

Introduced

JUL 15 2005

I MINA 'BENTE OCHO NA LIHESLATURAN GUÅHAN

2005 (FIRST) Regular Session

Bill No. 173 (FC)

Introduced by:

A. R. Unpingco

2005 JUL 15 PM 3:17

AN ACT TO ADD A NEW CHAPTER 48 TO DIVISION 1 OF TITLE 21, GUAM CODE ANNOTATED, CREATING "THE GUAM UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT OF 2005" AND TO REPEAL TITLE 21 G.C.A. SECTIONS 21101, 21102, 21103, 21104, 21105, 21106, 21107, 21108, 21109, 21110, 21111, 21112, 21113, 21114, 21115, 21116, 21117, 21118, 21119, 21120, AND 21121

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Findings. I Liheslaturan Guåhan finds that the laws of Guam presently do not provide sufficient safeguards for tenants and landlords that the delays and inefficiencies associated with not having a comprehensive landlord and tenant law are costly for both. I Liheslaturan Guåhan further recognizes that the availability of a uniform landlord and tenant law will facilitate the willingness of financial institutions to lend to borrowers in Guam for rental properties. This is of benefit to both landlords and tenants in Guam and, among other benefits, will help make housing more readily

1 available and affordable for the People of Guam. The need for a comprehensive
2 landlord and tenant law has been recognized by most U.S. jurisdictions.

3 **Section 2. A new Chapter 48 is added to Division 1 of Title 21, Guam**
4 **Code Annotated.** A new Chapter 48 is added to Division 1 of Title 21, Guam Code
5 Annotated, to read as follows:

6 **“CHAPTER 48**

7 **UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT**

8 **ARTICLE 1. General Provisions and Definitions.**

9 **2. Landlord Obligation**

10 **3. Tenant Obligation**

11 **4. Remedies**

12 **5. Retaliatory Conduct**

13 **6. Effective Date and Repealer**

14 **ARTICLE 1**

15 **GENERAL PROVISIONS AND DEFINITIONS**

16 **PART 1. Short Title, Construction, Application and Subject Matter**
17 **of the Act.**

18 **§48101 Short Title**

19 **§48102 Purposes; Rules of Construction**

20 **§48103 Supplementary Principles of Law Applicable**

21 **§48104 Construction Against Implicit Repeal**

22 **§48105 Administration of Remedies; Enforcement**

23 **§48106 Settlement of Disputed Claim or Right**

24 **2. Scope and Jurisdiction**

25 **§48107 Territorial Application**

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§48108 Exclusions from Application of act

§48109 Jurisdiction and Service of Process

3. General Definitions and Principles of Interpretation:

Notice

§48110 General Definitions

§48111 Obligation of Good Faith

§48112 Unconscionability

§48113 Notice

4. General Provisions

§48114 Terms and Conditions of Rental Agreement

§48115 Effect of Unsigned or Undelivered Rental

Agreement

§48116 Prohibited Provisions in Rental Agreements

§48117 Separation of Rents and Obligations to Maintain Property

Forbidden

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LANDLORD OBLIGATION

§48201 Security Deposits; Prepaid Rent

§48202 Disclosure

§48203 Landlord to Deliver Possession of Dwelling Unit

§48204 Landlord to Maintain Premises

§48205 Limitation of Liability

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1 §48302 Rules and Regulations

2 §48303 Access

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7 §48401 Noncompliance by the Landlord-In General

8 §48402 Failure to Deliver Possessions

9 §48403 Self-help for Minor Defects

10 §48404 Wrongful Failure to Supply Heat, Water, Hot Water, or
11 Essential Services

12 §48405 Landlord's Noncompliance as Defense to Action for
13 Possession or Rent

14 §48406 Fire or Casualty Damage

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16 Exclusion, or Diminution of Service

17 **PART 2 LANDLORD REMEDIES**

18 §48408 Noncompliance with Rental Agreement; Failure to Pay
19 Rent

20 §48409 Failure to Maintain

21 §48410 Remedies for absence, Nonuse and Abandonment

22 §48411 Waiver of Landlord's Right to Terminate

23 §48412 Landlord Liens; Distress for Rent

24 §48413 Remedy after Termination

25 §48414 Recovery of Possession Limited

1 **PART 3 PERIODIC TENANCY; HOLDOVER; ABUSE OF ACCESS**

2 §48415 Periodic Tenancy; Holdover Remedies

3 §48416 Landlord and Tenant Remedies for Abuse of Access

4 **ARTICLE 5**

5 **RETALIATORY CONDUCT**

6 §48501 Retaliatory Conduct Prohibited

7 **ARTICLE 6**

8 **EFFECTIVE DATE AND REPEALER**

9 §48601 Effective date

10 §48602 Specific Repealer

11 §48603 Savings Clause

12 §48604 Severability

13 **UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT**

14 **ARTICLE I**

15 **GENERAL PROVISIONS AND DEFINITIONS**

16 **PART I**

17 **SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER**

18 **OF THE ACT**

19 § 48101. **Short Title.** This Act shall be known and may be cited as the
20 "The Guam Residential Landlord and Tenant Act of 2005."

21 § 48102. **Purposes; Rules of Construction.** (a) This Act shall be liberally
22 construed and applied to promote its underlying purposes and policies,
23 which are:

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1 (1) to simplify, clarify, modernize, and revise the law governing
2 the rental of dwelling units and the rights and obligations of
3 landlords and tenants;
4 (2) to encourage landlords and tenants to maintain and improve
5 the quality of housing.

6 **§ 48103. Supplementary Principles of Law Applicable.** Unless
7 displaced by the provisions of this Act, the principles of law and equity,
8 including the law relating to capacity to contract, mutuality of obligations,
9 principal and agent, real property, public health, safety and fire prevention,
10 estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or
11 other validating or invalidating causes supplement its provisions.

12 **§ 48104. Construction Against Implicit Repeal.** This Act being a general
13 act intended as a unified coverage of its subject matter, no part of it is to be
14 construed as impliedly repealed by subsequent legislation if that construction
15 can reasonably be avoided.

16 **§ 48105. Administration of Remedies; Enforcement.** (a) The remedies
17 provided by this Act shall be so administered that an aggrieved party may
18 recover appropriate damages. The aggrieved party has a duty to mitigate
19 damages.

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

22 **§ 48106. Settlement of Disputed Claim or Right.** A claim or right
23 arising under this Act or on a rental agreement, if disputed in good faith, may
24 be settled by agreement.

25 **PART II**

1 **SCOPE AND JURISDICTION**

2 **§ 48107. Territorial Application.** This Act applies to, regulates, and
3 determines rights, obligations, and remedies under a rental agreement,
4 wherever made, for a dwelling unit located within the Territory of Guam.

5 **§ 48108. Exclusions from Application of Act.** Unless created to avoid
6 the application of this Act, the following arrangements are not governed by
7 this Act:

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

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

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

16 (4) transient occupancy in a hotel or motel;

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

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

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

23 **§ 48109. Jurisdiction and Service of Process.** (a) The Superior Court of
24 Guam may exercise jurisdiction over any landlord with respect to any conduct
25 in Guam governed by this Act or with respect to any claim arising from a

1 transaction subject to this Act. Personal jurisdiction over a landlord may be
2 acquired in a civil action or proceeding instituted in the Superior Court by the
3 service of process in the manner provided by the Guam Rules of Civil
4 Procedure.

5 PART III

6 GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION:

7 NOTICE

8 § 48110. **General Definitions.** Subject to additional definitions
9 contained in subsequent Articles of this Act which apply to specific Articles or
10 Parts thereof, and unless the context otherwise requires, in this Act:

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

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

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

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

1 (5) "landlord" means the owner, lessor, or sublessor of the dwelling unit
2 or the building of which it is a part, and it also means a manager of the
3 premises who fails to disclose as required by Section 48202;

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

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

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

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

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

19 (11) "rental agreement" means all agreements, written or oral, and valid
20 rules and regulations adopted under Section 48302 embodying the terms
21 and conditions concerning the use and occupancy of a dwelling unit and
22 premises;

23 (12) "roomer" means a person occupying a dwelling unit that does not
24 include a toilet and either a bath tub or a shower and a refrigerator,
25 stove, and kitchen sink, all provided by the landlord, and where one or

1 more of these facilities are used in common by occupants in the
2 structure;

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

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

11 **§ 48111. Obligation of Good Faith.** Every duty under this Act and every
12 act which must be performed as a condition precedent to the exercise of a
13 right or remedy under this Act imposes an obligation of good faith in its
14 performance or enforcement.

15 **§ 48112. Unconscionability.** (a) If the court, as a matter of law, finds
16 (1) a rental agreement or any provision thereof was unconscionable when
17 made, the court may refuse to enforce the agreement, enforce the remainder of
18 the agreement without the unconscionable provision, or limit the application
19 of any unconscionable provision to avoid an unconscionable result; or
20 (2) a settlement in which a party waives or agrees to forego a claim or right
21 under this Act or under a rental agreement was unconscionable when made,
22 the court may refuse to enforce the settlement, enforce the remainder of the
23 settlement without the unconscionable provision, or limit the application of
24 any unconscionable provision to avoid an unconscionable result.

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

5 § 48113. Notice. (a) A person has notice of a fact if:

6 (1) he has actual knowledge of it,

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

8 (3) from all the facts and circumstances known to him at the time
9 in question he has reason to know that it exists. A person "knows"
10 or "has knowledge" of a fact if he has actual knowledge of it.

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

15 (1) it comes to his attention; or

16 (2) in the case of the landlord, it is delivered at the place of
17 business of the landlord through which the rental agreement was
18 made or at any place held out by him as the place for receipt of the
19 communication; or

20 (3) in the case of the tenant, it is delivered in hand to the tenant or
21 mailed by registered or certified mail to him at the place held out
22 by him as the place for receipt of the communication, or in the
23 absence of such designation, to his last known place of residence.

24 (c) "Notice," knowledge of a notice or notification received by an
25 organization is effective for a particular transaction from the time it is brought

1 to the attention of the individual conducting that transaction, and in any event
2 from the time it would have been brought to his attention if the organization
3 had exercised reasonable diligence.

4 **PART IV**

5 **GENERAL PROVISIONS**

6 **§ 48114. Terms and Conditions of Rental Agreement.** (a) A landlord
7 and a tenant may include in a rental agreement terms and conditions not
8 prohibited by this Act or other rule of law, including rent, term of the
9 agreement, and other provisions governing the rights and obligations of the
10 parties.

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

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

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

22 **§ 48115. Effect of Unsigned or Undelivered Rental Agreement.** (a) If
23 the landlord does not sign and deliver a written rental agreement signed and
24 delivered to him by the tenant, acceptance of rent without reservation by the

1 landlord gives the rental agreement the same effect as if it had been signed
2 and delivered by the landlord.

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

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

9 **§ 48116. Prohibited Provisions in Rental Agreements.** (a) A rental
10 agreement may not provide that the tenant:

11 (1) agrees to waive or forego rights or remedies under this Act;

12 (2) authorizes any person to confess judgment on a claim arising out of
13 the rental agreement;

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

15 (4) agrees to the exculpation or limitation of any liability of the landlord
16 arising under law or to indemnify the landlord for that liability or the
17 costs connected therewith.

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

23 **§ 48117. Separation of Rents and Obligations to Maintain Property**

24 **Forbidden.** A rental agreement, assignment, conveyance, trust deed, or

1 security instrument may not permit the receipt of rent free of the obligation to
2 comply with Section 48204(a).

3 ARTICLE II

4 LANDLORD OBLIGATIONS

5 **§ 48201. Security Deposits; Prepaid Rent.** (a) A landlord may not
6 demand or receive security, however denominated, in an amount or value in
7 excess of one [1] month's periodic rent.

8 (b) Upon termination of the tenancy, property or money held by the
9 landlord as security may be applied to the payment of accrued rent and the
10 amount of any damages which the landlord has suffered by reason of the
11 tenant's noncompliance with Section 48302 all as itemized by the landlord in a
12 written notice delivered to the tenant together with the amount due fourteen
13 [14] days after termination of the tenancy and delivery of possession and
14 demand by the tenant.

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

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

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

1 **§ 48202. Disclosure.** (a) A landlord or any person authorized to enter
2 into a rental agreement on his behalf shall disclose to the tenant in writing at
3 or before the commencement of the tenancy the name and address of:

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

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

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

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

13 (1) service of process and receiving notices and demands; and

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

17 **§ 48203. Landlord to Deliver Possession of Dwelling Unit.** At the
18 commencement of the term a landlord shall deliver possession of the premises
19 to the tenant in compliance with the rental agreement and Section 48204. The
20 landlord may bring an action for possession against any person wrongfully in
21 possession and may recover the damages provided in Section 48415(c).

22 **§ 48204. Landlord to Maintain Premises.** (a) A landlord shall

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

1 (2) make all repairs and do whatever is necessary to maintain the
2 premises in a fit and habitable condition;
3 (3) keep all common areas of the premises in a clean and safe
4 condition;
5 (4) maintain in good and safe working order and condition all
6 electrical, plumbing, sanitary, heating, ventilating, air-
7 conditioning, and other facilities and appliances, including
8 elevators, supplied or required to be supplied by him;
9 (5) provide and maintain appropriate receptacles and
10 conveniences for the removal of ashes, garbage, rubbish, and other
11 waste incidental to the occupancy of the dwelling unit and arrange
12 for their removal; and
13 (6) supply running water and reasonable amounts of hot water at
14 all times except where hot water is generated by an installation
15 within the exclusive control of the tenant and supplied by a direct
16 public utility connection.

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

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

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

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

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

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

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

14 **§ 48205. Limitation of Liability.** (a) Unless otherwise agreed, a landlord
15 who conveys premises that include a dwelling unit subject to a rental
16 agreement in a good faith sale to a bona fide purchaser is relieved of liability
17 under the rental agreement and this Act as to events occurring after written
18 notice to the tenant of the conveyance. However, he remains liable to the
19 tenant for all security recoverable by the tenant under Section 48201 and all
20 prepaid rent.

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

25 **ARTICLE III**

1 TENANT OBLIGATIONS

2 § 48301. **Tenant to Maintain Dwelling Unit.** A tenant shall

3 (1) comply with all obligations primarily imposed upon tenants by
4 applicable provisions of building and housing codes materially
5 affecting health and safety;

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

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

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

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

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

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

21 § 48302. **Rules and Regulations.** (a) A landlord, from time to time, may
22 adopt a rule or regulation, however described, concerning the tenant's use and
23 occupancy of the premises. It is enforceable against the tenant only if:

24 (1) its purpose is to promote the convenience, safety, or welfare of the
25 tenants in the premises, preserve the landlord's property from abuse, or

1 make a fair distribution of services and facilities held out for the tenants
2 generally;

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

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

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

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

9 and

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

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

15 **§ 48303. Access.** (a) A tenant shall not unreasonably withhold consent to
16 the landlord to enter into the dwelling unit in order to inspect the premises,
17 make necessary or agreed repairs, decorations, alterations, or improvements,
18 supply necessary or agreed services, or exhibit the dwelling unit to
19 prospective or actual purchasers, mortgagees, tenants, workmen, or
20 contractors.

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

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

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

3 (d) A landlord has no other right of access except

4 (1) pursuant to court order;

5 (2) as permitted by Sections 48409 and 48410; or

6 (3) unless the tenant has abandoned or surrendered the premises.

7 **§ 48304. Tenant to Use and Occupy.** Unless otherwise agreed, a tenant
8 shall occupy his dwelling unit only as a dwelling unit. The rental agreement
9 may require that the tenant notify the landlord of any anticipated extended
10 absence from the premises **in excess of seven [7] days** no later than the first
11 day of the extended absence.

12 **ARTICLE IV**

13 **REMEDIES**

14 **PART I**

15 **TENANT REMEDIES**

16 **§ 48401. Noncompliance by the Landlord - In General.** (a) Except as
17 provided in this Act, if there is a material noncompliance by the landlord with
18 the rental agreement or a noncompliance with Section 48204 materially
19 affecting health and safety, the tenant may deliver a written notice to the
20 landlord specifying the acts and omissions constituting the breach and that
21 the rental agreement will terminate upon a date not less than thirty [30] days
22 after receipt of the notice if the breach is not remedied in fourteen [14] days,
23 and the rental agreement shall terminate as provided in the notice subject to
24 the following:

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

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

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

13 (b) Except as provided in this Act, the tenant may recover actual
14 damages and obtain injunctive relief for noncompliance by the landlord with
15 the rental agreement or Section 48204. If the landlord's noncompliance is
16 willful the tenant may recover reasonable attorney's fees.

17 (c) The remedy provided in subsection (b) is in addition to any right of
18 the tenant arising under Section 48401(a).

19 (d) If the rental agreement is terminated, the landlord shall return all
20 security recoverable by the tenant under Section 48201 and all prepaid rent.

21 **§ 48402. Failure to Deliver Possession.** (a) If the landlord fails to deliver
22 possession of the dwelling unit to the tenant as provided in Section 48203, rent
23 abates until possession is delivered and the tenant may:

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

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

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

12 **§ 48403. Self-Help for Minor Defects.** (a) If the landlord fails to comply
13 with the rental agreement or Section 48204, and the reasonable cost of
14 compliance is less than One Hundred Dollars [\$100] or an amount equal to
15 **one-half** the monthly rent, whichever amount is greater, the tenant may
16 recover damages for the breach under Section 48401(b) or may notify the
17 landlord of his intention to correct the condition at the landlord's expense. If
18 the landlord fails to comply within fourteen [14] days after being notified by
19 the tenant in writing or as promptly as conditions require in case of
20 emergency, the tenant may cause the work to be done in a workmanlike
21 manner and, after submitting to the landlord an itemized statement, deduct
22 from his rent the actual and reasonable cost or the fair and reasonable value of
23 the work, not exceeding the amount specified in this subsection.

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

4 **§ 48404. Wrongful Failure to Supply Heat, Water, Hot Water, or**
5 **Essential Services.** (a) If, contrary to the rental agreement or Section 48204,
6 the landlord willfully or negligently fails to supply running water, hot water,
7 electric, gas, or other essential service, the tenant may give written notice to
8 the landlord specifying the breach and may:

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

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

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

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

22 (c) If the tenant proceeds under this section, he may not proceed under
23 Section 48401 or Section 48403 as to that breach.

24 (d) Rights of the tenant under this section do not arise until he has given
25 notice to the landlord or if the condition was caused by the deliberate or

1 negligent act or omission of the tenant, a member of his family, or other
2 person on the premises with his consent.

3 **§ 48405. Landlord's Noncompliance as Defense to Action for**
4 **Possession or Rent.** (a) In an action for possession based upon nonpayment of
5 rent or in an action for rent when the tenant is in possession, the tenant may
6 counterclaim for any amount he may recover under the rental agreement or
7 this Act. In that event, the court from time to time may order the tenant to pay
8 into court all or part of the rent accrued and thereafter accruing, and shall
9 determine the amount due to each party. The party to whom a net amount is
10 owed shall be paid first from the money paid into court, and the balance by
11 the other party. If no rent remains due after application of this section,
12 judgment shall be entered for the tenant in the action for possession. If the
13 defense or counterclaim by the tenant is without merit and is not raised in
14 good faith, the landlord may recover reasonable attorney's fees.

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

18 **§ 48406. Fire or Casualty Damage.** (a) If the dwelling unit or premises
19 are damaged or destroyed by fire or casualty to the extent that enjoyment of
20 the dwelling unit is substantially impaired, the tenant may:

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

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

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

9 **§ 48407. Tenant's Remedies for Landlord's Unlawful Ouster,**
10 **Exclusion, or Diminution of Service.** If a landlord unlawfully removes or
11 excludes the tenant from the premises or willfully diminishes services to the
12 tenant by interrupting or causing the interruption of heat, running water, hot
13 water, electric, gas, or other essential service, the tenant may recover
14 possession or terminate the rental agreement and, in either case, recover an
15 amount not more than three [3] months' periodic rent or treble the actual
16 damages sustained by him, whichever is greater, and reasonable attorney's
17 fees. If the rental agreement is terminated, the landlord shall return all
18 security recoverable under Section 48201 and all prepaid rent.

19 PART II

20 LANDLORD REMEDIES

21 **§ 48408. Noncompliance with Rental Agreement; Failure to Pay Rent.**

22 (a) Except as provided in this Act, if there is a material noncompliance by the
23 tenant with the rental agreement or a noncompliance with Section 48301
24 materially affecting health and safety, the landlord may deliver a written
25 notice to the tenant specifying the acts and omissions constituting the breach

1 and that the rental agreement will terminate upon a date not less than thirty
2 [30] days after receipt of the notice. If the breach is not remedied in fourteen
3 [14] days, the rental agreement shall terminate as provided in the notice
4 subject to the following. If the breach is remediable by repairs or the payment
5 of damages or otherwise and the tenant adequately remedies the breach
6 before the date specified in the notice, the rental agreement shall not
7 terminate. If substantially the same act or omission which constituted a prior
8 noncompliance of which notice was given recurs within six [6] months, the
9 landlord may terminate the rental agreement upon at least fourteen [14] days
10 written notice specifying the breach and the date of termination of the rental
11 agreement.

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

16 (c) Except as provided in this Act, the landlord may recover actual
17 damages and obtain injunctive relief for noncompliance by the tenant with the
18 rental agreement or Section 48301. If the tenant's noncompliance is willful the
19 landlord may recover reasonable attorney's fees.

20 **§ 48409. Failure to Maintain.** If there is noncompliance by the tenant
21 with Section 48301 materially affecting health and safety that can be remedied
22 by repair, replacement of a damaged item, or cleaning, and the tenant fails to
23 comply as promptly as conditions require in case of emergency or within
24 fourteen [14] days after written notice by the landlord specifying the breach
25 and requesting that the tenant remedy it within that period of time, the

1 landlord may enter the dwelling unit and cause the work to be done in a
2 workmanlike manner and submit the itemized bill for the actual and
3 reasonable cost or the fair and reasonable value thereof as rent on the next
4 date periodic rent is due, or if the rental agreement has terminated, for
5 immediate payment.

6 **§ 48410. Remedies for Absence, Nonuse and Abandonment.** (a) If the
7 rental agreement requires the tenant to give notice to the landlord of an
8 anticipated extended absence **in excess of seven [7] days** pursuant to Section
9 48304 and the tenant willfully fails to do so, the landlord may recover actual
10 damages from the tenant.

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

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

23 **§ 48411. Waiver of Landlord's Right to Terminate.** Acceptance of rent
24 with knowledge of a default by the tenant or acceptance of performance by
25 him that varies from the terms of the rental agreement constitutes a waiver of

1 the landlord's right to terminate the rental agreement for that breach, unless
2 otherwise agreed after the breach has occurred.

3 **§ 48412. Landlord Liens; Distress for Rent.** (a) A lien or security interest
4 on behalf of the landlord in the tenant's household goods is not enforceable
5 unless perfected before the effective date of this Act.

6 (b) Distrain for rent is abolished.

7 **§ 48413. Remedy after Termination.** If the rental agreement is
8 terminated, the landlord has a claim for possession and for rent and a separate
9 claim for actual damages for breach of the rental agreement and reasonable
10 attorney's fees as provided in Section 48408(c).

11 **§ 48414. Recovery of Possession Limited.** A landlord may not recover
12 or take possession of the dwelling unit by action or otherwise, including
13 willful diminution of services to the tenant by interrupting or causing the
14 interruption of running water, hot water, electric, gas, or other essential
15 service to the tenant, except in case of abandonment, surrender, or as
16 permitted in this Act.

17 **PART III**

18 **PERIODIC TENANCY; HOLDOVER; ABUSE OF ACCESS**

19 **§ 48415. Periodic Tenancy; Holdover Remedies.** (a) The landlord or the
20 tenant may terminate a week-to-week tenancy by a written notice given to the
21 other at least ten [10] days before the termination date specified in the notice.

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

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

9 **§ 48416. Landlord and Tenant Remedies for Abuse of Access.** (a) If the
10 tenant refuses to allow lawful access, the landlord may obtain injunctive relief
11 to compel access, or terminate the rental agreement. In either case the landlord
12 may recover actual damages and reasonable attorney's fees.

13 (b) If the landlord makes an unlawful entry or a lawful entry in an
14 unreasonable manner or makes repeated demands for entry otherwise lawful
15 but which have the effect of unreasonably harassing the tenant, the tenant
16 may obtain injunctive relief to prevent the recurrence of the conduct or
17 terminate the rental agreement. In either case the tenant may recover actual
18 damages **not less than one [1] month's rent** and reasonable attorney's fees.

19 ARTICLE V

20 RETALIATORY CONDUCT

21 **§ 48501. Retaliatory Conduct Prohibited.** (a) Except as provided in this
22 section, a landlord may not retaliate by increasing rent or decreasing services
23 or by bringing or threatening to bring an action for possession after:

24 (1) the tenant has complained to a governmental agency charged with
25 responsibility for enforcement of a building or housing code of a

1 violation applicable to the premises materially affecting health and
2 safety; or

3 (2) the tenant has complained to the landlord of a violation under
4 Section 48204; or

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

7 (b) If the landlord acts in violation of subsection (a), the tenant is entitled
8 to the remedies provided in Section 48407 and has a defense in any retaliatory
9 action against him for possession. In an action by or against the tenant,
10 evidence of a complaint within one [1] year before the alleged act of retaliation
11 creates a presumption that the landlord's conduct was in retaliation. The
12 presumption does not arise if the tenant made the complaint after notice of a
13 proposed rent increase or diminution of services. "Presumption" means that
14 the trier of fact must find the existence of the fact presumed unless and until
15 evidence is introduced which would support a finding of its nonexistence.

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

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

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

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