Alaska having jurisdiction seeking temporary or permanent injunctive relief. This includes the granting of a temporary restraining order not to exceed 10 days in duration, unless a longer period is agreed to by the parties, and the granting of preliminary and/or permanent injunction following a court hearing. (Adapted from CAC 8.36.060 and new).

5.30.050 Order

A. At the completion of the hearing, if the commission finds that a person against whom a complaint was filed has engaged in discriminatory conduct, it shall order him to refrain from engaging in discriminatory conduct. The order shall include findings of fact, and may prescribe conditions on the respondent's future conduct relevant to the type of discrimination. In a case involving discrimination in:

1. employment, the commission may order any equitable relief, including, but not limited to thehiring, reinstatement or upgrading of an employee or group of employees with or without back pay, restoration to membership in a labor organization, or his admission to or participation in an apprenticeship training program, on-the-job training program, or other retraining program;

2. housing, the commission may order any equitable relief, including, but not limited to the sale, lease or rental of the housing accommodation to the aggrieved person if it is still available, or the sale, lease or rental of the next vacancy in like accommodations owned by the person against whom the complaint was filed;

3. public accommodations, the commission may order any equitable relief, including, but not limited to, restoration to membership in a place of public accommodation, or admission to or service in a place of public accommodation;

4. financial institutions, the commission may order any equitable relief, including, but not limited to, the issuance of a credit card to a person, the approval of a loan to a person, or the issuance of insurance to a person;

5. educational institutions, the commission may order any equitable relief, including, but not limited to, admission to the institution or admission to the program or programs of the institution.

B. The commission may order payment of reasonable expenses to the complainant or to the respondent when the commission determines the allowance is appropriate.

C. The commission may monitor compliance with orders. The order may require a report or reports to be made to the commission on the manner of compliance.

D. If the commission finds that a person against whom a complaint was filed has not engaged in the discriminatory conduct alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

E. A copy of all orders issued following public hearing shall be filed with the municipal attorney. (new).

5.30.060 Retaliation, coercion, aiding, abetting and inciting.

It shall be unlawful for a person to discharge, expel, evict, retaliate or to otherwise discriminate against a person because he/she has filed a complaint, testified or assisted in a proceeding under this title. It is unlawful for a person to aid, abet, incite, compel or coerce the doing of an act forbidden under this title or to attempt to do so. (new).

5.30.070 Penalty.

A person who willfully resists, prevents, impedes or interfers with the commission or any of its authorized representatives because of or in the performance of duty under this title and is convicted by a court of competent jurisdiction and found guilty is guilty of a misdemeanor punishable by fine of not more than $500.00, or by imprisonment in a jail for not more than 30 days, or by both. (new).

5.30.080 Judicial review and enforcement.

A. A complainant, or person against whom a complaint is filed or other person aggrieved by an order of the commission may obtain judicial review of the order in accordance with AS 44.62.560-.570.

B. The commission may obtain a court order for the enforcement of any of its orders by filing a complaint with the Superior Court in the Third Judicial District. (new).

5.30.090 Effect of compliance with order.

Immediate and continuing compliance with all the terms of a commission order is a bar to prosecution for the particular instances of discriminatory conduct described in the accusation filed before the commission. (new).

NJ-

Dear Senator:

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

Thanks for your assistance!

Signed: Carl D. Cartwright