STATE OF DELAWARE

LANDLORD-TENANT CODE
TITLE 25 DELAWARE CODE

A COMPILATION OF ALL DELAWARE STATUTES CONCERNING LANDLORDS AND TENANTS

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Subchapter I. Rights, Obligations and Procedures, Generally.

§ 5101. Applicability of Code.

(a) This Code shall regulate and determine all legal rights, remedies and obligations of all parties and beneficiaries of any rental agreement of a rental unit within this State, wherever executed. Any rental agreement, whether written or oral, shall be unenforceable insofar as the agreement or any provision thereof conflicts with any provision of this Code, and is not expressly authorized herein. The unenforceability shall not affect other provisions of the agreement which can be given effect without the void provision.

(b) Any rental agreement for a commercial rental unit is excluded from this Code. All legal rights, remedies and obligations under any agreement for the rental of any commercial rental unit shall be governed by general contract principles; and only Chapter 57 of Title 25 and Part IV of Title 25 shall have any application to commercial rental agreements.

§ 5102. Exclusions from application of this Code.

The following arrangements are not intended to be governed by this Code, unless created solely to avoid such application:

(1) Residence at an institution, whether public or private, where such residence is merely incidental to detention or to the provision of medical, geriatric, educational, counseling, religious or similar services, including (but not limited to) prisons, student housing provided by a college or school, old-age homes, nursing homes, homes for unwed mothers, monasteries, nunneries and hospitals.

(2) Residence by a member of a fraternal organization in a structure operated for the benefit of the organization.

(3) Residence in a hotel, motel, cubicle hotel or other similar lodgings.

(4) Nonrenewable rental agreements of 120 days or less for any calendar year for a dwelling located within the boundaries of Broadkill Hundred, Lewes-Rehoboth Hundred, Indian River Hundred and Baltimore Hundred.

(5) A rental agreement for ground upon which improvements were constructed or installed by the tenant and used as a dwelling, where the tenant retains ownership or title thereto, or obtains title to existing improvement on the property.

§ 5103. Jurisdiction.

Any person, whether or not a citizen or resident of this State, who owns, holds an ownership or beneficial interest in, uses, manages or possesses real estate situated in this State submits himself, herself or itself or such person's personal representative to the jurisdiction of the courts of this State as to any action or proceeding for the enforcement of an obligation arising under this Code.

§ 5104. Obligations of good faith.

Every duty under this Code, and every act which must be performed as a condition precedent to the exercise of a right or remedy under this Code, imposes an obligation of good faith in its performance or enforcement.

§ 5105. Disclosure.

(a) On each written rental agreement, the landlord shall prominently disclose:

(1) The names and usual business addresses of all persons who are owners of the rental unit or the property of which the rental unit is a part, or the names and business addresses of their appointed resident agents; and/or

(2) The names and usual business addresses of any person who would be deemed a landlord of the unit pursuant to § 5141(12) of this title.

(b) Where there is a written rental agreement, the landlord shall provide a copy of such written rental agreement to the tenant, free of charge. In the case of an oral agreement, the landlord shall, on demand, furnish the tenant with a written statement containing the information required by subsection (a) of this section.

(c) Any owner or resident agent not dealing with the tenant as a landlord shall be responsible for compliance with this section by the landlord and may not take advantage of any failure to serve process upon such owner or resident agent in any proceeding arising under this Code where such failure is due to the owner or resident agent's failure to comply with this section.

§ 5106. Rental agreement; term and termination of rental agreement.

(a) No rental agreement, unless in writing, shall be effective for a longer term than 1 year.

(b) Where no term is expressly provided, a rental agreement for premises shall be deemed and construed to be for a month-to-month term.

(c) The landlord may terminate any rental agreement, other than month-to-month agreements, by giving a minimum of 60 days' written notice to the tenant prior to the expiration of the term of the rental agreement. The notice shall indicate that the agreement shall terminate upon its expiration date. A tenant may terminate a rental agreement by giving a minimum of 60 days' written notice prior to the expiration of the term of the rental agreement that the agreement shall terminate upon its expiration date.

(d) Where the term of the rental agreement is month-to-month, the landlord or tenant may terminate the rental agreement by giving the other party a minimum of 60 days' written notice, which 60-day period shall begin on the 1st day of the month following the day of actual notice.

(e) With regard to a tenant occupying a federally-subsidized housing unit, in the event of any conflict between the terms of this Code and the terms of any federal law, regulations or guidelines, the terms of the federal law, regulations or guidelines shall control.

§ 5107. Renewals of rental agreements with modifications.

(a) If the landlord intends to renew the rental agreement subject to amended or modified provisions, the landlord shall give the tenant a minimum of 60 days' written notice prior to the expiration of

the rental agreement that the agreement shall be renewed subject to amended or modified provisions, including, but not limited to, amended provisions relating to the length of term or the amount of security deposit or rent. Such notice shall specify the modified or amended provisions, the amount of any rent or security deposit and the date on which any modifications or amendments shall take effect.

(b) After receipt of such notice from the landlord, unless the tenant notifies the landlord of the tenant's intention to terminate the existing rental agreement a minimum of 45 days prior to the last day of the term, the provisions of the amended or modified rental agreement shall be deemed to have been accepted and agreed to by the tenant, and the terms of the lease, as amended, shall take full force and effect.

(c) If the tenant rejects the modified terms or provisions set forth in a notice of renewal given under this section, then the rejected notice of renewal shall be considered an effective termination notice.

(d) The terms of subsections (a) through (c) of this section shall not be applicable where the tenant's rent and security deposit are a function of the tenant's income in accordance with any form of regulations or guidelines of the United States Department of Housing and Urban Development (HUD); in the event that they are a function of income, the regulations and guidelines established by HUD with regard to the determination and future adjustments of a tenant's rent and security deposit shall govern. With regard to a tenant's occupying HUD-subsidized units, in the event of any conflict between the terms of this Code and the terms of any HUD regulation or guideline, the terms of a HUD regulation or guideline shall control.

§ 5108. Rental agreement; automatic extension of agreements where parties fail to terminate or renew subject to modifications.

(a) Where a rental agreement, other than for farm unit, is for 1 or more years, and 60 days or upward before the end of the term either the landlord does not give notice in writing to the tenant of landlord's intention to terminate the rental agreement and the tenant does not give 45 days' notice to the landlord of tenant's intention to terminate the rental agreement, the term shall be month-to-month, and all other terms of the rental agreement shall continue in full force and effect.

(b) The provisions of § 5107(a) through (c) of this title shall control if a notice of renewal with modifications has been sent.

(c) With regard to a tenant occupying a federally-subsidized housing unit, in the event of any conflict between the terms of this Code and the terms of any federal law, regulations or guidelines, the terms of the federal law, regulations or guidelines shall control.

§ 5109. Rental agreement; promises mutual and dependent.

(a) Material promises, agreements, covenants or undertakings of any kind to be performed by either party to a rental agreement shall be interpreted as mutual and dependent conditions to the performance of material promises, agreements, covenants and undertakings by the other party.

(b) A party undertaking to remedy a breach by the other party in accordance with this Code shall be deemed to have complied with the terms of this Code if their noncompliance with the exact instructions of this Code is nonmaterial and nonprejudicial to the other party.

§ 5110. Rental agreement; effect of unsigned rental agreement.

(a) If the landlord does not sign a written rental agreement which has been signed and tendered to the landlord by the tenant, acceptance of rent without reservation by the landlord shall give to the rental agreement the same effect as if it had been signed by the landlord.

(b) If the tenant does not sign a written rental agreement which has been signed and tendered to the tenant by the landlord, acceptance of possession and payment of rent by the tenant, without reservation, shall give to the rental agreement the same effect as if it had been signed by the tenant.

(c) Where a rental agreement which has been given effect by the operation of this section provides by its terms for a term longer than 1 year, it shall operate to create only a 1-year term.

§ 5111. Attorney's fees prohibited.

No provision in a rental agreement providing for the recovery of attorney's fees by either party in any suit, action or proceeding arising from the tenancy shall be enforceable.

§ 5112. Time computation.

In computing any period of time prescribed or allowed by order of the Court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included unless specifically included by statute, order or rule. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation.

§ 5113. Service of notices or pleadings and process.

(a) Any notice or service of process required by this Code shall be served either personally upon the tenant or landlord or upon the tenant by leaving a copy thereof at the person's rental unit or usual place of abode with an adult person residing therein; and upon the landlord by leaving a copy thereof at the landlord's address as set forth in the lease or as otherwise provided by landlord with an adult person residing therein, or with an agent or other person in the employ of the landlord whose responsibility it is to accept such notice. If the landlord is an artificial entity, pursuant to Supreme Court Rule 57, service of the notice or process may be made by leaving a copy thereof at its office or place of business as set forth in the lease with an agent authorized by appointment or by law to receive service of process.

(b) In lieu of personal service or service by copy of the notice or process required by this Code, a copy of such notice or process may be sent by registered or certified mail or 1st-class mail as evidenced by a certificate of mailing postage-prepaid, addressed to the tenant at the leased premises, or to the landlord at the landlord's business address as set forth in the lease or as otherwise provided by landlord, or if the landlord is an artificial entity, pursuant to Supreme Court Rule 57, at its office or place of business. The return receipt of the notice, whether signed, refused or unclaimed, sent by registered or certified mail, or the certificate of mailing if sent by 1st-class mail, shall be held and considered to be prima facie evidence of the service of the notice or process.

(c) In the alternative, service of notice or process may also be obtained by 1 of the following 2 alternatives:

(1) Posting of the notice on the rental unit, when combined with a return receipt or certificate of mailing; or

(2) Personal service by a special process-server appointed by the Court.

§ 5114. Notice; contractual notice between the parties.

(a) A person has notice of a fact if:

(1) The person has actual knowledge of it;

(2) The person has received a notice pursuant to the provisions of this Code; or

(3) From all the facts and circumstances known at the time in question, such person has reason to know that it exists.

§ 5115. Application for a forthwith summons.

Where the landlord alleges and by substantial evidence demonstrates to the Court that a tenant has caused substantial or irreparable harm to landlord's person or property, or where the tenant alleges and by substantial evidence demonstrates to the Court that the landlord has caused substantial or irreparable harm to the tenant's person or property, the Justice of the Peace Court shall issue a forthwith summons to expedite the Court's consideration of the allegations.

§ 5116. Fair housing provisions.

(a) No person, being an owner or agent of any real estate, house, apartment or other premises, shall refuse or decline to rent, subrent, sublease, assign or cancel any existing rental agreement to or of any tenant or any person by reason of race, creed, religion, marital status, color, sex, national origin, disability, age or occupation or because the tenant or person has a child or children in the family.

(b) No person shall demand or receive a greater sum as rent for the use and occupancy of any premises because the person renting or desiring to rent the premises is of a particular race, creed, religion, marital status, color, sex, national origin, disability, age or occupation or has a child or children in the family.

(c) In the event of discrimination under this section, the tenant may recover damages sustained as a result of the landlord's action, including, but not limited to, reasonable expenditures necessary to obtain adequate substitute housing.

(d) Notwithstanding subsection (a) of this section relating to age discrimination, and consistent with federal and state fair housing acts, a landlord may make rental units available exclusively for rental by senior citizens. A senior citizen rental unit shall be available for rent solely to senior citizens, without regard to race, creed, religion, marital status, color, sex, national origin, disability or occupation of the senior citizen and without regard to whether or not the senior citizen has a dependent child or children in the residence.

§ 5117. Remedies for violation of the rental agreement or the Code.

(a) For any violation of the rental agreement or this Code, or both, by either party, the injured party shall have a right to maintain a cause of action in any court of competent civil jurisdiction.

(b) In satisfaction of any judgment obtained by the landlord for rental arrearage or unlawful destruction of property, the wages of the judgment debtor may be attached in the manner provided by law.

§ 5118. Summary of residential landlord-tenant code.

A summary of the Landlord-Tenant Code, as prepared by the Consumer Protection Unit of the Attorney General's Office or its successor agency, shall be given to the new tenant at the beginning of the rental term. If the landlord fails to provide the summary, the tenant may plead ignorance of the law as a defense.

§ 5119. [Reserved.].

[Reserved.]

§ 5120. Landlord liens; distress for rent.

(a) The right of the landlord of distress for rent is hereby abolished, except as otherwise provided herein.

(b) Unless perfected before the effective date of this code, no lien on behalf of the landlord in the personal property and possessions of the tenant shall be enforceable, except as otherwise provided herein.

§ 5121. Confession of judgment.

A provision of a written rental agreement authorizing a person other than the tenant to confess judgment against the tenant is void and unenforceable.

Subchapter II. Definitions

§ 5141. Definitions.

The following words, terms and phrases, when used in this Part, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Action" shall mean any claim advanced in a court proceeding in which rights are determined.

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

(3) "Certificate of mailing" shall mean United States Postal Form No. 3817, or its successor.

(4) "Commercial rental unit" shall mean any lot, structure or portion thereof, which is occupied or rented solely or primarily for commercial or industrial purposes.

(5) "Disabled or handicapped" person shall have the same meaning as found in the Americans with Disabilities Act (1992) as amended.

(6) "Equivalent substitute housing" shall mean a rental unit of like or similar location, size, facilities and rent.

(7) "Extended absence" shall mean any absence of more than 7 days.

(8) "Forthwith summons" shall mean any summons requiring the personal appearance of a party or person(s) at the earliest convenience of the court.

(9) "Good faith dispute" shall mean the manifestation of an honest difference of opinion relating to the rights of the parties to a rental agreement pursuant to such agreement, or pursuant to this Code.

(10) "Holdover" or "holdover tenant" shall mean a tenant who wrongfully retains possession or who wrongfully exercises control of the rental unit after the expiration or termination of the rental agreement.

(11) "Injunction" shall mean a court order prohibiting a party from doing an act or restraining a party from continuing an act.

(12) "Landlord" shall mean:

a. The owner, lessor or sub-lessor of the rental unit or the property of which it is a part and, in addition, shall mean any person authorized to exercise any aspect of the management of the premises, including any person who, directly or indirectly, receives rents or any part thereof other than as a bona fide purchaser and who has no obligation to deliver the whole of such receipts to another person; or

b. Any person held out by any landlord as the appropriate party to accept performance, whether such person is a landlord or not; or

c. Any person with whom the tenant normally deals as a landlord; or

d. Any person to whom the person specified in subparagraphs b. and c. of this paragraph is directly or ultimately responsible.

(13) "Legal holiday" shall mean any date designated as a legal holiday under § 501 of Title 1.

(14) "Local government unit" shall mean a political subdivision of this State, including, but not limited to, a county, city, town or other incorporated community or subdivision of the subdivision providing local government service for residents in a geographically limited area of the State as its primary purpose, and has the power to act primarily on behalf of the area.

(15) "Month to month" shall mean a renewable term of 1 month.

(16) "Normal wear and tear" shall mean the deterioration in the condition of a property or premises by the ordinary and reasonable use of such property or premises.

(17) a. "Owner" shall mean 1 or more persons, jointly or severally, in whom is vested:

1. All or part of the legal title to property; or

2. All or part of the beneficial ownership, usufruct and a right to present use and enjoyment of the premises.

b. The word "owner" shall include a mortgagee in possession.

(18) "Person" shall include an individual, artificial entity pursuant to Supreme Court Rule 57, government or governmental agency, business trust, 2 or more persons having a joint or common trust or any other legal or commercial entity.

(19) "Pet deposit" shall mean any deposit made to a landlord by a tenant to be held for the term of the rental agreement, or any part thereof, for the presence of an animal in a rental unit.

(20) "Premises" shall mean a rental unit and the structure of which it is a part, and the facilities and appurtenances therein, grounds, areas and facilities held out for the use of tenants generally, or whose use is contracted for between the landlord and the tenant.

(21) "Rental agreement" shall mean and include all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations or any other provisions concerning the use and occupancy of a rental unit.

(22) "Rental unit," "dwelling unit" or "dwelling place" shall mean any house, building, structure, or portion thereof, which is occupied, rented or leased as the home or residence of 1 or more persons.

(23) "Security deposit" shall mean any deposit, exclusive of a pet deposit, given to the landlord which is to be held for the term of the rental agreement or for any part thereof.

(24) "Senior citizen" shall mean any person, 62 years of age or older, regardless of the age of such person's spouse.

(25) "Support animal" shall mean any animal individually trained to do work or perform tasks to meet the requirements of a disabled person, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair or retrieving dropped items.

(26) "Tenant" shall mean a person entitled under a rental agreement to occupy a rental unit to the exclusion of others, and the word "tenant" shall include an occupant of any premises pursuant to a conditional sales agreement.

(27) "Utility services" shall mean water, sewer, electricity or fuel.

(28) "Domestic abuse" shall mean any act or threat against a victim of domestic abuse or violence that either constitutes a crime under Delaware law or any act or threat that constitutes domestic violence or domestic abuse as defined anywhere in the Delaware Code. Domestic abuse can be verified by an official document, such as a court order, or by a reliable third party professional, including a law enforcement agency or officer, a domestic violence or domestic abuse service provider, or health care provider. It is the domestic violence or abuse victim's responsibility to provide the reliable statement from the reliable third party.

(29) The terms "sexual offenses" and "stalking" shall here have the same meanings as in Title 11. Sexual offenses and stalking can be verified by an official document, such as a court order, or by a reliable third party professional, including a law enforcement agency or officer, a sexual assault service provider, or health care provider. It is the sexual assault or stalking victim's responsibility to provide the reliable statement from the reliable third party.

CHAPTER 53. LANDLORD OBLIGATIONS AND TENANT REMEDIES

Sec.

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§ 5301. Landlord obligation; rental agreement.

(a) A rental agreement shall not provide that a tenant:

(1) Agrees to waive or forego rights or remedies under this Code;

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

(3) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith.

(b) A provision prohibited by subsection (a) of this section which is included in the rental agreement is unenforceable. If a landlord attempts to enforce provisions of a rental agreement known by the landlord to be prohibited by subsection (a) of this section the tenant may bring an action to recover an amount equal to 3 months rent, together with costs of suit but excluding attorneys' fees.

§ 5302. Tenant remedy; termination at the beginning of term.

(a) If the landlord fails to substantially conform to the rental agreement, or if there is a material noncompliance with any code, statute, ordinance or regulation governing the maintenance or operation of the premises, the tenant may, on written notice to the landlord, terminate the rental agreement and vacate the premises at any time during the 1st month of occupancy, so long as the tenant remains in possession in reliance on a promise, whether written or oral, by the landlord to correct all or any part of the condition or conditions which would justify termination by the tenant under this section.

(b) If the tenant remains in possession in reliance on a promise, whether written or oral, by the landlord, to correct all or any part of the condition or conditions which would justify termination by the tenant under this section; and if substantially the same act or omission which constitutes a prior noncompliance, of which prior notice was given under subsection (a) of this section, recurs within 6 months, the tenant may terminate the rental agreement upon at least 15 days' written notice, which notice shall specify the breach and the date of termination of the rental agreement.

(c) If there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of the condition; and, if the landlord does not remedy the condition within 15 days, the tenant may terminate the rental agreement. The tenant must then initiate an action in the Justice of the Peace Court seeking a determination that the landlord has breached the rental agreement by depriving the tenant of a substantial part of the benefit or enjoyment of the bargain and may seek damages, including a rent deduction from the date written notice of the condition was given to the landlord.

(d) If the condition referred to in subsection (c) of this section was caused willfully or negligently by the landlord, the tenant may recover the greater of:

(1) The difference between the rent payable under the rental agreement and all expenses necessary to obtain equivalent substitute housing for the remainder of the rental term; or

(2) An amount equal to 1 month's rent and the security deposit.

(e) The tenant may not terminate the rental agreement for a condition caused by the want of due care by the tenant, a member of tenant's family or any other person on the premises with the tenant's consent. If a tenant terminates wrongfully, the tenant shall remain obligated under the rental agreement.

§ 5303. Landlord obligation to supply possession of rental unit.

The landlord shall supply the rental unit bargained for at the beginning of the term and shall put the tenant into full possession.

§ 5304. Tenant's remedies for failure to supply possession.

(a) If the landlord fails to put the tenant into full possession of the rental unit at the beginning of the agreed term, the rent shall abate during any period the tenant is unable to enter and:

(1) Upon notice to the landlord, the tenant may terminate the rental agreement at any time the tenant is unable to enter into possession; and the landlord shall return all monies paid to the landlord for the rental unit, including any pre-paid rent, pet deposit and security deposit; and

(2) If such inability to enter is caused wrongfully by the landlord or by anyone with the landlord's consent or license due to substantial failure to conform to existing building and housing codes, the tenant may recover reasonable expenditures necessary to secure equivalent substitute housing for up to 1 month. In no event shall such expenditures under this subsection exceed the agreed upon rent for 1 month. Such expenditures may be recovered by appropriate action or proceeding or by deduction from the rent upon the submission of receipts for same.

(b) If such inability to enter results from the wrongful occupancy of a holdover tenant and the landlord has not brought an action for summary possession against such holdover tenant, the entering tenant may maintain an action for summary possession against the holdover tenant. The expenses of such proceeding and substitute housing expenditures may be claimed from the rent in the manner specified in subsection (a) (2) of this section.

§ 5305. Landlord obligations relating to the rental unit.

(a) The landlord shall, at all times during the tenancy:

(1) Comply with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the rental unit and the property of which it is a part;

(2) Provide a rental unit which shall not endanger the health, welfare or safety of the tenants or occupants and which is fit for the purpose for which it is expressly rented;

(3) Keep in a clean and sanitary condition all common areas of the buildings, grounds, facilities and appurtenances thereto which are maintained by the landlord;

(4) Make all repairs and arrangements necessary to put and keep the rental unit and the appurtenances thereto in as good a condition as they were, or ought by law or agreement to have been, at the commencement of the tenancy; and

(5) Maintain all electrical, plumbing and other facilities supplied by the landlord in good working order.

(b) If the rental agreement so specifies, the landlord shall:

(1) Provide and maintain appropriate receptacles and conveniences for the removal of ashes, rubbish and garbage and arrange for the frequent removal of such waste; and

(2) Supply or cause to be supplied, water, hot water, heat and electricity to the rental unit.

(c) The landlord and tenant may agree by a conspicuous writing, separate from the rental agreement, that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling, but only if:

(1) The particular work to be performed by the tenant is for the primary benefit of the rental unit; and

(2) The work is not necessary to bring a noncomplying rental unit into compliance with a building or housing code, ordinance or the like; and

(3) Adequate consideration, apart from any provision of the rental agreement, or a reduction in the rent is exchanged for the tenant's promise. In no event may the landlord treat any agreement under this subsection as a condition to any provision of rental agreements; and

(4) The agreement of the parties is entered into in good faith and is not for the purpose of evading an obligation of the landlord.

(d) Evidence of compliance with the applicable building and housing codes shall be prima facie evidence that the landlord has complied with this chapter or with any other chapter of Part III of this title.

§ 5306. Tenant's remedies relating to the rental unit; termination.

(a) If there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of the condition and, if the landlord does not remedy the condition within 15 days following receipt of notice, the tenant may terminate the rental agreement. If such condition renders the premises uninhabitable or poses an imminent threat to the health, safety or welfare of the tenant or any member of the family, then tenant may, after giving notice to the landlord, immediately terminate the rental agreement without proceeding in a Justice of the Peace Court.

(b) The tenant may not terminate the rental agreement for a condition caused by the want of due care by the tenant, a member of the family or any other person on the premises with the tenant's consent. If a tenant terminates wrongfully, the tenant shall remain obligated under the rental agreement.

(c) If the condition referred to in subsection (a) of this section was caused willfully or negligently by the landlord, the tenant may recover the greater of:

(1) The difference between rent payable under the rental agreement and all expenses necessary to obtain equivalent substitute housing for the remainder of the rental term; or

(2) An amount equal to 1 month's rent and the security deposit.

§ 5307. Tenant's remedies relating to the rental unit; repair and deduction from rent.

(a) If the landlord of a rental unit fails to repair, maintain or keep in a sanitary condition the leased premises or perform in any other manner required by statute, code or ordinance, or as agreed to in the a rental agreement; and, if after being notified in writing by the tenant to do so, the landlord:

(1) Fails to remedy such failure within 30 days from the receipt of the notice; or

(2) Fails to initiate reasonable corrective measures where appropriate, including, but not limited to, the obtaining of an estimate of the prospective costs of the correction, within 10 days from the receipt of the notice;

Then the tenant may immediately do or have done the necessary work in a professional manner. After the work is done, the tenant may deduct from the rent a reasonable sum, not exceeding $200, or one-half of 1 month's rent, whichever is less, for the expenditures by submitting to the landlord copies of those receipts covering at least the sum deducted.

(b) In no event may a tenant repair or cause anything to be repaired at the landlord's expense when the condition complained of was caused by the want of due care by the tenant, a member of the tenant's family or another person on the premises with the tenant's consent.

(c) A tenant who is otherwise delinquent in the payment of rent may not take advantage of the remedies provided in this section.

(d) The tenant is liable for any damage to persons or property where such damage was caused by the tenant or by someone authorized by the tenant in making said repairs.

§ 5308. Essential services; landlord obligation and tenant remedies.

(a) If the landlord substantially fails to provide hot water, heat, water or electricity to a tenant, or fails to remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant's bargain in violation of the rental agreement; or in violation of a provision of this Code; or in violation of an applicable housing code and such failure continues for 48 hours or more, after the tenant gives the landlord actual or written notice of the failure, the tenant may:

(1) Upon written notice of the continuation of the problem to the landlord, immediately terminate the rental agreement; or

(2) Upon written notice to the landlord, keep two-thirds per diem rent accruing during any period when hot water, heat, water, electricity or equivalent substitute housing is not supplied. The landlord may avoid this liability by a showing of impossibility of performance.

(b) If the tenant has given the notice required under subsection (a) of this section and remains in the rental unit and the landlord still fails to provide water, hot water, heat and electricity to the rental unit

as specified in the applicable city or county housing code in violation of the rental agreement, the tenant may:

(1) Upon written notice to the landlord, immediately terminate the rental agreement; or

(2) Upon notice to the landlord, procure equivalent substitute housing for as long as heat, water, hot water or electricity is not supplied, during which time the rent shall abate, and the landlord shall be liable for any additional expense incurred by the tenant, up to one half of the amount of abated rent. This additional expense shall not be chargeable to the landlord if landlord is able to show impossibility of performance; or

(3) Upon written notice to the landlord, tenant may withhold two-thirds per diem rent accruing during any period when hot water, heat, water or equivalent substitute housing is not supplied.

(c) Rent withholding does not act as a bar to the subsequent recovery of damages by a tenant if those damages exceed the amount withheld.

(d) Where a landlord files an action for summary possession, claiming that a tenant has wrongfully withheld rent or deducted money from rent under this section and the court so finds, the landlord shall be entitled to receive from the tenant either possession of the premises or an amount of money equal to the amount wrongfully withheld ("damages") or, if the court finds the tenant acted in bad faith, an amount of money equal to double the amount wrongfully withheld ("double damages"). In the event the court awards damages or double damages and court costs excluding attorneys' fees, then the court shall issue an order requiring such damages or double damages to be paid by the tenant to the landlord within 10 days from the date of the court's judgment. If such damages are not paid in accordance with the court's order, the judgment for damages or double damages, together with court costs, shall become a judgment for the amount withheld, plus summary possession, without further notice to the tenant.

§ 5309. Fire and casualty damage; landlord obligation and tenant remedies.

(a) If the rental unit or any other property or appurtenances necessary to the enjoyment thereof are damaged or destroyed by fire or casualty to an extent that enjoyment of the rental unit is substantially impaired, and such fire or other casualty occurs without fault on the part of the tenant, or a member of the tenant's family, or another person on the premises with the tenant's consent, the tenant may:

(1) Immediately quit the premises and promptly notify the landlord, in writing, of the tenant's election to quit within 1 week after vacating, in which case the rental agreement shall terminate as of the date of vacating. If the tenant fails to notify the landlord of the tenant's election to quit, the tenant shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's vacating the rental unit or impossibility of further occupancy; or

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

(b) If the rental agreement is terminated, the landlord shall timely return any security deposit, pet deposit and pre-paid rent, except that to which the landlord is entitled to retain pursuant to this Code. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

§ 5310. "Assurance money" prohibited.

(a) In every transaction wherein an application is made by a prospective tenant to lease a dwelling unit, the prospective landlord or owner of the dwelling unit shall not ask for, nor receive, any "assurance money" or other payment which is not an application fee, security deposit, pet deposit or similar deposit reserving the dwelling unit for the prospective tenant for a time certain. The prospective landlord shall not charge the prospective tenant, as a fee for any credit or other type of investigation, any more than the specific cost of such investigation. For purposes of this section, "assurance money" shall mean any payment to the prospective landlord by a prospective tenant, except an application fee, a payment in the way of a security deposit, pet deposit or similar deposit, reserving the dwelling unit for the prospective tenant for a time certain or the reimbursing of the specific sums expended by the landlord in credit or other investigations.

(b) Each landlord shall retain, for a period of 6 months, the records of each application made by any prospective tenant. Upon any complaint of a violation of this section, the Consumer Protection Unit of the Attorney General's office shall investigate the same, shall interview tenants of the landlord and shall,

under appropriate search warrant, have the right to investigate all records of the landlord pertaining to applications made within the preceding 6 months. If such investigation reveals good cause for the Attorney General's office to believe there has been a violation of this section, the Attorney General's office may issue such cease and desist orders in accordance with § 2517 of Title 29 as are required to remedy the violation.

§ 5311. Fees.

Except for an optional service fee for actual services rendered, such as a pool fee or tennis court fee, a landlord shall not charge to a tenant any nonrefundable fee as a condition for occupancy of the rental unit.

§ 5312. Metering and charges for utility services.

(a) A landlord may install, operate and maintain meters or other appliances for measurement to determine the consumption of utility services by each rental unit. Only if the rental agreement so provides, and in compliance with this section, may a landlord charge a tenant separately for the utility services as measured by such meter or other appliance. With the exception of metering systems already in use prior to July 17, 1996, a landlord shall not separately charge a tenant for any utility service, unless such utility service is separately metered. The metering system may be inspected by and must be approved by the Division of Weights and Measures.

(b) No landlord shall require that any tenant contract directly with the provider of a utility service for service to a tenant or to a rental unit, unless such rental unit is separately metered. No landlord who purchases utility services in bulk shall charge any tenant individually for utility services, unless such utility services are either individually metered or the cost of such services is included as part of each monthly rental payment, as provided for in the rental agreement.

(c) A landlord who charges a tenant separately for utility services under this section shall not charge the tenant an amount for such services which exceeds the actual cost of the utility service as determined by the cost of the service charged by the provider to the landlord or to any company owned in whole or in part by the landlord.

(d) Any tenant who is charged and who pays for utility services separately to the landlord shall be entitled to inspect the bills and records upon which such charges were calculated, during the landlord's regular business hours at the landlord's regular business office. A landlord shall retain such bills and records for 1 year from the date upon which tenants were billed.

(e) Charges for utility services made by a landlord to a tenant shall be considered rent for all purposes under this Code. With respect to security deposits, and unless the rental agreement otherwise provides, the rights and obligations of the parties as to payment and nonpayment of utility charges shall be enforced in the same manner as the rights and obligations of the parties relating to payment and nonpayment of rent. A landlord shall not discontinue or terminate utility service for nonpayment of rent, utility charges or other breach.

(f) A landlord who charges separately for utilities in accordance with this section shall bill the tenant for such charges not less frequently than monthly, and shall use reasonable efforts to obtain actual readings of meters or appliances for measurements, which readings shall reasonably coincide with the landlord's bulk billing. If, despite reasonable effort, a landlord is unable to obtain an actual reading, the landlord may estimate the tenant's utility consumption and bill the tenant for such estimated amount; provided however, that a landlord may not send more than 2 consecutive estimated billings. Notwithstanding the foregoing, an actual reading shall be made upon the commencement of the lease and at the expiration or termination of the lease.

(g) (1) A landlord, upon request by a tenant, shall cause to be examined or tested the meter or appliance for measurement. If the meter or appliance so tested or examined is found to be accurate within commercially reasonable limits, the costs and expenses of such test or examination shall be paid by the tenant as additional rent; but if the meter or appliance is found to be not accurate, then such costs and expenses shall be borne by the landlord, who shall forthwith replace the inaccurate meter or other appliance.

(2) In addition to those rights and powers vested by law in the Consumer Protection Unit of the Attorney General's office or its successor agency, the Attorney General's office may enter, by and through its agents, experts or examiners, upon any premises for the purpose of making the examination

and tests provided for in this section, and may set up and use on such premises any apparatus and appliances necessary therefore.

(h) A landlord who installs, operates and maintains meters or other appliances for measurement and who bills tenants separately for utilities, shall not be deemed a public utility, nor shall the Public Service Commission have any authority, power or jurisdiction over such landlords or their practices in connection with the installation, operation and maintenance of meters or other appliances for measurement, the reading of meters, calculation and determination of charges for utility services or otherwise. The Consumer Protection Unit of the Attorney General's office shall have authority to enforce this section.

§ 5313. Unlawful ouster or exclusion of tenant.

If removed from the premises or excluded there from by the landlord or the landlord's agent, except under color of a valid court order authorizing such removal or exclusion, the tenant may recover possession or terminate the rental agreement. The tenant may also recover treble the damages sustained or an amount equal to 3 times the per diem rent for the period of time the tenant was excluded from the unit, whichever is greater, and the costs of the suit excluding attorneys' fees.

§ 5314. Tenant's right to early termination.

(a) Except as is otherwise provided in this Part, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease and all parties shall thereupon discharge any remaining obligations as soon as is practicable.

(b) Upon 30 days' written notice, which 30-day period shall begin on the 1st day of the month following the day of actual notice, the tenancy may be terminated:

(1) By the tenant, whenever a change in location of the tenant's employment with the tenant's present employer requires a change in the location of the tenant's residence in excess of 30 miles;

(2) By the tenant, whenever the serious illness of the tenant or the death or serious illness of a member of the tenant's immediate family, residing therein, requires a change in the location of the tenant's residence on a permanent basis;

(3) By the tenant, when the tenant is accepted for admission to a senior citizens' housing facility, including subsidized public or private housing, or a group or cooperative living facility or retirement home;

(4) By the tenant, when the tenant is accepted for admission into a rental unit subsidized by a governmental entity or by a private nonprofit corporation, including subsidized private or public housing;

(5) By the tenant who, after the execution of such rental agreement, enters the military service of the United States on active duty;

(6) By a tenant who is the victim of domestic abuse, sexual offenses, stalking, or a tenant who has obtained or is seeking relief from domestic violence or abuse from any court, police agency, or domestic violence program or service; or

(7) By the surviving spouse or personal representative of the estate of the tenant, upon the death of the tenant.

§ 5315. Taxes paid by tenant; setoff against rent; recovery from owner.

Any tax laid upon lands or tenements according to law which is paid by or levied from the tenant of such lands or tenements, or a person occupying and having charge of same, shall be a setoff against the rent or other demand of the owner for the use, or profits, of such premises. If there is no rent or other demand sufficient to cover the sum so paid or levied, the tenant or other person may demand and recover the same from the owner, with costs. This provision shall not affect any contract between the landlord and tenant.

CHAPTER 55. TENANT OBLIGATIONS AND LANDLORD REMEDIES

Sec.

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§ 5501. Tenant obligations; rent.

(a) The landlord and tenant shall agree to the consideration for rent. In the absence of such agreement, the tenant shall pay to the landlord a reasonable sum for the use and occupation of the rental unit.

(b) Rent shall be payable at the time and place agreed to by the parties. Unless otherwise agreed, the entire rent shall be payable at the beginning of any term for 1 month or less, while 1 month's rent shall be payable at the beginning of each month of a longer term.

(c) Except for purposes of payment, rent shall be uniformly apportioned from day to day.

(d) Where the rental agreement provides for a late charge payable to the landlord for rent not paid at the agreed time, such late charge shall not exceed 5 percent of the monthly rent. A late charge is considered as additional rent for the purposes of this Code. The late charge shall not be imposed within 5 days of the agreed time for payment of rent. The landlord shall, in the county in which the rental unit is located, maintain an office or other permanent place for receipt of payments, where rent may be timely paid. Failure to maintain such an office, or other permanent place of payment where rent may be timely paid, shall extend the agreed on time for payment of rent by 3 days beyond the due date.

(e) If a landlord accepts a cash payment for rent, the landlord shall, within 15 days, give to the tenant a receipt for that payment. The landlord shall, for a period of 3 years, maintain a record of all cash receipts for rent.

§ 5502. Landlord remedies for failure to pay rent.

(a) A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

(b) A landlord or the landlord's agent may bring an action for rent alone at any time after the landlord has demanded payment of past-due rent and has notified the tenant of the landlord's intention to bring such an action. This action may include late charges, which have accrued as additional rent.

(c) If a tenant pays all rent due before the landlord has initiated an action against the tenant and the landlord accepts such payment without a written reservation of rights, the landlord may not then initiate an action for summary possession or for failure to pay rent.

(d) If a tenant pays all rent due after the landlord has initiated an action for nonpayment or late payment of rent against the tenant and the landlord accepts such payment without a written reservation of rights, then the landlord may not maintain that action for past due rent.

§ 5503. Tenant obligations relating to rental unit; waste.

A tenant shall:

(1) Comply with all obligations imposed upon tenants by applicable provisions of all municipal, county and state codes, regulations, ordinances and statutes;

(2) Keep that part of the premises which the tenant occupies and uses as clean and safe as the conditions of the premises permit;

(3) Dispose from the rental unit all ashes, rubbish, garbage and other organic or flammable waste, in a clean and safe manner;

(4) Keep all plumbing fixtures used by the tenant as clean and safe as their condition permits;

(5) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating and other facilities and appliances in the premises;

(6) Not willfully or wantonly destroy, deface, damage, repair or remove any part of the structure or rental unit or the facilities, equipment or appurtenances thereto, nor permit any person on the premises with the tenant's permission to do any such thing; and

(7) Comply with all covenants, rules, requirements and the like which are in accordance with §§ 5511 and 5512 of this title; and which the landlord can demonstrate are reasonably necessary for the preservation of the property and persons of the landlord, other tenants or any other person.

§ 5504. Defense to an action for waste.

(a) It shall be a complete defense to any action, suit or proceeding for waste if the tenant alleges and establishes that the tenant notified the landlord a reasonable time in advance of the repair, alteration or replacement and that such repair, alteration or replacement:

(1) Is one which a prudent owner of an estate in fee simple absolute of the affected property would be likely to make in view of the conditions existing on or in the neighborhood of the affected property; or

(2) Has not reduced the market value of the reversion or other interest of the plaintiff; and

(3) If the conditions set forth in (a)(1) or (a)(2) of this section exist, and the landlord makes a demand that the tenant posts security to protect against a failure to complete the proposed work, and against any responsibility for expenditures incident to the making of such proposed repairs, alterations or replacements as the court demands.

(b) This section shall not be interpreted to bar an action for damages for breach of a written rental agreement nor bar an action or summary proceeding based on breach of a written rental agreement.

§ 5505. Tenant's obligation relating to defective conditions.

(a) Any defective condition of the premises which comes to the tenant's attention, and which the tenant has reason to believe is the duty of the landlord or of another tenant to repair, shall be reported in writing by the tenant to the landlord as soon as is practicable. The tenant shall be responsible for any liability or injury resulting to the landlord as a result of the tenant's failure to timely report such condition.

(b) A tenant on whom a complaint in ejectment or an action against the premises is served shall immediately notify the landlord in writing.

(c) The provisions of this section shall not apply where the landlord has actual notice of the defective condition.

§ 5506. Tenant obligation; notice of extended absence.

The landlord may require in the rental agreement that the tenant notify the landlord in writing of any anticipated extended absence from the premises no later than the 1st day of such absence.

§ 5507. Landlord remedies for absence or abandonment.

(a) If the rental agreement provides for notification to the landlord by the tenant of an anticipated extended absence as defined in this Code or in the rental agreement, and the tenant fails to comply with such requirement, the tenant shall indemnify the landlord for any harm resulting from such absence.

(b) The landlord may, during any extended absence of the tenant, enter the rental unit as is reasonably necessary for inspection, maintenance and safekeeping.

(c) Unless otherwise agreed to in the rental agreement, the tenant shall use the rental unit only as the tenant's abode. A violation of this covenant shall constitute the breach of a rule under § 5511 of this title, and shall entitle the landlord to proceed as specified elsewhere in this chapter.

(d) If the tenant wrongfully quits the rental unit and unequivocally indicates by words or deeds the tenant's intention not to resume tenancy, such action by the tenant shall entitle the landlord to proceed as specified elsewhere in this chapter and the tenant shall be liable for the lesser of the following for such abandonment:

(1) The entire rent due for the remainder of the term and expenses for actual damages caused by the tenant (other than normal wear and tear) which are incurred in preparing the rental unit for a new tenant; or

(2) All rent accrued during the period reasonably necessary to re-rent the premises at a fair rental; plus the difference between such fair rental and the rent agreed to in the prior rental agreement; plus expenses incurred to re-rent; repair damage caused by the tenant (beyond normal wear and tear); plus a reasonable commission, if incurred by the landlord for the re-renting of the premises. In any event, the landlord has a duty to mitigate damages.

(e) If there is no appeal from a judgment granting summary possession under subsection (c) or (d) of this section, the landlord may immediately remove and store, at the tenant's expense, any and all items left on the premises by the tenant. Seven days after the appeal period has expired, the property shall be deemed abandoned and may be disposed of by the landlord without further notice or liability.

§ 5508. Landlord remedies; restrictions on subleasing and assignments.

(a) Unless otherwise agreed in writing, the tenant may sublet the premises or assign the rental agreement to another.

(b) The rental agreement may restrict or prohibit the tenant's right to assign the rental agreement in any manner. The rental agreement may restrict the tenant's right to sublease the premises by conditioning such right on the landlord's consent. Such consent shall not be unreasonably withheld.

(c) In any proceeding under this section to determine whether or not consent has been unreasonably withheld, the burden of showing reasonableness shall be on the landlord.

§ 5509. Tenant obligation to permit reasonable access.

(a) The tenant shall not unreasonably withhold consent for the landlord to enter into the rental unit in order to inspect the premises, make necessary repairs, decorations, alterations or improvements, supply services as agreed to or exhibit the rental unit to prospective purchasers, mortgagees or tenants. A tenant shall have the right to install a new lock at the tenant's cost, on the condition that:

(1) The tenant notifies the landlord in writing and supplies the landlord with a key to the lock;

(2) The new lock fits into the system already in place; and

(3) The lock installation does not cause damage to the door.

(b) The landlord shall not abuse this right of access nor use it to harass a tenant. The landlord shall give the tenant at least 48 hours' notice of landlord's intent to enter, except for repairs requested by the tenant, and shall enter only between 8:00 a.m. and 9:00 p.m. As to prospective tenants or purchasers only, the tenant may expressly waive in a signed addendum to the rental agreement or other separate signed document the requirement that the landlord provide 48 hours' notice prior to the entry into the premises. In the case of an emergency the landlord may enter at any time.

(c) The tenant shall permit the landlord to enter the rental unit at reasonable times in order to obtain readings of meters or appliances for measurement of utility consumption in accordance with § 5312 of this title.

§ 5510. Landlord remedy for unreasonable refusal to allow access.

(a) The tenant shall be liable to the landlord for any harm proximately caused by the tenant's unreasonable refusal to allow access. Any court of competent jurisdiction may issue an injunction against a tenant who has unreasonably withheld access to the rental unit.

(b) The landlord shall be liable to the tenant for any theft, casualty or other harm proximately resulting from an entry into the rental unit by landlord, its employees or agents or with landlord's permission or license:

(1) When the tenant is absent and has not specifically consented to the entry;

(2) Without the tenant's actual consent when tenant is present and able to consent; and

(3) In any other case, where the harm suffered by the tenant is due to the landlord's negligence.

(c) Repeated demands for unreasonable entry or any actual entry which is unreasonable and not consented to by the tenant may be treated by the tenant as grounds for termination of the rental agreement. Any court of competent jurisdiction may issue an injunction against such unreasonable demands on behalf of 1 or more tenants.

(d) Every agreement or understanding between a landlord and a tenant which purports to exempt the landlord from any liability imposed by this section, except consent to a particular entry, shall be null and void.

§ 5511. Rules and regulations; tenant obligations.

(a) The tenant and all others in the premises with the consent of the tenant shall obey all obligations or restrictions, whether denominated by the landlord as "rules," "regulations," "restrictions" or otherwise, concerning the tenant's use, occupation and maintenance of the rental unit, appurtenances thereto and the property of which the rental unit is a part, if:

(1) Such obligations and restrictions promote the health, safety, quiet, private enjoyment or welfare, peace and order of the tenants; promote the preservation of the landlord's property from abuse; and promote the fair distribution of services and facilities provided for all tenants generally; and

(2) Such obligations and restrictions are brought to the attention of the tenant at the time of the tenant's entry into the agreement to occupy the rental unit; and

(3) Such obligations and restrictions are reasonably related to the purpose for which they are promulgated; and

(4) Such obligations and restrictions apply to all tenants of the property in a fair manner; and

(5) Such obligations and restrictions are sufficiently explicit in the prohibition, direction or limitation of the tenant's conduct to fairly inform tenant of what tenant must or must not do to comply; and

(6) Such obligations or restrictions, if not made known to the tenant at the commencement of tenancy, are brought to the attention of the tenant and if said obligations work a substantial modifications of the lease agreement they have been consented to in writing by tenant.

(b) All tenants and other guests of the premises with the consent of tenant shall conduct themselves in a manner that does not unreasonably interfere with the peaceful enjoyment of the other tenants.

§ 5512. Rules and regulations relating to certain buildings; landlord remedies.

Any provision of the Landlord-Tenant Code to the contrary notwithstanding, all rental agreements for the rental of single rooms in certain buildings may be terminated immediately upon notice to the tenant for a tenant's material violation of a regulation which has been given to a tenant at the time of contract or lease, and the landlord shall be entitled to bring a proceeding for possession where:

(1) The building is the primary residence of the landlord; and

(2) No more than 3 rooms in the building are rented to tenants; and

(3) No more than 3 tenants occupy such building.

§ 5513. Landlord remedies relating to breach of rules and covenants.

(a) If the tenant breaches any rule or covenant which is material to the rental agreement, the landlord shall notify the tenant of such breach in writing, and shall allow at least 7 days after such notice for remedy or correction of the breach. This section shall not apply to late payment of rent which is covered under § 5502 of this title.

(1) Such notice shall substantially specify the rule allegedly breached and advise the tenant that, if the violation continues after 7 days, the landlord may terminate the rental agreement and bring an action for summary possession. Such notice shall also state that it is given pursuant to this section, and if the tenant commits a substantially similar breach within 1 year, the landlord may rely upon

such notice as grounds for initiating an action for summary possession. The issuance of a notice pursuant to this section does not establish that the initial breach of the rental agreement actually occurred for purposes of this section.

(2) If the tenant's breach can be remedied by the landlord, as by cleaning, repairing, replacing a damaged item or the like, the landlord may so remedy the tenant's breach and bill the tenant for the actual and reasonable costs of such remedy. Such billing shall be due and payable as additional rent, immediately upon receipt.

(3) If the tenant's breach of a rule or covenant also constitutes a material breach of an obligation imposed upon tenants by a municipal, county or state code, ordinance or statute, the landlord may terminate the rental agreement and bring an action for summary possession.

(b) When a breach by a tenant causes or threatens to cause irreparable harm to any person or property, or the tenant is convicted of a class A misdemeanor or felony during the term of the tenancy which caused or threatened to cause irreparable harm to any person or property, the landlord may, without notice, remedy the breach and bill the tenant as provided in subsection (a) of this section; immediately terminate the rental agreement upon notice to the tenant and bring an action for summary possession; or do both.

(c) Upon notice to tenant, the landlord may bring an action or proceeding for waste or for breach of contract for damages suffered by the tenant's willful or negligent failure to comply with tenant's responsibilities under the preceding section. The landlord may request a forthwith summons.

§ 5514. Security deposit.

(a) (1) A landlord may require the payment of security deposit.

(2) No landlord may require a security deposit in excess of 1 month's rent where the rental agreement is for 1 year or more.

(3) No landlord may require a security deposit in excess of 1 month's rent (with the exception of federally-assisted housing regulations), for primary residential tenancies of undefined terms or month to month where the tenancy has lasted 1 year or more. After the expiration of 1 year, the landlord shall immediately return, as a credit to the tenant, any amount in excess of 1 month's rent.

(4) The security deposit limits set forth above shall not apply to furnished rental units.

(b) Each security deposit shall be placed by the landlord in an escrow bank account in a federally-insured banking institution with an office that accepts deposits within the State. Such account shall be designated as a security deposits account and shall not be used in the operation of any business by the landlord. The landlord shall disclose to the tenant the location of the security deposit account. The security deposit principal shall be held and administered for the benefit of the tenant, and the tenant's claim to such money shall be prior to that of any creditor of the landlord, including, but not limited to, a trustee in bankruptcy, even if such money is commingled.

(c) The purpose of the security deposit shall be:

(1) To reimburse the landlord for actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning; and/or

(2) To pay the landlord for all rental arrearage due under the rental agreement, including late charges and rental due for premature termination or abandonment of the rental agreement by the tenant; and/or

(3) To reimburse the landlord for all reasonable expenses incurred in renovating and rerenting the premises caused by the premature termination of the rental agreement by the tenants, which includes termination pursuant to §5314 of this title, providing that reimbursement caused by termination pursuant to § 5314 of this title shall not exceed 1 month's rent.

(d) Where a tenant is required to pay a fee to determine the tenant's credit worthiness, such fee is an application fee. A landlord may charge an application fee, not to exceed the greater of either 10 percent of the monthly rent for the rental unit or $50, to determine a tenant's credit worthiness. The landlord shall, upon receipt of any money paid as an application fee, furnish a receipt to the tenant for the full amount paid by the tenant, and shall maintain for a period of at least 2 years, complete records of all application fees charged and amounts received for each such fee. Where the landlord unlawfully demands more than the allowable application fee, the tenant shall be entitled to damages equal to double the amount charged as an application fee by the landlord.

(e) If the landlord is not entitled to all or any portion of the security deposit, the landlord shall remit the security deposit within 20 days of the expiration or termination of the rental agreement.

(f) Within 20 days after the termination or expiration of any rental agreement, the landlord shall provide the tenant with an itemized list of damages to the premises and the estimated costs of repair for each and shall tender payment for the difference between the security deposit and such costs of repair of damage to the premises. Failure to do so shall constitute an acknowledgment by the landlord that no payment for damages is due. Tenant's acceptance of a payment submitted with an itemized list of damages shall constitute agreement on the damages as specified by the landlord, unless the tenant, within 10 days of the tenant's receipt of such tender of payment, objects in writing to the amount withheld by the landlord.

(g) Penalties.

(1) Failure to remit the security deposit or the difference between the security deposit and the amount set forth in the list of damages within 20 days from the expiration or termination of the rental agreement shall entitle the tenant to double the amount wrongfully withheld.

(2) Failure by a landlord to disclose the location of the security deposit account within 20 days of a written request by a tenant or failure by the landlord to deposit the security deposit in a federally-insured financial institution with an office that accepts deposits within the State, shall constitute forfeiture of the security deposit by the landlord to the tenant. Failure by the landlord to return the full security deposit to the tenant within 20 days from the effective date of forfeiture shall entitle the tenant to double the amount of the security deposit.

(h) All communications and notices, including the return of any security deposit under this section, shall be directed to the landlord at the address specified in the rental agreement and to the tenant at an address specified in the rental agreement or to a forwarding address, if provided in writing by the tenant at or prior to the termination of the rental agreement. Failure by the tenant to provide such address shall relieve the landlord of landlord's responsibility to give notice herein and landlord's liability for double the amount of the security deposit as provided herein, but the landlord shall continue to be liable to the tenant for any unused portion of the security deposit; provided, that the tenant shall make a claim in writing to the landlord within 1 year from the termination or expiration of the rental agreement.

(i) Pet deposits.

(1) A landlord may require a pet deposit. Damage to the rental unit caused by an animal shall first be deducted from the pet deposit. Where the pet deposit is insufficient, such damages may be deducted from the security deposit. A pet deposit is subject to subsections (b), (e), (f), (g) and (h) of this section.

(2) No landlord may require a pet deposit in excess of 1 month's rent, regardless of the duration of the rental agreement.

(3) A landlord may require an additional deposit from a tenant with a pet, but shall not require any pet deposit from a tenant if the pet is a duly certified and trained support animal for a disabled person who is a resident of the rental unit.

(j) If the rental agreement so specifies, a landlord may increase the security deposit commensurate with the rent. If the increase of the security deposit will exceed 10 percent of the monthly rent, payment of the increased security deposit shall be prorated over the term of the rental agreement, except in the case of month-to-month tenancy, in which case payment of the increase shall be prorated over a period of 4 months.

§ 5515. Landlord's remedies relating to holdover tenants.

(a) Except as is otherwise provided in this Code, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease.

(b) Whenever the term of the rental agreement expires, as provided herein or by the exercise by the landlord of a right to terminate given the landlord under any section of this Code, if the tenant continues in possession of the premises after the date of termination without the landlord's consent, such tenant shall pay to the landlord a sum not to exceed double the monthly rental under the previous agreement, computed and pro-rated on a daily basis, for each day the tenant remains in possession for any period. In addition, the holdover tenant shall be responsible for any further losses incurred by the landlord as determined by a proceeding before any court of competent jurisdiction.

§ 5516. Retaliatory acts prohibited.

(a) Retaliatory acts are prohibited.

(b) A retaliatory act is an attempt on the part of the landlord to: pursue an action for summary possession or otherwise cause the tenant to quit the rental unit involuntarily; demand an increase in rent from the tenant; or decrease services to which the tenant is entitled after:

(1) The tenant has complained in good faith of a condition in or affecting the rental unit which constitutes a violation of a building, housing, sanitary or other code or ordinance to the landlord or to an authority charged with the enforcement of such code or ordinance; or

(2) A state or local government authority has filed a notice or complaint of such violation of a building, housing, sanitary or other code or ordinance; or

(3) The tenant has organized or is an officer of a tenant's organization; or

(4) The tenant has pursued or is pursuing any legal right or remedy arising from the tenancy.

(c) If the tenant proves that the landlord has instituted any of the actions set forth in subsection (b) of this section within 90 days of any complaints or act as enumerated above, such conduct shall be presumed to be a retaliatory act.

(d) It shall be a defense to a claim that the landlord has committed a retaliatory act if:

(1) The landlord has given appropriate notice under a section of this part which allows a landlord to terminate early;

(2) The landlord seeks in good faith to recover possession of the rental unit for immediate use as landlord's own residence;

(3) The landlord seeks in good faith to recover possession of the rental unit for the purpose of substantially altering, remodeling or demolishing the premises;

(4) The landlord seeks in good faith to recover possession of the rental unit for the purpose of immediately terminating, for at least 6 months, use of the premises as a rental unit;

(5) The complaint or request of the landlord relates to a condition or conditions caused by the lack of ordinary care by the tenant or other person in the household, or on the premises with the tenant's consent;

(6) The rental was, on the date of filing of tenant's complaint or request or on the date of appropriate notice prior to the end of the rental term, in full compliance with all codes, statutes and ordinances;

(7) The landlord has in good faith contracted to sell the property and the contract of sale contains a representation by the purchaser conforming to paragraphs (2), (3) or (4) of this subsection;

(8) The landlord is seeking to recover possession of the rental unit on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant prior to the complaint or request;

(9) The condition complained of was impossible to remedy prior to the end of the cure period;

(10) The landlord has become liable for a substantial increase in property taxes or a substantial increase in other maintenance or operating costs not associated with the landlord complying with the complaint or request, and such liability occurred not less than 4 months prior to the demand for the increase in rent, and the increase in rent does not exceed the pro-rata portion of the net increase in taxes or cost;

(11) The landlord has completed a substantial capital improvement of the rental unit or the property of which it is a part, not less than 4 four months prior to the demand for increased rent, and such increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, pro-rated among the rental units benefited by the improvement; or

(12) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar rental units in the same complex, or the landlord can establish that the increase in rent is not directed at the particular tenant as a result of any retaliatory acts.

(e) Any tenant from whom possession of the rental unit has been sought, or who the landlord has otherwise attempted to involuntarily dispossess, in violation of this section, shall be entitled to recover 3 months' rent or treble the damages sustained by tenant, whichever is greater, together with the cost of the suit but excluding attorneys' fees.

§ 5517. Preference of rent in cases of execution.

Liability of goods levied upon for 1 year's rent:

(1) If goods, chattels or crops of a tenant being upon premises held by the tenant by demise under a rent of money are seized by virtue of any process of execution, attachment or sequestration, the goods and chattels shall be liable for 1 year's rent of the premises in arrear, or growing due, at the time of the seizure, in preference to such process; accordingly the landlord shall be paid such rent, not exceeding 1 year's rent, out of the proceeds of the sale of such goods and chattels, before anything shall be applicable to such process.

(2) The sheriff, or other officer, who sells the goods and chattels of a tenant upon process of execution, attachment or sequestration shall at least 10 days before such sale give written notice of the time and place thereof to the landlord, if residing in the county, and if not, to any known agent of the landlord in the county.

CHAPTER 57. SUMMARY POSSESSION

Sec.

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§ 5701. Jurisdiction and venue.

An action for summary possession in accordance with § 5702 of this title shall be maintained in the Justice of the Peace Court which handles civil cases and which is closest to the premises or commercial rental unit and in the same county. For purposes of this chapter, the term "rental agreement" shall include a lease for a commercial rental unit.

§ 5702. Grounds for summary proceeding.

Unless otherwise agreed in a written rental agreement, an action for summary possession may be maintained under this chapter because:

(1) The tenant unlawfully continues in possession of any part of the premises after the expiration of the rental agreement without the permission of the landlord or, where a new tenant is entitled to possession, without the permission of the new tenant;

(2) The tenant has wrongfully failed to pay the agreed rent;

(3) The tenant has wrongfully deducted money from the agreed rent;

(4) The tenant has breached a lawful obligation relating to the tenant's use of the premises;

(5) The tenant, employee, servant or agent of the landlord holds over for more than 15 days after dismissal when the housing is supplied by the landlord as part of the compensation for labor or services;

(6) The tenant holds over for more than 5 days after the property has been duly sold upon the foreclosure of a mortgage and the title has been duly perfected;

(7) The rightful tenant of the rental unit has been wrongfully ousted;

(8) The tenant refuses to yield possession of the rental unit rendered partially or wholly unusable by fire or casualty, and the landlord requires possession for the purpose of effecting repairs of the damage;

(9) The tenant is convicted of a class A misdemeanor or any felony during the term of tenancy which caused or threatened to cause irreparable harm to any person or property;

(10) A rental agreement for a commercial rental unit provides grounds for an action for summary possession to be maintained; or

(11) Or, if, and only if, it pertains to manufactured home lots, for any of the grounds set forth in the Manufactured Home Owners and Community Owners Act, as amended.

§ 5703. Who may maintain proceeding.

The proceeding may be initiated by:

(1) The landlord;

(2) The owner;
(3) The tenant who has been wrongfully put out or kept out;
(4) The next tenant of the premises, whose term has begun; or
(5) The tenant.

§ 5704. Commencement of action and notice of complaint.

(a) The proceeding shall be commenced by filing a complaint for possession with the court.

(b) Upon commencement of an action, the court shall issue the process specified in the praecipe and shall cause service of the complaint on the defendant, together with a notice stating the time and place of the hearing. The notice shall further state that if the defendant shall fail at such time to appear and defend against the complaint, defendant may be precluded from afterwards raising any defense or a claim based on such defense in any other proceeding or action.

(c) The party requesting the issuance of process may file a motion for the appointment of a special process server, consistent with Justice of the Peace Court Civil Rules. The party requesting the appointment of a special process server may prepare a form of order for signature by the clerk of court under the seal of the court. Blank forms for a motion for the appointment of a special process server and for an order appointing such a special process server shall be provided by the clerk of the court on request of the party.

§ 5705. Service and filing of notice.

(a) The notice of hearing and the complaint shall be served at least 5 days and not more than 30 days before the time at which the complaint is to be heard.

(b) The notice and complaint, together with proof of service thereof, shall be filed with the court before which the complaint is to be heard prior to the hearing, and in no event later than 5 days after service. If service has been made by certified or registered mail, the return receipt, signed, refused or unclaimed, shall be proof of service.

(c) Service of the notice and complaint may be made in any manner consistent with either § 5704 or § 5706 of this title.

§ 5706. Manner of service.

(a) Service of the notice of hearing and complaint shall be made in the same manner as personal service of a summons in an action.

(b) If service cannot be made in such manner, it shall be made by leaving a copy of the notice and complaint personally with a person of suitable age and discretion who resides or is employed in the rental unit.

(c) If no such person can be found after a reasonable effort, service may be made:

(1) Upon a natural person by affixing a copy of the notice and complaint upon a conspicuous part of the rental unit within 1 day thereafter, and by sending by either certified mail or 1st class mail with certificate of mailing, using United States Postal Service Form 3817 or its successor, an additional copy of each document to the rental unit and to any other address known to the person seeking possession as reasonably chosen to give actual notice to the defendant; or

(2) If defendant is an artificial entity, pursuant to Supreme Court Rule 57, by sending by certified mail or by sending by 1st class mail with certificate of mailing, using United States Postal Service Form 3817 or its successor, within 1 day after affixation, additional copies of each document to the rental unit and to the principal place of business of such defendant, if known, or to any other place known to the party seeking possession as reasonably chosen to effect actual notice.

(d) Service pursuant to this section shall be considered actual or statutory notice.

§ 5707. Contents of complaint generally.

The complaint shall:

(1) State the interest of the plaintiff in the rental unit from which removal is sought;

(2) State the defendant's interest in the rental unit and defendant's relationship to the petitioner with regard thereto;

(3) Describe the rental unit from which removal is sought;

(4) State the facts upon which the proceeding is based and attach a copy of any written notice of the basis of the claim as an exhibit to the complaint; and

(5) State the relief sought which may include a judgment for rent due if the notice of complaint contains a conspicuous notice that such demand has been made.

§ 5708. Additional contents of certain complaints.

If possession of the rental unit is sought on the grounds that the tenant has violated or failed to observe a lawful obligation in relation to tenant's use and enjoyment of the rental unit, the complaint shall, in addition to the requirements of the foregoing section:

(1) Set forth the rule or provision of the rental agreement allegedly breached, together with the date the rule was made known to the tenant and a copy of the rule or provision as initially provided to the tenant and the manner in which such rule or provision was made known to the tenant;

(2) Allege with specificity the facts constituting a breach of the rule or provision of the rental agreement and that notice or warning as required by law was given to the tenant;

(3) Set forth the facts constituting a continued or recurrent violation of the rule or provision of the rental agreement;

(4) Set forth the purpose served by the rule or provision of the rental agreement allegedly breached; and

(5) Allege that where the rule is not a part of the rental agreement or any other agreement of the landlord and tenant at the time of the formation of the rental agreement, that it does not work a substantial modification of the tenant's bargain or, if it does, that the tenant consented knowingly in writing to the rule.

§ 5709. Answer.

At the time when the petition is to be heard, the defendant or any person in possession or claiming possession of the rental unit may answer orally or in writing. If the answer is oral, the substance thereof shall be endorsed on the complaint. The answer may contain any legal or equitable defense or counter-claim, not to exceed the jurisdiction of the court.

§ 5710. Trial.

Where triable issues of fact are raised, they shall be tried by the court. At the time when an issue is joined, the court, at the application of either party and upon proof to its satisfaction by affidavit or orally that an adjournment is necessary to enable the applicant to procure necessary witnesses or evidence or by consent of all the parties who appear, may adjourn the trial, but not more than 10 days, except by consent of all parties.

§ 5711. Judgment.

(a) The court shall enter a final judgment determining the rights of the parties. The judgment shall award to the successful party the costs of the proceeding.

(b) The judgment shall not bar an action, proceeding or counterclaim commenced or interposed within 60 days of entry of judgment for affirmative equitable relief which was not sought by counterclaim in the proceeding because of the limited jurisdiction of the court.

(c) If the proceeding is founded upon an allegation of forcible entry or forcible holding out, the court may award to the successful party a fixed sum as damages, in addition to the costs.

§ 5712. Default judgment.

(a) No judgment for the plaintiff shall be entered unless the court is satisfied, upon competent proof, that the defendant has received actual notice of the proceeding or, having abandoned the rental unit, cannot be found within the jurisdiction of the court after the exercise of reasonable diligence. Posting and 1st-class mail, as evidenced by a certificate of mailing, is acceptable as actual notice for the purposes of a default judgment.

(b) A party may, within 10 days of the entry of a default judgment or a nonsuit, file a motion with the court to vacate the judgment and if, after a hearing on the motion, the court finds that the party has satisfied the requirements of Justices of the Peace Civil Rule 20(b), it shall grant the motion and permit the parties to elect a trial before a single judge or a jury trial.

§ 5713. Jury trials.

(a) In any civil action commenced pursuant to this chapter, the plaintiff may demand a trial by jury at the time the action is commenced and the defendant may demand a trial by jury within 10 days

after being served. Upon receiving a timely demand, the justice shall appoint 6 impartial persons of the county in which the action was commenced to try the cause. In making such appointments, the justice shall appoint such persons from the jury list being used at time of appointment by the Superior Court in the county where the action was commenced.

(b) The jury shall be sworn or affirmed that they will "faithfully and impartially try the cause pending between the said plaintiff and defendant and make a true and just report thereupon according to the evidence" and shall hear the allegations of the parties and their proofs. If either party fails to appear before the jury, they may proceed in that party's absence. When the jury or any 4 of them agree, they shall make a report under their hands and return the same to the justice who shall give judgment according to the report.

(c) If any juror appointed fails to appear or serve throughout the trial the justice may supply a replacement by appointing and qualifying another, but there shall be no trial by jury if the defendant has not appeared.

(d) In all other cases, the justice shall hear the case and give judgment according to the right of the matter and the law of the land.

(e) A Chief Magistrate shall have the authority to designate courts in each county which can accommodate a jury trial.

§ 5714. Compelling attendance of jurors.

(a) In a proceeding under this chapter, the justice may require the attendance of the jurors the justice appoints, and may issue a summons under hand and seal to a constable for summoning them to appear before the court.

(b) If any juror duly summoned fails to appear as required, or to be qualified and serve throughout the trial, the juror shall, unless the juror shows to the justice a sufficient excuse, be guilty of contempt and shall be fined $50 which shall be levied with costs by distress and sale of the juror's goods and chattels by virtue of a warrant by the justice.

(c) The warrant shall be directed to a constable in the following manner:

County, ss. The State of Delaware.

To any constable, greeting:

Whereas, ... of .... has been adjudged by ...., 1 of our justices of the peace, to be guilty of a contempt in making default after due summons as a juror in a case pending before said justice and has been ordered to pay a fine of $50 in pursuance of the act of assembly in such case provided, and

Whereas, the said .... has neglected to pay the said sum, we therefore command you to levy the said sum of $50 with .... costs and your costs hereon by distress and sale of the goods and chattels of the said .... upon due notice given as upon other execution process. Witness the hand and seal of the said justice the ..... day of 19 ...

§ 5715. Execution of judgment; writ of possession.

(a) Upon rendering a final judgment for plaintiff, but in no case prior to the expiration of the time for the filing of an appeal or motion to vacate or open the judgment, the court shall issue a writ of possession directed to the constable or the sheriff of the county in which the property is located, describing the property and commanding the officer to remove all persons and put the plaintiff into full possession.

(b) The officer to whom the writ of possession is directed and delivered shall give at least 24 hours' notice to the person or persons to be removed and shall execute it between the hours of sunrise and sunset.

MANUFACTURED HOME. If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and, on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to 7 days' rent, then the court, through its officers, may extend the notice period for the removal of the home from the lot, to a maximum period of 7 calendar days from the date of posting. In no event may the tenant inhabit the home after the 1st 24 hours of the notice period. If the per diem charge above described has been prepaid and the time for removal has been extended, then 7 calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has

not been extended by a prepayment of the per diem amount for storage, then 24 hours after the posting of the writ, the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of 30 days before it can be disposed of through further legal action. The tenant may not remove the home from the storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(c) The plaintiff has the obligation to notify the constable to take the steps necessary to put the plaintiff in full possession.

(d) The issuance of a writ of possession for the removal of a tenant cancels the agreement under which the person removed held the premises and annuls the relationship of landlord and tenant. Plaintiff may recover, by an action for summary possession, any sum of money which was payable at the time when the action for summary possession was commenced and the reasonable value of the use and occupation to the time when a writ of possession was issued and for any period of time with respect to which the agreement does not make any provision for payment of rent, including the time between the issuance of the writ and the landlord's actual recovery of the premises.

(e) If, at the time of the execution of the writ of possession, the tenant fails to remove tenant's property, the landlord shall have the right to and may immediately remove and store such property for a period of 7 days, at tenant's expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days. If, at the end of such period, the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant. Nothing in this subsection shall be construed to prevent the landlord from suing for both rent and possession at the same hearing.

(1) If there is no appeal from the judgment of summary possession at the time of the execution of the writ of possession and the tenant has failed to remove tenant's property, then the landlord may immediately remove and store such property for a period of 7 days, at tenant's expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days.

(2) If, at the end of such period, the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

(3) All writs of possession where no appeal has been filed must contain the following language:

NOTICE WHERE NO APPEAL FILED

If you do not remove your property from the premises within 24 hours, then the landlord may immediately remove and store your property for a period of 7 days at your expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days. If you fail to claim your property and reimburse the landlord prior to the expiration of the 7-day period, then the landlord may dispose of your property without any further legal action.

MANUFACTURED HOME. If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and, on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to 7 days' rent, then the court, through its officers, may extend the notice period for the removal of the home from the lot to a maximum period of 7 calendar days from the date of posting. In no event may the tenant inhabit the home after the first 24 hours of the notice period. If the per diem charge above described has been prepaid and the time for removal has been extended, then 7 calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended by a prepayment of the per diem amount for storage, then 24 hours after the posting of the writ, the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of 30 days before it can be disposed of through

further legal action. The tenant may not remove the home from storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(f) If, at the time of the execution of the writ of possession, an appeal of the judgment of possession has been filed:

(1) If there has been an appeal filed from a judgment of summary possession at the time of the execution of the writ of possession and the tenant has failed to remove property within 24 hours, then the landlord may immediately remove and store such property, at the tenant's expense, for a period of 7 days after the resolution of the appeal, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days.

(2) If, at the end of such period, the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

(3) All writs of possession, where an appeal has been filed, must contain the following language:

NOTICE WHERE APPEAL HAS BEEN FILED

If you do not remove your property from the premises with 24 hours, then the landlord may immediately remove and store your property until 7 days after your appeal has been decided, at your expense. If you fail to claim your property and reimburse the landlord prior to the expiration of the 7-day period, then the landlord may dispose of your property without any further legal action.

MANUFACTURED HOME. If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and, on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to 7 days' rent, then the court, through its officers, may extend the notice period for the removal of the home from the lot to a maximum period of 7 calendar days from the date of posting. In no event may the tenant inhabit the home after the 1st 24 hours of the notice period. If the per diem charge above described has been prepaid and the time for removal has been extended, then 7 calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended by a prepayment of the per diem amount for storage, then 24 hours after the posting of the writ, the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of 30 days before it can be disposed of through further legal action. The tenant may not remove the home from storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(g) Nothing in subsection (d) of this section shall prevent the landlord from making a claim for rent due from the tenant under the provisions of the lease. The landlord shall have the duty of exercising diligence in landlord's efforts to re-rent the premises. The landlord shall have the burden of showing the exercise of such diligence. The landlord shall have the right to sue for both rent and possession at the same hearing.

(h) Whenever the plaintiff is put into full possession under this chapter it shall be the duty of the plaintiff, at the time actual repossession occurs, to have the locks to the premises changed if said premises are to be further leased out. Any plaintiff who fails to comply with this subsection shall be liable to any new tenant whose person or property is injured as a result of entry to the premises gained by the dispossessed tenant by use of a key still in their possession which fit the lock to the premises at the time of this tenancy.

§ 5716. Stay of proceedings by tenant; good faith dispute.

When a final judgment is rendered in favor of the plaintiff in a proceeding brought against a tenant for failure to pay rent and the default arose out of a good faith dispute, the tenant may stay all

proceedings on such judgment by paying all rent due at the date of the judgment and the costs of the proceeding or by filing with the court an undertaking to the plaintiff, with such assurances as the court shall require, to the effect that defendant will pay such rent and costs within 10 days of the final judgment being rendered for the plaintiff. At the expiration of said period, the court shall issue a warrant of possession unless satisfactory proof of payment is produced by the tenant.

§ 5717. Stay of proceedings on appeal.

(a) Nonjury trials. With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial de novo before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote, on the original complaint within 15 days after such request for a trial de novo. No such request shall stay proceedings on such judgment unless the aggrieved party, at the time of making such request, shall execute and file with the Court an undertaking to the successful party, with such bond or other assurances as may be required by the Court, to the effect that the aggrieved party will pay all costs of such proceedings which may be awarded against that party and abide the order of the Court therein and pay all damages, including rent, justly accruing during the pendency of such proceedings. All further proceedings in execution of the judgment shall thereupon be stayed.

(b) An appeal taken pursuant to subsection (a) of this section may also include claims and counter-claims not raised in the initial proceeding; provided, that within 5 days of the filing of the appeal, the claimant also files a bill of particulars identifying any new issues which claimant intends to raise at the hearing which were not raised in the initial proceeding.

(c) Jury trials. With regard to jury trials, a party aggrieved by the judgment rendered in such proceeding may request, in writing, within 5 days after judgment, a review by an appellate court comprised of 3 justices of the peace other than the justice of the peace who presided at the jury trial, as appointed by the chief magistrate or a designee. This review shall be on the record and the party seeking the review must designate with particularity the points of law which the party appealing feels were erroneously applied at the trial court level. The decision on the record shall be by majority vote. No such request shall stay proceedings on such judgment unless the aggrieved party, at the time of making such request, shall execute and file with the Court an undertaking to the successful party, with such bond or other assurances as may be required by the Court, to the effect that the aggrieved party will pay all costs of such proceedings which may be awarded against that party and abide the order of the Court therein and pay all damages, including rent, justly accruing during the pendency of such proceedings. All further proceedings in execution of the judgment shall thereupon be stayed.

(d) The Court shall not issue the writ of possession during the 5-day appeal period. After the 5-day appeal period has ended, the Court may issue the writ of possession at the plaintiff's request if the defendant has filed an appeal, but not filed a bond or other assurance or an in forma pauperis request to stay the issuance of the writ of possession. If the plaintiff executes on the writ of possession prior to a determination of the appeal and the appealing party is ultimately successful, then the plaintiff shall be responsible for reasonable cover damages (including, but not limited to, the cost of substitute housing or relocation) for the period of the dispossession as a result of the execution of the writ of possession, plus court costs and fees.

(e) An aggrieved party may appeal in forma pauperis if the Court grants an application for such status. In that event, the Court may waive the filing fee and bond for a trial de novo, a trial on the record or a request to stay the writ of possession.

(f) An appeal taken pursuant to this section may include any issue on which judgment was rendered at the trial court level, including the issue of back rent due, any other statute to the contrary notwithstanding.

§ 5718. Proceedings in forma pauperis.

Upon application of a party claiming to be indigent, the Court may authorize the commencement, prosecution or defense of any civil action or civil appeal without pre-payment of fees and costs or security therefor by a person who makes an affidavit that such person is unable to pay the costs or give security therefore. Such affidavit shall state the nature of the action or defense and the affiant's belief that the affiant is entitled to redress, and shall state sufficient facts from which the Court may make an objective determination of the petition's alleged indigence.

The Court may, in its discretion, conduct a hearing on the question of indigence. In any action in which a claim for damages is asserted by a party seeking the benefit of this rule, the Prothonotary shall, before entering a dismissal of the claim or satisfaction of any judgment entered therein, require payment of accrued court costs from any party for whose benefit this rule has been applied if said party has recovered a judgment in said proceedings or received any funds in settlement thereof. A party and such party's attorney of record shall file appropriate affidavits in the event a claim is sought to be dismissed without settlement or recovery.

CHAPTER 59. TENANT'S RECEIVERSHIP

Sec.

5901. Petition for receivership; grounds, notice and jurisdiction.
5902. Necessary parties defendant.
5903. Defenses.
5904. Stay of judgment by defendant.
5905. Receivership procedures.
5906. Powers and duties of the receiver.
5907. Discharge of the receiver.

§ 5901. Petition for receivership; grounds, notice and jurisdiction.

Any tenant or group of tenants may petition for the establishment of a receivership in a Justice of the Peace Court upon the grounds that there has existed for 5 days or more after notice to the landlord:

(1) If the rental agreement, or any state or local statute, code, regulation or ordinance, places a duty upon the landlord to so provide, a lack of heat, or of running water, or of light, or of electricity, or of adequate sewage facilities;

(2) Any other conditions imminently dangerous to the life, health or safety of the tenant.

§ 5902. Necessary parties defendant.

(a) Petitioners shall join as defendants:

(1) All parties duly disclosed to any of them in accordance with § 5106; and

(2) All parties whose interest in the property is:

a. A matter of public record; and

b. Capable of being protected in this proceeding.

(b) Petitioner shall not be prejudiced by a failure to join any other interested parties.

§ 5903. Defenses.

It shall be sufficient defense to this proceeding, if any defendant of record establishes that:

(1) The condition or conditions described in the petition do not exist at the time of trial; or

(2) The condition or conditions alleged in the petition have been caused by the wilful or grossly negligent acts of 1 or more of the petitioning tenants or members of his or their families or by other persons on the premises with his or their consent; or

(3) Such condition or conditions would have been corrected, were it not for the refusal by any petitioner to allow reasonable access.

§ 5904. Stay of judgment by defendant.

(a) If, after a trial, the Court shall determine that the petition should be granted, the Court shall immediately enter judgment thereon and appoint a receiver as authorized herein; provided, however, prior to the entry to judgment and appointment of a receiver, the owner or any mortgagee or lienor of record or other person having an interest in the property may apply to the Court to be permitted to remove or remedy the conditions specified in the petition. If such person demonstrates the ability to perform promptly the necessary work and posts security for the performance thereof within the time, and in the amount and manner, deemed necessary by the Court, then the Court may stay judgment and issue an order permitting such person to perform the work within a time fixed by the Court and requiring such person to report to the Court periodically on the progress of the work. The Court shall retain jurisdiction over the matter until the work is completed.

(b) If, after the issuance of an order under the foregoing provision but before the time fixed in such order for the completion of the work prescribed therein, there is reason to believe that the work will not be completed pursuant to the court's order or that the person permitted to do the same is not proceeding with due diligence, the Court or the petitioners, upon notice to all parties to the proceeding, may move that a hearing be held to determine whether judgment should be rendered immediately as provided in the following subsection.

(c) (1) If, upon a hearing authorized in the preceding subsection, the Court shall determine that such party is not proceeding with due diligence, or upon the actual failure of such person to complete the work in accordance with the provisions of the order, the Court shall appoint a receiver as authorized herein.

(2) Such judgment shall direct the receiver to apply the security posted to executing the powers and duties as described herein.

(3) In the event that the amount of such security should be insufficient to accomplish the above objectives, such judgment shall direct the receiver to collect the rents, profits and issues to the extent of the deficiency. In the event that the security should exceed the amount necessary to accomplish the above objectives, such judgment shall direct the receiver to return the excess to the person posting the security.

§ 5905. Receivership procedures.

The receiver shall be the Division of Consumer Protection of the State or its successor agency.

(1) Upon its appointment, the receiver must make within 15 days an independent finding whether there is proper cause shown for the need for rent to be paid to it and for the employment of a private contractor to correct the condition complained of in § 5901 of this title and found by the Court to exist.

(2) If the receiver shall make such a finding, it shall file a copy of the finding with the recorder of deeds of the county where the property lies and it shall be a lien on that property where the violation complained of exists.

(3) Upon completion of the aforesaid contractual work and full payment of the contractor, the receiver shall file a certification of such with the recorder of deeds of the appropriate county, and this filing shall release the aforesaid lien.

(4) The receiver shall forthwith give notice to all lienholders of record.

(5) If the receiver shall make a finding at such time or any other time that for any reason the appointment of a receiver is not appropriate, it shall be discharged upon notification of the Court and all interested parties and shall make legal distribution of any funds in its possession.

§ 5906. Powers and duties of the receiver.

The receiver shall have all the powers and duties accorded a receiver foreclosing a mortgage on real property and all other powers and duties deemed necessary by the Court. Such powers and duties shall include, but are not necessarily limited to, collecting and using all rents and profits of the property, prior to and despite any assignment of rent, for the purposes of:

(1) Correcting the condition or conditions alleged in the petition;

(2) Materially complying with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the building and surrounding grounds;

(3) Paying all expenses reasonably necessary to the proper operation and management of the property including insurance, mortgage payments, taxes and assessments and fees for the services of the receiver and any agent he should hire;

(4) Compensating the tenants for whatever deprivation of their rental agreement rights resulted from the condition or conditions alleged in the petition; and

(5) Paying the costs of the receivership proceeding.

§ 5907. Discharge of the receiver.

(a) In addition to those situations described in § 5905, the receiver may also be discharged when:

(1) The condition or conditions alleged in the petition have been remedied;

(2) The property materially complies with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the building and the surrounding grounds;

(3) The costs of the above work and any other costs as authorized herein have been paid or reimbursed from the rents and profits of the property; and

(4) The surplus money, if any, has been paid over to the owner.

(b) Upon subsections (a)(1) and (2) of this section being satisfied, the owner, mortgagee or any lienor may apply for the discharge of the receiver after paying to the latter all moneys expended by him and all other costs which have not been paid or reimbursed from the rent and profits of the property.

(c) If the Court determines that future profits of the property will not cover the costs of satisfying subsections (a)(1) and (2) of this section, the Court may discharge the receiver and order such action as would be appropriate in the situation, including but not limited to terminating the rental agreement and ordering the vacation of the building within a specified time. In no case shall the Court permit repairs which cannot be paid out of the future profits of the property.

PART IV
COMMERCIAL LEASES
CHAPTER 61. COMMERCIAL LEASES

Sec.

6101. Metering and charges for utility services.
6102. Definitions.
6103. Preference of rent in cases of execution.
6104. Confession of judgment.
6105. Taxes paid by tenant; setoff against rent; recovery from owner.

§ 6101. Metering and charges for utility services.

Whenever any landlord or other person:

(1) Purchases utility service from a public utility and redistributes the same to a tenant in a commercial unit and/or in connection with the operation of that commercial unit (e.g., the operation of the common area); and

(2) Continuously meters the tenant's use in that commercial unit to which it redistributes the utility service and continually meters the common area;

Such landlord or other person may charge and collect from such tenant, by way of rent or otherwise, an amount not to exceed the amount the tenants would be billed by the public utility for such utility service if the same was directly metered by such public utility.

§ 6102. Definitions.

The following words, terms and phrases, when used in this Part, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Commercial unit" shall mean any lot, structure or portion thereof which is occupied or rented for commercial or industrial purposes.

(2) "Landlord" shall mean:

a. The owner, lessor or sub-lessor of the rental unit or the property of which it is a part and, in addition, shall mean any person authorized to exercise any aspect of the management of the premises, including any person who, directly or indirectly, receives rents or any part thereof other than as a bona fide purchaser and who has no obligation to deliver the whole of such receipts to another person;

b. Any person held out by any landlord as the appropriate party to accept performance, whether such person is a landlord or not;

c. Any person with whom the tenant normally deals as a landlord; or

d. Any person to whom the person specified in subparagraphs b. and c. of this paragraph is directly or ultimately responsible.

(3) "Owner" shall mean 1 or more persons, jointly or severally, in whom is vested:

a. All or part of the legal title to property; or

b. All or part of the beneficial ownership, usufruct and a right to present use and enjoyment of the premises.

(4) "Person" shall include an individual, corporation, government or governmental agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common trust or any other legal or commercial entity.

(5) "Premises" shall mean the rental unit and the structure of which it is a part, and the facilities and appurtenances therein, and ground, areas and facilities held out for the use of tenants generally or whose use by the tenant is promised by the landlord.

(6) "Rental agreement" shall mean and include all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations or other provisions concerning the use and occupancy of a rental unit.

(7) "Rental unit" shall mean a commercial unit.

(8) "Tenant" shall mean a person entitled under a rental agreement to occupy a rental unit to the exclusion of others.

§ 6103. Preference of rent in cases of execution.

Liability of goods levied upon for 1 year's rent:

(1) If goods, chattels or crops of a tenant being upon premises held by the tenant by demise under a rent of money are seized by virtue of any process of execution, attachment or sequestration, the goods and chattels shall be liable for 1 year's rent of the premises in arrear, or growing due, at the time of the seizure, in preference to such process; accordingly the landlord shall be paid such rent, not exceeding 1 year's rent, out of the proceeds of the sale of such goods and chattels, before anything shall be applicable to such process.

(2) The sheriff, or other officer, who sells the goods and chattels of a tenant upon process of execution, attachment or sequestration shall at least 10 days before such sale give written notice of the time and place thereof to the landlord, if residing in the county, and if not, to any known agent of the landlord in the county.

§ 6104. Confession of judgment.

A provision of a written rental agreement authorizing a person other than the tenant to confess judgment against the tenant is void and unenforceable.

§ 6105. Taxes paid by tenant; setoff against rent; recovery from owner.

Any tax laid upon lands or tenements according to law which is paid by or levied from the tenant of such lands or tenements, or a person occupying and having charge of same, shall be a setoff against the rent or other demand of the owner for the use or profits, of such premises. If there is no rent or other demand sufficient to cover the sum so paid or levied, the tenant or other person may demand and recover the same from the owner, with costs. This provision shall not affect any contract between the landlord and tenant.

CHAPTER 63. DISTRESS FOR RENT

Sec.
6301. Action at law; jurisdiction; case in which distress lies.
6302. Form of claim; contents; costs.
6303. Order of distress; service of claim and order; levy; inventory; return; duration of levy.
6304. Levied goods in custody of Court; removal and sale; plaintiff's interest.
6305. Protective measures upon a showing that a tenant may abscond.
6306. Procedure in the event of a forcible entry.
6307. Release of distrained property upon filing of bond.
6308. Answer to claim; hearing; final order of sale.
6309. Public sale of property distrained; notice of sale.
6310. Liability of officer.

§ 6301. Action at law; jurisdiction; case in which distress lies.

(a) Distress for rent is hereby abolished except pursuant to a rental agreement for a commercial unit and in that event it shall be an action at law which shall be brought as provided herein.

(b) The several courts of the justices of the peace shall have original jurisdiction in all cases of distress for unpaid rent regardless of the amount of rent notwithstanding any other law to the contrary.

(c) A distress shall lie for any unpaid rent due either in money or in a quantity of any tangible items, goods or produce pursuant to any rental agreement of a commercial unit.

§ 6302. Form of claim; contents; costs.

(a) The claim for distress shall name the tenant as defendant and shall set forth the name and address of the landlord, the name and address of the tenant and the facts as to any assignment of the rental agreement, the premises leased, the date of the rental agreement, the term of the rental agreement, the rent required to be paid by the tenant, the amount of rent in arrears and the plaintiff's statement that there is reason to believe the levied property would be disposed of absent the issuance of the levy. The claim for distress shall also set forth facts supporting the plaintiff's reasonable belief that the goods on the leased premises to be levied upon would be disposed of absent the issuance of the writ. The claim for distress shall be made under oath or affirmation by the plaintiff.

(b) The claim shall be filed in a Court of the Justice of the Peace located in the county wherein the commercial unit or a portion thereof is situated.

(c) The costs in the action shall include the cost of the sale.

§ 6303. Order of distress; service of claim and order; levy; inventory; return; duration of levy.

(a) Upon the filing of an action of distress, a justice of the peace shall make a determination as to the claim's compliance with the provisions of this chapter, and upon a determination of compliance, the Court shall promptly issue an order requiring plaintiff to file a cash bond or a bond with surety in such amount and in such form as the Court shall determine and an order to a constable or sheriff of that county directing that all goods on the leased premises be levied upon, once plaintiff has filed said bond. A copy of the claim of distress and order of levy shall be served upon each tenant on the leased premises, as provided herein. The order shall also set forth the time and place where the defendant may appear and make answer to the allegations in the claim.

(b) The levy may be made within the hours of 8:00 a.m. to 8:00 p.m.

(c) The officer making the levy shall then proceed to make an inventory of each article of goods distrained upon and shall deliver to each tenant found on the premises, or if not so found, leave affixed to the premises, a copy of the inventory as provided herein.

(d) The officer serving the order shall make a return of his action to the court, including the date and time thereof.

(e) A levy for distress shall not remain in force for more than 60 days and if the goods distrained are not sold within that period they shall be discharged from the levy.

§ 6304. Levied goods in custody of Court; removal and sale; plaintiff's interest.

(a) Except as hereinafter provided, goods levied upon by the constable or sheriff shall remain on the leased premises in the custody of the Court unless released as hereinafter provided.

(b) Upon application to the Court by either party, the Court may allow the removal, sale, or both, in whole or in part, of the levied goods, upon such terms and conditions as the Court deems necessary for the protection of the parties and to avoid irreparable harm, including the posting of a bond by the tenant for the fair market value of the goods or other protective measures, including the appointment of a receiver, or the depositing of sale proceeds with the court or a specified depository.

(c) Unless otherwise provided in accordance with subsection (b) of this section or § 6307, the plaintiff in an action of distress shall have a special property interest in the goods distrained until they are returned to the defendant or sold by the Court, so that he may take the goods wherever found and recover damages for carrying away or injuring them.

§ 6305. Protective measures upon a showing that a tenant may abscond.

Upon petition of the plaintiff in distress and upon a showing under oath or affirmation of a need for protective measures because the tenant may abscond or remove and conceal his goods, the Court may take any or all of the following protective measures:

(1) The constable or sheriff shall be directed to make the levy forthwith and at any time;

(2) The constable or sheriff can take actual possession of the goods levied upon and remove same from the leased premises to such place as the Court may direct pending the release or sale of the goods. Removal of the goods may, if the Court deems it necessary, be conditioned on the filing of a bond by the plaintiff in such amount and in such form as the Court may determine but in an amount not less than the fair market value of the goods removed. The expense of removal of any goods from the leased premises to any other place for storage pending sale shall be included as part of the costs of distress;

(3) The Court may order the levying officer to enter the premises forcibly if entry cannot otherwise be gained.

§ 6306. Procedure in the event of a forcible entry.

Where entry is gained forcibly and if no tenant is found on the premises, a copy of the claim and order shall be affixed on a prominent place on the interior of the leased premises. The constable or sheriff shall then proceed to make an inventory of each article of goods distrained and leave affixed to the premises a copy of the inventory and shall attempt to contact the tenant if his whereabouts are known and leave the premises locked and as safe and secure as possible. The constable or sheriff serving the order shall make a return of his action to the Court including the date, time and manner of the forcible entry.

§ 6307. Release of distrained property upon filing of bond.

Upon the filing of a bond with surety with the Court where the distress action is pending, the Court may release from the levy and return, or release from the levy or return, the property to the tenant. The bond shall be in an amount not exceeding the fair market value of the goods levied as determined by the Court or the amount of rent in arrears plus 2 months' rent, whichever is less.

§ 6308. Answer to claim; hearing; final order of sale.

(a) The defendant in an action of distress may file an answer to the action, setting forth any defenses defendant may have to the action. The court shall schedule the hearing to be held promptly after the levy, but not later than 5 days after the levy. At the hearing, the Court may determine and decide all issues raised, may issue an order for the sale of the goods and may make such orders in connection therewith as may be required.

(b) In any final order for the sale of goods distrained, the Court shall have power to increase the amount of rent claimed to an amount equal to the sum of the plaintiff's original claim plus rent accruing after the filing of the claim for distress up to the day of sale on which rent may fall due.

(c) If the tenant named as defendant in an action for distress shall fail to file an answer to the petition for distress and/or appear at the time and place set for the hearing, the Court may upon motion of the plaintiff issue an order for the sale of the goods distrained.

§ 6309. Public sale of property distrained; notice of sale.

After the expiration of 10 days from the day of the issuance of a final order of sale by the Court, the officer may sell the property, or so much thereof as is necessary to satisfy the rent and all costs, at public vendue, to the highest and best bidder, or bidders, first giving at least 6 days notice of the sale by advertisement posted in at least 5 public places in the county. All goods neither sold nor retained by the landlord shall be returned to the defendant.

§ 6310. Liability of officer.

Any constable, sheriff or other officer of the Court acting in good faith pursuant to an order of the Court as provided herein shall not incur civil or criminal liability for his actions in carrying out said order except for any damage incurred as a result of his gross negligence or wilful misconduct.

PART V
AGRICULTURAL LEASES
CHAPTER 67. AGRICULTURAL LEASES

Subchapter I. Rights and Duties of Landlords and Tenants.

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Subchapter I. Rights and Duties of Landlords and Tenants

§ 6701. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

(1) "Agricultural land," "farmland" or "rural land" shall mean any parcel, 10 acres or more, not within the limits of any city or municipality, which is capable of being farmed;

(2) "Demise" shall be synonymous with the term "lease";

(3) "Cropper" or "sharecropper" shall mean one who cultivates the farmland of another, in return for a share of the crop produced.

§ 6702. Term of verbal lease and term of lease in which no term expressed; notice to terminate; continuance of lease; leases of tenant houses located on poultry farms.

(a) Every verbal lease of agricultural land and every written lease of agricultural land in which no term is expressed shall be deemed and construed to be a lease having a term of 1 year, terminating on December 31 next occurring unless the lease is entered into after September 1, in which case the lease shall terminate on the second December 31 next occurring.

(b) In every verbal lease of agricultural land and every written lease of agricultural land in which no term is expressed, the lease shall terminate at the end of 1 year, terminating on December 31 next occurring unless the lease is entered into after September 1, in which case the lease shall terminate on the second December 31 next occurring; provided, however, the landlord or tenant gives the other party notice in writing at least 4 months in advance of the expiration date thereof that the landlord or tenant, as the case may be, intends to terminate the lease at the expiration date thereof. If no such notice is given

by either party the lease shall become a year to year lease renewing itself yearly under the same terms and conditions until the hereinmentioned notice requirement is met by either party desiring to terminate said lease.

(c) Notice, as provided for herein, shall not be required if all parties to a lease of agricultural land specify in writing that said lease shall terminate on the expiration date thereof without notice of such termination.

(d) In every verbal lease of a tenant house located on a poultry farm and every written lease of a tenant house located on a poultry farm in which no term is expressed, the landlord or tenant, as the case may be, shall have 14 days to notify the landlord/or tenant, as the case may be, that the lease of the tenant house is terminated, except that this subsection shall not apply to a tenant who is not involved with the management or supervision of poultry.

§ 6703. Lease in which term expressed; notice to terminate; continuation of lease.

(a) In every written lease of agricultural land, which by its terms is for a definite period, the lease shall terminate on the expiration date thereof; provided, however, the landlord or tenant gives the other party notice in writing at least 4 months in advance of the expiration date thereof that the landlord or tenant, as the case may be, intends to terminate the lease at the expiration date thereof. If no such notice is given by either party the lease shall become a year to year lease renewing itself yearly under the same terms and conditions until the hereinmentioned notice requirement is met by either party desiring to terminate said lease.

(b) Notice, as provided for herein, shall not be required if all parties to a lease of agricultural land specify in writing that said lease shall terminate on the expiration date thereof without notice of such termination.

§ 6704. Remedy of agricultural landlord.

Grantees of reversions and remainders in any lands, tenements or hereditaments let to lease, and their heirs, executors, administrators or assigns, shall have the same remedies, by entry or action, or otherwise, against the lessees, their executors, administrators or assigns, for any waste done, or for the nonperformance of any condition, covenant or contract contained in the lease or demise, as the grantors could have.

§ 6705. Distress on agricultural leases.

(a) Distress will lie for any rent due and owing on agricultural lands, and distraint may be effected on any personality including a quantity or share of crops being grown by the tenant on the land of the landlord.

(b) A distress may be of the grain, orchard produce or other crops found upon the premises out of which the rent issues, or upon which it is charged, whether growing, severed, in sheaves, stacks or otherwise, as well as upon horses, cattle and other goods and chattels of the tenant being upon the premises; provided, however, goods and chattels not the property of the tenant, but being in his possession or upon the premises, are not subject to distraint. Also excepted from this section are any animals, not the property of the tenant, which have escaped into the premises of the landlord through a defect in the fences which the tenant was bound to repair. Goods and chattels which have been sold or leased to the tenant under the terms of a conditional sales contract or lease, properly recorded in accordance with law, are not subject to the process of the agricultural landlord's distress.

§ 6706. Preference of rent in cases of execution.

(a) (1) If grain or other produce, growing or being upon premises held by a tenant, for which rent to be paid is a quantity or share of grain or other produce, is seized by virtue of any process of execution, attachment or sequestration, such agricultural produce shall be first applied to the payment of the year's rent before it is applied to the payment of other debts of the tenant.

(2) Any agricultural produce remaining after the payment of the year's rent shall be applied to other debts of the tenant before process is issued against other personalty.

(3) If the rent is to be paid by a particular crop, whatever amount of that particular crop is found upon the premises shall be first taken as payment or part payment of that rent.

(4) If the crops are still planted or growing, the person executing upon such crops shall be responsible for the proper cultivation and care of the crops.

(5) No person shall remove the grain or produce of an agricultural tenant who is in arrears for rent without either paying the rent proper to be rendered from such property, or giving, or tendering to the landlord or other person entitled to the rent, good security for payment of the same.

(b) In the case of a removal of agricultural produce in violation of this section, the landlord or other person entitled to the rent may immediately follow and distrain upon the produce removed, and may proceed in the same manner as if the rent had been in arrears at the time of removal.

§ 6707. Removal by tenant of hay.

Whenever a tenant at the beginning of his tenancy has moved or carried upon the demised premises any hay, he shall at the expiration of his tenancy be authorized to remove from the premises, without the consent of the owner, a like quantity of hay. In any dispute concerning the quantity of hay removed or carried upon such demised premises by the tenant at the beginning of his tenancy, the burden of proof shall be upon the tenant.

§ 6708. Obstruction by tenant; protection afforded tenant's crops.

In the absence of a written contract to the contrary, no tenant of a farm shall obstruct or interfere with the cultivation and care of fruit trees, the seeding of wheat and other grains where by custom or by contract such seeding is to be done by the incoming tenant or the setting of plants necessary for future crops, by the landlord or his incoming tenant, their agents and employees, but no injury may be done to growing crops of the tenant, and such tenant shall remove or carry over such crops as is the custom in the community at a reasonable time to permit the seeding or setting of plants.

§ 6709. Duties of outgoing tenants with respect to corn.

Any agricultural tenant who grew corn or who is growing corn the year he surrenders possession of the premises shall harvest all corn which he leaves on the premises at the time of his removal. In the event the outgoing tenant, or the tenant giving up possession does not harvest the corn on the farm, then the incoming tenant may be privileged to enter upon the farm and harvest the corn and charge the expenses to the crop.

§ 6710. Rent payable with portion of grain or produce.

In all cases where land shall be rendered in consideration of the rendering of a portion of the crops raised upon the same, or for a specific amount of grain or other produce, and the tenant shall fail to render such grain or produce according to the terms of the contract, the landlord may levy a distress for the same.

§ 6711. Distress of agricultural produce; appraisal.

Where the distress is for grain or produce, the person authorized to levy such distress shall summon and cause to be sworn 2 disinterested persons, whose duty it shall be to estimate under oath the money value of the specific amount or quantity of grain, or other produce or proportion of the crops agreed upon as rent, and thereupon to proceed to levy the said distress.

§ 6712. Delivery of grain or other produce, or payment of estimated value.

The tenant whose goods are distrained in accordance with this chapter shall have his election at any time before the goods, chattels and property distrained shall be sold under such distress to deliver the rent of grain or other produce or proportion of crops to the landlord, or to pay him the estimated value, together in both cases with the expense of said distress; whereupon all proceedings in the said distress shall cease. But nothing herein contained shall limit the tenant from any action to recover goods unlawfully taken or to take any action to contest the fairness of such valuation.

§ 6713. Number and compensation of appraisers.

No sheriff, constable or other person making distress for rent shall summon more than 2 appraisers of property, and the compensation of the appraisers shall be $5 each, to be recovered and paid as other costs in such cases. In distress for money rent on agricultural leases, the appraisers shall not be summoned.

§ 6714. Crops reserved as rent.

In all cases of renting lands wherein a share of the growing crop or crops shall be reserved as rent, said rent reserved shall be a lien upon such crop or crops, and such crop or crops shall not be seized in bankruptcy or insolvency, or by process of law issued against the tenant.

§ 6715. Lien on crops.

In all cases of renting land wherein a share of the growing crop or crops shall be reserved as rent, or wherein advances are made by the landlord upon the faith of the crops to be grown, said rent reserved and such advances made shall be a lien on such crop or crops, which shall not be divested by any sale by any administrator of a deceased tenant, or by the assignment of the tenant in insolvency, or by process of law issued against the tenant; provided, however, that at the time of the said renting the contract under and by which the said advances are made shall be reduced to writing, duly attested by the said landlord and tenant. Before such advances shall be made a lien, however, the contract under which such advances are made shall be recorded as other liens are recorded in the county wherein the land lies.

§ 6716. Preference of rent in cases of execution.

Liability of goods levied upon for 1 year's rent:

(1) If goods, chattels or crops of a tenant being upon premises held by the tenant by demise under a rent of money are seized by virtue of any process of execution, attachment or sequestration, the goods and chattels shall be liable for 1 year's rent of the premises in arrear or growing due, at the time of the seizure, in preference to such process; accordingly the landlord shall be paid such rent, not exceeding 1 year's rent, out of the proceeds of the sale of such goods and chattels, before anything shall be applicable to such process.

(2) The sheriff, or other officer, who sells the goods and chattels of a tenant upon process of execution, attachment or sequestration shall at least 10 days before such sale give written notice of the time and place thereof to the landlord if residing in the county, and if not, to any known agent of the landlord in the county.

§ 6717. Taxes paid by tenant; setoff against rent; recovery from owner.

Any tax laid upon lands or tenements according to law which is paid by or levied from the tenant of such lands or tenements, or a person occupying and having charge of same, shall be a setoff against the rent or other demand of the owner for the use, or profits, of such premises. If there is no rent or other demand sufficient to cover the sum so paid or levied, the tenant or other person may demand and recover the same from the owner, with costs. This provision shall not affect any contract between the landlord and tenant.

Subchapter II. Miscellaneous

§ 6721. Disposition of manure.

(a) (1) In the absence of an express agreement between the parties, an agricultural tenant, whether a tenant at will or for a term of years, shall have no right to remove, or sell for removal, any manure made in the ordinary course of his husbandry on the farm occupied by such tenant and consisting of the collections from any stable or barnyard, or of composts formed by an admixture of these with soil or other substances.

(2) If an agreement between the landlord and the tenant grants to the tenant the right to remove the manure made on the premises, the tenant shall do no act which will do unnecessary injury to the soil, and may not remove soil with the manure.

(3) During the term of the lease, however, the tenant of a farm lease is entitled to the possession of the manure made thereon in the ordinary course of husbandry, for the purpose of using it on the farm but shall have no right to sell it. If the tenant sells the manure, the landlord shall have the choice of receiving the money paid, or he may maintain an action against the purchaser for the true value of the manure if the amount paid was less than the true value.

(b) A tenant who uses the demised premises as a corral for cattle and feeds such cattle with supplies procured from sources foreign to the demised land may remove all manure made by them which

is not commingled with the soil, provided such tenant uses reasonable care and skill when removing the manure from the land so as to prevent injury thereto.

§ 6722. Improper tillage and cutting of timber.

The cutting of timber by the tenant on leased agricultural land, without the consent of the landlord in writing, is waste. Improper tillage and the cutting of timber may be enjoined by the landlord, who may also bring an action for double the damage done to the land, loss of value of the land and loss of value of the crop or timber.

§ 6723. Assignment of farm leases.

A lease of land on shares, including the use of buildings, farm implements, stock and other personal property, is a personal contract and is not assignable without the consent of the lessor; provided, however, where the original lease runs "to the lessee and his assigns," or where the crop has been harvested and marketed, the lease shall be assignable.

§ 6724. Delivery of crop rent.

In the absence of any agreement between a landlord and his tenant fixing the place at which crop rent shall be delivered, it shall be delivered upon the leased premises.

PART VI
MANUFACTURED HOME COMMUNITIES
CHAPTER 70. MANUFACTURED HOMES AND MANUFACTURED HOME COMMUNITIES

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§7001. Purposes and policies; enforceability.

(a) This subchapter must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) to clarify and establish the law governing the rental of lots for manufactured homes as well as the rights and obligations of manufactured home community owners (landlords), manufactured home owners (tenants), and residents of manufactured home communities; and

(2) to encourage manufactured home community owners and manufactured home owners and residents to maintain and improve the quality of life in manufactured home communities.

(b) This subchapter applies to all rental agreements for manufactured home lots and regulates and determines the legal rights, remedies, and obligations of all parties to a rental agreement, wherever executed, for a lot for a manufactured home in a manufactured home community within this State. A provision of a rental agreement which conflicts with a provision of this subchapter and is not expressly authorized herein is unenforceable. The unenforceability of a provision does not affect the enforceability of other provisions of a rental agreement which can be given effect without the unenforceable provision.

§ 7001A. The Delaware Manufactured Housing Alternative Dispute Resolution Act.

(a) The purpose of the Delaware Manufactured Housing Alternative Dispute Resolution (ADR) Act is to provide a means to resolve disputes without litigation by using alternative dispute resolution techniques. The act requires the use of alternative dispute resolution by the parties if the Governor's Advisory Council on Manufactured Housing, by the affirmative vote of a majority of its members, determines that an existing dispute or perceived grievance between a manufactured home community owner and a tenant or a group of tenants should be referred to ADR. A broad interpretation of the provisions of this section should achieve these purposes.

(b) As used in this section, unless the context otherwise requires:

(1) "ADR" means the alternative dispute resolution method provided for by this section, unless the parties to a dispute adopt by written agreement some other method of ADR, in which event "ADR" refers to the method they adopt. The "ADR" method provided for by this section is mandatory, but nonbinding mediation.

(2) "ADR specialist" means an individual who has the qualifications described in subsection (g) of this section to conduct an ADR proceeding.

(3) "Advisory Council" means the Governor's Advisory Council on Manufactured Housing.

(4) A "dispute subject to ADR" means a dispute that is not the basis for a pending action for summary possession in accordance with § 5702 of this title.

(5) "Mediation" is an option by which an ADR specialist facilitates the parties in reaching a mutually acceptable resolution of a dispute. It includes all contacts between the ADR specialist and any party or parties until a resolution is agreed to, the parties discharge the ADR specialist, or the ADR specialist finds that the parties cannot agree.

(6) "Person" means any individual, corporation, association, partnership, statutory trust, business trust, limited liability company, or any other legal, commercial, or governmental entity, whether or not organized for profit.

(c) A person who files a certificate of agreement provided for in subsection (d) of this section agrees to submit all disputes subject to ADR to an ADR specialist. Upon the filing of a certificate of agreement, the filer is bound by the provisions of this section.

(d) (1) A certificate of agreement to submit a dispute to ADR must set forth:

a. The name of the person filing the certificate;

b. The address of the person filing the certificate, including the street, number, city, state, and zip code, which will be used to give any required notice in a dispute;

c. The name of the person or persons or entity subject to the dispute; and

d. The nature and substance of the dispute in sufficient detail to permit understanding of the circumstances and issues involved in the dispute.

(2) A provision in a certificate of agreement that purports to limit a dispute that is subject to ADR, other than an action for summary possession, is void.

(e) (1) A certificate of agreement accepting ADR must be filed with the Chair of the Advisory Council, or the Chair's designee.

(2) The Chair shall keep records as are required to determine who has filed a certificate of agreement accepting ADR or when such a certificate has been revoked, together with the date of any such filing or revocation.

(3) The Chair shall keep appropriate records regarding all disputes which have been referred to ADR by the action of the members of the Advisory Council.

(4) A certificate of agreement accepting ADR or revoking ADR must be accompanied by a payment of $30 to the Governor's Advisory Council. The payment amount may be changed by a two-thirds affirmative vote of the members of the Advisory Council. The payment will be refunded if the Advisory Council does not submit the dispute to ADR.

(f) (1) If the Advisory Council determines that an existing dispute or perceived grievance between a manufactured home community owner and a tenant or a group of tenants should be referred to ADR, ADR is mandatory, but nonbinding. A manufactured home community owner or a tenant or a group of tenants who are the respondents in a dispute for which a certificate of agreement has been filed with the Advisory Council, shall submit to the ADR.

(2) An affirmative vote by a majority of the members of the Advisory Council is sufficient to submit a dispute between a manufactured housing community owner and a tenant or a group of tenants to ADR.

(g) ADR proceedings must be conducted by a person who meets the following criteria:

(1) The person has successfully completed at least 25 hours of training in resolving civil disputes in a course or program approved by the Delaware State Bar Association, or

(2) The person is registered as an active member of the Delaware Bar, together with a minimum of 5 years of experience as a practicing attorney; and

(3) The person agrees to conduct ADR proceedings without compensation.

(h) The ADR mediation conference. -- A mediation conference must be scheduled in consultation with the parties within 30 days of the date of the determination by the Advisory Council that the dispute shall be referred to ADR, and must be held by the selected ADR specialist within ninety days after scheduling. All parties must participate in the mediation conference. The ADR specialist may immediately terminate the ADR conference and recommend that the Advisory Council refer the dispute to the Attorney General's office for further investigation, for failure to participate in the mediation conference. All persons necessary for the resolution of the case must be present at the mediation conference.

(1) Before a mediation conference begins, the ADR specialist shall provide the parties with a written statement setting forth the procedure to be followed. The parties are each required to serve upon the ADR specialist a Confidential Mediation Conference Statement 10 days prior to the scheduled mediation conference.

(2) Prior to the commencement of the mediation conference, the parties and the ADR specialist shall sign a written agreement which must include explanation of the following:

a. The rights and obligations of parties to the mediation conference; and

b. The confidentiality of the mediation conference.

(3) All memoranda, documents, work products, and other materials contained in the case files of an ADR specialist or a court related to the mediation are confidential. Any communication made in, or in connection with, the mediation which relates to the dispute being mediated, whether made to the ADR specialist or a party or to any person, if made at a mediation conference, is confidential. The certificate of agreement is confidential unless the parties otherwise agree in writing. Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding except:

a. If all parties to the mediation agree in writing to waive confidentiality;

b. In an action between an ADR specialist and a party to the mediation for damages arising out of the mediation; or

c. Statements, documents, memoranda, materials, and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in, and were not used in, the mediation conference.

(4) The ADR specialist shall assist the parties to reach a mutually acceptable resolution of their dispute through discussion and negotiation. The ADR specialist may terminate the mediation conference if the parties are unable to reach agreement. Such a termination is without prejudice to either party in any other proceeding. The ADR specialist may not impose any adjudication, sanction, or penalty upon the parties based solely on their failure to reach an agreement; however, the ADR specialist may impose sanctions upon a party who fails to appear for a mediation conference or fails to negotiate in good faith. A party is not bound by anything said or done at the mediation conference, except by a settlement agreement, if a settlement is reached.

(5) If the parties involved in a mediation conference reach a settlement, the agreement must be reduced to writing by the ADR specialist, unless the parties otherwise agree as part of their settlement that they will prepare the writing. The written agreement must be signed by the parties and the ADR specialist. The ADR specialist shall encourage unrepresented parties to the mediation to consult with counsel prior to executing a mediation agreement. The ADR specialist shall provide all parties with a list of agencies that may be able to assist an unrepresented party, such as the Consumer Protection Unit of the Attorney General's Office; Delaware Volunteer Legal Services, Inc. (DVLS); Community Legal Aid Society, Inc. (CLASI); and Legal Services Corporation of Delaware, Inc. (LSCD). A settlement agreement must set forth the settlement of the disputed issues and the future responsibilities of each party to the agreement. The agreement is binding on all parties to the agreement.

(6) If the parties involved in a mediation conference do not reach a settlement, the ADR specialist shall file with the Advisory Council a notice and serve a copy to each of the parties, advising that mediation was not successful.

(i) (1) With the exception of subsection (l) (statute of limitations) of this section, the ADR procedures provided for in this section cease to have any force or effect upon the commencement of litigation concerning the dispute that is the subject of the ADR proceedings. The parties to such litigation are exclusively subject to the rules of the tribunal in which the litigation has been commenced and nothing in this section shall be construed to infringe upon or otherwise affect the jurisdiction of the courts over such disputes.

(2) The Council may make a recommendation to the Office of the Attorney General for further action if the ADR process is unsuccessful. The Office of the Attorney General shall report back to the Advisory Council within 60 days as to the action taken or to be taken with respect to the dispute.

(j) The results of the ADR proceedings must be reported to the Advisory Council. Memoranda and documents submitted to an ADR specialist, statements made during the ADR, and notes or other materials made by the ADR specialist or any party in connection with the ADR are not subject to discovery, may not be introduced into evidence in any proceeding, and may not be construed to be a waiver of any otherwise applicable privilege; however, nothing in this section limits the discovery or use as evidence of documents and other materials that would have otherwise been discoverable or admissible as evidence but for the use of those documents or materials in the ADR proceeding.

(k) An ADR specialist has the same immunity that the ADR specialist would have if that ADR specialist were a judge acting in a court with jurisdiction over the subject matter and over the parties involved in the dispute that led to ADR.

(l) The initiation of ADR under this section suspends the running of the statute of limitations applicable to the dispute that is the subject of the ADR until 14 days after the ADR specialist files notice that mediation was not successful, pursuant to paragraph (h)(6) of this section.

§7002. Jurisdiction.

(a) Any person, whether or not a citizen or resident of this State, who owns, holds an ownership or beneficial interest in, uses, manages, or possesses real estate situated in this State submits to the jurisdiction of the courts of this State as to any action or proceeding for the enforcement of an obligation or right arising under this subchapter.

(b) A summary proceeding to recover the possession of a rented lot, pursuant to Chapter 57 of this title, may be maintained in the Justice of the Peace Court in the county where the property is located.

(c) In the absence of a provision in this subchapter governing the relationship between a manufactured home owner (tenant) and a manufactured home community owner (landlord), the Residential Landlord-Tenant Code set forth in Part III of this title governs the relationship. The Residential Landlord-Tenant Code also governs the rental of manufactured homes. In the event of conflict between the provisions of this subchapter and those of the Residential Landlord-Tenant Code, this subchapter governs issues pertaining to the rental of lots in manufactured home communities.

§7003. Definitions.

Unless otherwise expressly stated, if a word or term is not defined under this section, it has its ordinarily accepted meaning or means what the context implies. In this subchapter, the following definitions apply.

(a) 'Agreement' means a written rental agreement.

(b) 'Authority' means the Delaware Manufactured Home Relocation Authority.

(c) 'Common area' means shared land or facilities within a manufactured home community over which the landlord retains control.

(d) 'Community owner' or 'landlord' means the owner of two or more manufactured home lots offered for rent. It includes a lessor, sub-lessor, park owner, or receiver of two or more manufactured home lots offered for rent, as well as any person, other than a lender not in possession, who directly or indirectly receives rents for two or more manufactured home lots offered for rent and who has no obligation to deliver such rents to another person.

(e) 'Guest' or 'visitor' means a person who is not a tenant or resident of a manufactured home community and who is on the premises of the manufactured home community with the express or implied permission of a tenant or resident of the community.

(f) 'Hold over' means to retain possession of a rented lot in a manufactured home community after the termination, non-renewal, or expiration of a rental agreement governing the rented lot.

(g) 'Holdover' means an act of retaining or a tenant who retains possession of a rented lot in a manufactured home community after the termination, non-renewal, or expiration of a rental agreement governing the rented lot.

(h) 'Home owner' or 'tenant' means an owner of a manufactured home who has a tenancy of a lot in a manufactured home community; a lessee.

(i) 'Landlord' or 'community owner' means the owner of two or more manufactured home lots offered for rent. It includes a lessor, sub-lessor, park owner, or receiver of two or more manufactured home lots offered for rent, as well as any person, other than a lender not in possession, who directly or indirectly receives rents for two or more manufactured home lots offered for rent and who has no obligation to deliver such rents to another person.

(j) 'Lease' or 'rental agreement' means a written contract between a landlord and a tenant establishing the terms and conditions whereby a manufactured home is placed upon or is allowed to remain upon a rented or leased lot in a manufactured home community.

(k) 'Manufactured home' means a factory-built, single-family dwelling: (1) transportable in one or more sections, which is either (8) body feet or more in width and forty (40) body feet or more in length, or, when erected on site, has more than four hundred (400) square feet in living area; and (2) with or without a permanent foundation and designed to be used as a year-round dwelling when connected to the required utilities; and (3), if manufactured since June 15, 1976, built in accordance with manufactured home construction requirements promulgated by the federal Department of Housing and Urban Development (HUD) or by other applicable codes. 'Manufactured home' is synonymous with 'mobile home', 'trailer', and similar terms used elsewhere in this title.

(l) 'Manufactured home community' means a parcel of land where two or more lots are rented or offered for rent for the placement of manufactured homes. Manufactured home community is synonymous with 'mobile home park', 'trailer park', and 'trailer court'.

(m) 'Notice' means a written announcement, warning, or other communication delivered to or served upon a person, as designated in statute.

(n) 'Premises' means the rented lots in a manufactured home community, the structures upon them, and the facilities and appurtenances thereon, as well as the grounds, common areas, and facilities held out for the use of the tenants and/or residents generally or whose use is contracted for between landlord and tenant.

(o) 'Quiet enjoyment' includes the peaceful possession of the premises in a manufactured home community without unwarranted disturbance.

(p) 'Recreational vehicle' means a travel trailer, camping trailer, park trailer, camper, camper motor home, or similar accommodation which is primarily designed as temporary living quarters for recreational camping or for seasonal or travel use and which either has its own motor power or is mounted on or drawn by another vehicle.

(q) 'Rent' means money paid by a tenant to a landlord for the possession, use, and enjoyment of a rented lot and other parts of the premises in a manufactured home community pursuant to a rental agreement. For purposes of summary possession, rent includes late fees for rent, other fees and charges, including utility charges, and the tenant's share of the Delaware Manufactured Home Relocation Trust Fund assessment.

(r) 'Rental agreement' or 'lease' means a written contract between a landlord and a tenant establishing the terms and conditions whereby a manufactured home is placed upon or is allowed to remain upon a rented or leased lot in a manufactured home community.

(s) 'Resident' means a person who resides in a manufactured home located in a manufactured home community. A resident may or may not be a tenant.

(t) 'Seasonal property' means a parcel of land operated as a vacation resort on which two or more lots are rented or offered for rent for the placement of manufactured homes or other dwellings used less than 8 months of the year. A seasonal property is characterized by a lack of availability of year-round utilities and by the fact that its tenants have primary residences elsewhere.

(u) 'Tenant' or 'home owner' means an owner of a manufactured home who has a tenancy of a lot in a manufactured home community; a lessee.

(v) 'Trust Fund' means the Delaware Manufactured Home Relocation Trust Fund.

(w) 'Utility charge' means a charge by a landlord or others to a tenant for a commodity such as water, sewer, electricity, fuel, propane, cable television, or trash.

(x) 'Utility service' means a service provided by a landlord or others to a tenant for a commodity such as water, sewer, electricity, fuel, propane, cable television, or trash.

§7004. Exemptions.

(a) The rental of ground upon which a recreational vehicle is placed, including any facilities or utilities thereon, is exempt from the requirements of this subchapter, and nothing in this subchapter may be construed as determining, regulating, or governing the legal rights of parties to any lease or rental agreement for the ground on which a recreational vehicle is situated.

(b) The rental of ground within the category of seasonal property is exempt from the requirements of this subchapter, and nothing in this subchapter may be construed as determining, regulating, or governing the legal rights of parties to any lease or rental agreement for the rental of ground within the category of seasonal property.

§7005. Requisites for rental of a manufactured home lot.

A landlord may not rent a lot in a manufactured home community without first delivering a copy of the rental agreement, a copy of the rules, standards, and fee schedule of the manufactured home community, and a copy of this subchapter to the prospective tenant who shall acknowledge such delivery by signing a receipt.

§7006. Provisions of a rental agreement.

(a) All new and renewing rental agreements, including those rental agreements whose original term has expired, for a lot in a manufactured home community must contain:

(1) specific identification and location of the rented lot within the manufactured home community;

(2) a stipulation of the total amount of annual rent for the lot;

(3) a stipulation of the term of the rental agreement and the terms of payment of rent, whether monthly, quarterly, semiannually, or annually;

(4) the amount of rent due for each term of payment and the date on which each payment of rent is due;

(5) the amount of any late-payment fee for rent and the conditions under which the fee may be imposed;

(6) a listing of each other fee or charge in a manner that identifies the service to be provided for the fee or charge in accordance with the provisions of §7008 of this subchapter;

(7) the name and address of the landlord or the person authorized to receive notices and accept service on the landlord’s behalf;

(8) the name and location of the federally insured financial institution where the landlord's security-deposits account is located;

(9) a services rider which contains a description of each utility, facility, and service provided by the landlord and available to the tenant, clearly indicating the financial responsibility of the tenant and the landlord for installation and maintenance, and for the related fees or charges that may be imposed upon the tenant by the landlord;

(10) a rental agreement summary which must contain a brief description of the manufactured home, the rented lot, rental amount, term, landlord's mailing address, tenant's mailing address, fees, security deposit, information regarding rent adjustment, community status, and method of notice; in addition, the summary must include the amount of rent charged for the lot for the 3 most recent past years. If the amounts are unknown after a diligent search or if the lot was not rented, a statement to that effect must be included. The rent history provided pursuant to this paragraph may not be used as a predictor of future rent increases, nor may it be used against the community owner/landlord in any way;

(11) the grounds for termination, as described in this subchapter;

(12) a specific reference to this subchapter as the law governing the relationship between the landlord and the tenant regarding the lot rental;

(13) provisions requiring the landlord to:

a. maintain and re-grade the lot area where necessary and in good faith to prevent the accumulation of stagnant water thereon and to prevent the detrimental effects of moving water;

b. maintain the manufactured home community in such a manner as will protect the health and safety of residents, visitors, and guests;

c. identify each lot area in the community in such a way that each tenant can readily identify his or her area of responsibility and specify the duties of the tenant in maintaining his or her area of responsibility;

d. maintain the community, including common areas and rental lots not under rent, keeping it free of species of weeds or plant growth which are noxious or detrimental to the health of the residents;

e. make a good faith effort to exterminate insects, rodents, vermin, or other pests which are dangerous to the health of the residents when an infestation exists in the common areas of the community;

f. maintain all water, electrical, plumbing, gas, sewer, septic, and other utilities and services provided by the landlord in good working order, repairing these utilities and services within the earlier of 48 hours after written notification of a utility or service problem, or as soon thereafter as is practicable if a repair within 48 hours is not practicable;

g. when applicable, specify whether septic systems are to be maintained by the landlord or by the tenant;

h. respect the privacy of residents and agree not to enter into, under, or on the manufactured home without the permission of the tenant or an adult resident unless emergency circumstances exist and entry is required to prevent injury to person or damage to property. However, the landlord may, with 72 hours' notice, inspect any utility connections owned by the landlord or for which the landlord is responsible;

i. maintain all roads within the community in good condition;

j. comply with all federal, State, and local building codes;

k. allow the tenant freedom of choice in the purchase of goods and services other than utilities and related services subject to the limitations in subsection (b)(13) of this section;

(14) provisions requiring the tenant to:

a. keep the exterior of the manufactured home and the rented lot in a clean and sanitary condition;

b. refrain from storing outside on the lot occupied by the tenant's manufactured home building materials, furniture, or similar items usually not stored outside a home by a property owner in a residential area;

c. dispose of all rubbish, garbage, and other waste materials in a clean and sanitary manner;

d. abide by all reasonable written rules concerning use, occupation, and maintenance of the premises, and amendments thereto, as provided for in §7019 of this subchapter;

e. abide by all reasonable written manufactured home standards, and amendments thereto, as provided for in §7020 of this subchapter.

(b) A rental agreement for a lot in a manufactured home community may not contain:

(1) a provision whereby the tenant authorizes a person to confess judgment on a claim arising out of the rental agreement;

(2) a provision whereby the tenant agrees to waive or to forego any right or remedy provided by law;

(3) a provision whereby the tenant waives the right to a jury trial;

(4) a provision which permits the landlord to take possession of the rented lot or the tenant's personal property without the benefit of formal legal process;

(5) a provision which permits the landlord to collect a fee for late payment of rent without allowing the tenant to remit the rent in full a minimum of five (5) days beyond the date the rent is due;

(6) a provision which permits the landlord to impose for late payment of rent, based on a monthly payment, a fee in excess of the greater of twenty-five dollars ($25.00) or 5% of the rental payment specified in the rental agreement;

(7) a provision which permits the landlord to charge an amount in excess of one (1) month's rent for a security deposit, unless mutually agreed to, or to retain the security deposit upon termination of the rental agreement even though the tenant has paid the rent and any fees or charges in full as of the date of termination and has caused no damage to the landlord's property;

(8) a provision which permits the landlord to collect a deposit in excess of one normal billing period for any governmental mandated charge which is the responsibility of the tenant and would ultimately become the responsibility of the landlord if not paid by the tenant, or to retain the deposit upon termination of the lease if the tenant has paid the mandated charge;

(9) a provision which prohibits the tenant from terminating the rental agreement upon a minimum of thirty (30) days notice when a change in the location of the tenant's current employment causes the tenant to commute 30 miles farther from the manufactured home community than his or her current commuting distance from the community, or a provision which prohibits a tenant who is a member of the armed forces of the United States from terminating a rental agreement with less than thirty (30) days notice to the landlord if the tenant receives reassignment orders which do not allow at least 30 days notice;

(10) a provision for a waiver of any cause of action against, or indemnification for the benefit of, the landlord by the tenant for any injury or harm caused to the tenant or to residents, guests, or visitors or to the property of the tenant, residents, guests, or visitors resulting from any negligence of the landlord or of a person acting for the landlord in the performance of the landlord's obligations under the rental agreement;

(11) a provision which denies to the tenant the right to treat a continuing, substantial violation by the landlord of any agreement or duty protecting the health, welfare, or safety of the tenant or residents as a constructive or actual eviction which would otherwise permit the tenant to terminate the rental agreement and to immediately cease payments thereunder; provided that the landlord fails to correct the condition giving rise to the violation or fails to cease the violation within a reasonable time after written notice is given to the landlord by the tenant;

(12) a provision which prohibits displaying a for-sale sign that advertises the sale of a manufactured home in a manufactured home community; however, the landlord may establish reasonable limitations as to the number of signs and the size and placement of signs;

(13) a provision which unreasonably limits freedom of choice in the tenant's purchase of goods and services, provided, however, that:

a. the landlord is not required to allow service vehicles to have access to the manufactured home community in such numbers or with such frequency that a danger is created or that damage beyond ordinary wear and tear is likely to occur to the infrastructure of the community;

b. the landlord may restrict trash collection to a single provider; and

c. the landlord may select shared utilities;

(14) a provision which permits the recovery of attorney's fees by either party in a suit, action, or proceeding arising from the tenancy;

(15) a provision which violates any federal, State, or local law;

(16) a provision which requires the tenant to:

a. sell or transfer a manufactured home to the landlord; or

b. buy a manufactured home from the landlord; or

c. sell a manufactured home through the services of the landlord;

(17) a provision which requires the tenant to provide the landlord with a key to the tenant's manufactured home or any appurtenances thereto;

(18) a provision which regulates the use of satellite dishes or television antennas that conflicts with federal law or FCC regulations;

(19) a provision which requires the tenant to accept automatic deduction of rent payments from his or her checking or other account;

(20) a provision which grants the landlord an option or right of first refusal to purchase the tenant's manufactured home;

(21) a provision which limits to a liquidated sum the recovery to which the tenant otherwise would be entitled in an action to recover damages for a breach by the landlord in the performance of the landlord's obligations under the rental agreement.

(c) If a court of competent jurisdiction finds that a tenant's rental agreement contains a provision in violation of subsection (b) of this section:

(1) The landlord shall remove the provision and provide all affected tenants by regular first-class mail with proof of mailing or by certified mail, return receipt requested, at the address of the tenants' rented lots, with either an amended rental agreement or corrective addendum to the rental agreement within 30 days of the exhaustion of all appeals, if any are taken; and

(2) the landlord is liable to the tenant for actual damages suffered by the tenant as a result of the violation, plus court costs, if any.

(d) If a court of competent jurisdiction finds that a landlord has willfully included in the rental agreement a provision in violation of subsection (b) of this section, the tenant is entitled to recover three (3) months' rent in addition to an award under subsection (c) of this section.

(e) A rental agreement must be executed before a tenant occupies a lot.

(f) A landlord may not offer a lot for rent in a manufactured home community unless the lot conforms to the applicable State, county, or municipal statutes, ordinances, or regulations under which the manufactured home community was created, or under which the manufactured home community currently and lawfully exists.

(g) A violation of subsection (f) of this section is punishable by a fine of not more than one thousand dollars ($1,000).

(h) If a court of competent jurisdiction finds that a tenant's rental agreement fails to contain a provision required by subsection (a) of this section:

(1) The landlord shall include the provision and provide all affected tenants by regular first class mail with proof of mailing or by certified mail, return receipt requested, at the address of the tenants' rented lots, with either an amended rental agreement or corrective addendum to the rental agreement within 30 days of the exhaustion of all appeals, if any are taken; and

(2) The landlord is liable to the tenant for actual damages suffered by the tenant as a result of the violation, plus court costs, if any.

(i) If a court of competent jurisdiction finds that a landlord has wilfully failed to include in the rental agreement a provision required by subsection (a) of this section, the tenant is entitled to recover 3 months' rent in addition to an award under subsection (h) of this section.

(j) Both the landlord and tenant shall comply with the provisions of the rental agreement. The remedies available to a landlord or a tenant set forth in this chapter are in addition to those remedies available to a landlord or a tenant in a court of competent jurisdiction for the failure by the landlord or the tenant to comply with any provision of a rental agreement.

§7007. Term of rental agreement; renewal of rental agreement.

(a) The term of a rental agreement for a lot in a manufactured home community must be:

(1) one year; or

(2) a shorter or longer term that is mutually agreed upon by the parties and is designated in writing within the rental agreement.

(b) Upon the expiration of the term of a rental agreement, the rental agreement must be automatically renewed by the landlord for the same term and with the same provisions as the original agreement, with the exception that modified provisions relating to the amount and payment of rent are permitted, and, with the mutual agreement of all parties to the rental agreement, other modifications not prohibited by law, unless:

(1) the tenant notifies the landlord in writing, a minimum of 60 days prior to the expiration of the rental agreement, that the tenant does not intend to renew it, or a shorter or longer period of time as is mutually agreed upon by the parties; or

(2) the landlord notifies the tenant in writing, a minimum of 60 days prior to the expiration of the rental agreement, that the agreement will not be renewed for due cause, as described in §7010(a) of this subchapter.

§7008. Fees; services; utility rates.

(a) A 'fee' or 'charge' is a monetary obligation, other than lot rent, designated in a fee schedule pursuant to subsection (b) of this section and assessed by a landlord to a tenant for a service furnished to the tenant, or for an expense incurred as a direct result of the tenant's use of the premises or of the tenant's acts or omissions. A fee or charge may be considered as rent for purposes of termination of a rental agreement, summary possession proceedings, or for other purposes if specified in this title.

(b) A landlord must clearly disclose all fees in a fee schedule attached to each rental agreement.

(c) A landlord may assess a fee if the fee relates to a service furnished to a tenant or to an expense incurred as a direct result of the tenant's use of the premises. However, a fee that is assessed due to the tenant's failure to perform a duty arising under the rental agreement may be assessed only after the landlord notifies the tenant of the failure and allows the tenant 5 days after notification to remedy or correct the failure to perform. A tenant's failure to pay the fee within .5 days of notification is a basis for termination of the rental agreement pursuant to §7010A of this subchapter.

(d) A prospective tenant in a manufactured home community may be required to pay an application fee to be used by the landlord to determine the prospective tenant's credit worthiness. A landlord may not charge an application fee that exceeds the greater of 10% of the monthly lot rent or $50. A landlord shall, upon receipt of any money paid as an application fee, furnish a receipt to the prospective tenant for the full amount paid by the prospective tenant, and shall maintain for a period of at least 2 years complete records of all application fees charged and the amount received for each fee. If a landlord unlawfully demands or charges more than the allowable application fee, the prospective tenant is entitled to damages equal to double the amount demanded or charged as an application fee by the landlord.

(e)..If a landlord pays a tenant's utility charge to a third party due to the tenant's failure to do so, the charge is considered a pass-through utility charge. In addition to any late charge paid by the landlord to the third party, the landlord may assess a third-party-payment fee not to exceed the greater of 5% of the total payment by the landlord to the third party or $25.00.

(f)..A landlord may assess a late-payment fee for the late payment of rent if:

(1) the rent is not paid within five days after the due date specified in the rental agreement; and

(2) the rental agreement provides for a late-payment fee.

(g) A landlord may assess an optional-user fee for the use of designated facilities or services. Failure of a tenant to pay an optional-user fee for requested use of a facility or service may not be the basis for termination of the rental agreement. However, continued use of the requested facility or service without paying the optional-user fee may result in termination of the rental agreement pursuant to §7010A of this subchapter. Optional-user fees include, but are not limited to, fees for the use of a swimming pool, marine facilities, and tennis courts.

(h) The amount of an optional-user fee must be reasonably related to the cost of providing the facility or service upon which the fee is based.

(i) A fee may not be increased more than once during any twelve-month period. A utility rate may be adjusted as provided in subsection (j) of this section. A landlord shall notify a tenant in writing of any fee increase or additional fee at least 60 days prior to the effective date of the increase or addition. A fee increase or an additional fee is unenforceable unless proper written notice has been given to the tenant.

(j) A landlord may charge a tenant for utilities provided by the landlord to the tenant if specified in the rental agreement. The rate charged by a landlord for a utility may not exceed the utility's retail consumer rate, and the rate charged by the landlord may be adjusted without notice on a monthly basis.

(k) A landlord may not assess an entrance or exit fee. An entrance fee is any fee assessed by a landlord to a tenant prior to the tenant's occupancy of a rented lot, except for an application fee or a security deposit, or for those fees or charges for utilities, for direct services actually rendered, or for the use of facilities, all of which must be identified and described in the rental agreement or in a separate notice pursuant to §7006 of this title. An exit fee is a fee assessed by a landlord to a tenant immediately prior to or after the tenant's final departure from the rented lot, except for those fees or charges for direct

services actually rendered by the landlord which would not otherwise be provided without charge in the normal course of business.

(l) If a utility, facility, or service previously provided pursuant to the rental agreement is discontinued, the landlord shall adjust the tenant's rent, charge, or fee payment by deducting the landlord's direct operating costs of providing the discontinued utility, facility, or service. An adjustment is determined as follows:

(1) No less than 60 days prior to the discontinuance of the utility, facility, or service, the landlord shall notify all affected tenants of the discontinuance, and include in the notification an explanation of the discontinuance and the reduction in the direct operating cost, if any, associated with the discontinuance.

(2) Within 10 days after the landlord's notice pursuant to paragraph (1) of this subsection, the tenants may form a committee not to exceed five members. The committee and the landlord shall meet together at a mutually convenient time and place to discuss the discontinuance of the utility, facility, or service.

(3) At the meeting, the landlord shall disclose and explain all material factors for the proposed discontinuation of the utility, facility, or service, together with supporting documentation. The reduction in the direct operating cost of the utility, facility, or service, as determined by an independent public accountant or certified public accountant paid for by the landlord, is binding upon both the landlord and the tenants.

§7009. Termination of rental agreement by tenant during first month of occupancy; during first 18 months of occupancy.

(a) If a landlord fails to substantially comply with the provisions of a rental agreement, or if there is a material non-compliance with this subchapter or any statute, ordinance, or regulation governing the landlord's maintenance or operation of the manufactured home community, a tenant may, upon written notice to the landlord, terminate the rental agreement and vacate the rented lot by removing his or her manufactured home and all personal possessions at any time during the first month of occupancy. The tenant has no further obligation to pay rent after the date of vacating the lot. A tenant retains the right to terminate a rental agreement beyond the first month of occupancy if the tenant remains in possession of the lot in reliance on the written promise by the landlord to correct the condition or conditions which would justify termination of the agreement by the tenant during the first month of occupancy.

(b) If a condition exists which deprives a tenant of a substantial part of the benefit and enjoyment of the bargain pursuant to the rental agreement, the tenant may notify the landlord in writing of the condition, and, if the landlord does not remedy the condition within 15 days from the date of mailing, the tenant may terminate the rental agreement and vacate the rented lot by removing his or her manufactured home and all personal possessions. The tenant has no further obligation to pay rent after the date of vacating the lot. Notice pursuant to this subsection need not be given if the condition renders the premises uninhabitable or poses an imminent threat to the health, safety, or welfare of the tenant or a resident of the tenant's manufactured home.

(c) A tenant may not terminate a rental agreement pursuant to this section for a condition caused by lack of due care by the tenant, a resident of the tenant's manufactured home, or any other person on the premises with the tenant's or resident's consent.

(d) If a condition referred to in subsection (a) or (b) of this section was caused by the landlord, the tenant may recover any damages sustained as a result of the condition, including, but not limited to, reasonable expenditures necessary to obtain adequate substitute housing while the manufactured home is uninhabitable or while an imminent threat to health, safety, or welfare exists, or while the tenant is deprived of a substantial part of the benefit and enjoyment of the bargain pursuant to the rental agreement prior to the termination of the rental agreement by the tenant, and for a reasonable length of time following the termination of the rental agreement.

(e) If a landlord or the landlord's authorized representative intentionally misrepresents a material fact regarding a manufactured home community, the scope or extent of services provided by the landlord, or a provision of a rental agreement in a brochure, newspaper, radio or television advertisement, or other document or advertisement, for the purpose of inducing a tenant to enter into a rental agreement, and the tenant reasonably relies upon the misrepresentation to the tenant's detriment when entering into the rental agreement, the tenant has the right to terminate the rental agreement within 18 months of execution of the rental agreement.

§7010. Termination or nonrenewal of rental agreement by landlord; due cause: change in land use.

(a) A landlord may terminate a rental agreement for a lot in a manufactured home community before it expires or may refuse to renew an agreement only for due cause. Due cause means:

(1) an intended change in the use of the land of a manufactured home community as specified in subsection (b) of this section; or

(2) the grounds for termination pursuant to §7010A of this subchapter.

(b) If a change is intended in good faith in the use of land on which a manufactured home community or a portion of a manufactured home community is located and the landlord intends to terminate or not renew a rental agreement, the landlord shall:

(1) provide all tenants affected with at least a one-year termination or non-renewal notice, which informs the tenants of the intended change of use and of their need to secure another location for their manufactured homes. The landlord may not increase the lot rental amount of an affected tenant after giving notice of a change in use;

(2) give all notice required by this section in writing. All notice must be posted on the affected tenant's manufactured home and sent to the affected tenant by certified mail, return receipt requested, addressed to the tenant at an address specified in the rental agreement or at the tenant's last known address if an address is not specified in the rental agreement;

(3) provide, along with the one-year notice required by paragraph (1) of this subsection, a relocation plan (Plan) to each affected tenant of the manufactured home community. The Plan must be written in a straightforward and easily comprehendible manner and include the following:

a. the location, telephone number, and contact person of other manufactured home communities, known to the landlord after reasonable effort, within a 25-mile radius of the manufactured home community where the change of land use is intended;

b. the location, telephone number, and contact person of housing for tenants with disabilities and for older tenants, known to the landlord after reasonable effort, within a 25-mile radius of the manufactured home community where the change of land use is intended;

c. a listing, known to the landlord after reasonable effort, of government and community agencies available to assist tenants with disabilities and older tenants;

d. a basic description of relocation and abandonment procedures and requirements;

e. a preliminary indication of whether a tenant's manufactured home can or cannot be relocated;

f. a copy of this section of the Code;

(4) submit the Plan to the Delaware Manufactured Home Relocation Authority at the same time that the Plan is submitted to the affected tenants;

(5) update the Plan and distribute the updated Plan every three months. If the landlord fails to provide a quarterly update to each affected tenant and to the Authority, the date of termination of the tenant's rental agreement will be extended by one month for each omitted quarterly update;

(6) during the relocation process observe and comply with all federal, State, and local laws relating to older tenants and tenants with disabilities.

(c) If a manufactured home community owner does not in good faith intend to change the land use of the community, yet provides a homeowner or tenant with a termination or nonrenewal notice pursuant to subsection (b) of this section, the community owner has committed the act of misrepresentation with intent to deceive the homeowner or tenant.

(1) A violation of this subsection is subject to the following civil penalties:

a. A cease and desist order;

b. Payment of a monetary penalty of not more than $250 for each violation;

c. Restitution;

d. Such other relief as is reasonable and appropriate; and

e. Double the monetary penalty if the homeowner or tenant is over 65 years old.

(2) Prima facie evidence that a community owner did not intend in good faith to change land use includes, but is not limited to, evidence that the community owner reused the land for lot rentals for manufactured homes within 7 years of providing a tenant with a termination or nonrenewal notice, and did not make a material and bonafide effort to change the subdivision plan or zoning designation, or both.

(3) A court may award attorneys' fees and costs to a homeowner if it determines that the community owner violated this section.

(d) If a landlord has given the required notice to a tenant and has fulfilled all other requirements of this subchapter, the failure of the Authority to perform its duties or authorize payments does not prevent the landlord from completing the change in use of land.

§7010A. Termination or nonrenewal of rental agreement by landlord; due cause: noncompliance.

(a) A landlord may terminate a rental agreement with a tenant immediately upon written notice if the tenant does not comply with the terms of the rental agreement or the requirements of this subchapter and the noncompliance is the result of:

(1) clear and convincing evidence that conduct of the tenant or of a resident of the tenant's manufactured home caused, is causing, or threatens to cause, immediate and irreparable harm to any person or property in the manufactured home community;

(2) conviction of a crime or adjudication of delinquency committed by a tenant or by a resident of the tenant's manufactured home, the nature of which at the time of the crime or act of delinquency caused immediate and irreparable harm to any person or property in the manufactured home community;

(3) clear and convincing evidence of a material misrepresentation on the tenant's application to rent a lot in the manufactured home community which, if the truth were known, would have resulted in the denial of the application;

(4) the failure of the tenant to provide proper notification to the landlord prior to selling or transferring to a buyer or transferee title of a manufactured home which the buyer or transferee intends to retain in the manufactured home community, pursuant to §7022(c) of this subchapter; or

(5) the failure of a tenant to bring his or her manufactured home into compliance with written standards pursuant to §7020(b) or §7022(e) of this subchapter.

(b) A landlord may terminate a rental agreement with a tenant by providing prior written notice as follows:

(1) If the tenant's noncompliance with the terms of the rental agreement or the requirements of this subchapter involves conduct of the tenant, of a resident of the tenant's manufactured home, or of a guest or visitor of the tenant or resident which results in the disruption of the rights of others entitled to the quiet enjoyment of the premises, the landlord shall notify the tenant in writing to immediately cause the conduct to cease and not allow its repetition. The notice must specify the conduct which formed the basis for the notice and notify the tenant that if substantially the same conduct recurs within 6 months, whether or not the 6-month period falls within one lease period or overlaps two lease periods, the landlord may immediately terminate the rental agreement and bring an action for summary possession; or

(2) If the noncompliance is based upon a condition on or of the premises of the manufactured home community, the landlord shall notify the tenant in writing, specifying the condition constituting the noncompliance and allowing the tenant 12 days from the date of mailing or personal service to remedy the noncompliance. If the tenant remains in noncompliance at the expiration of the 12-day period, whether or not the 12-day period falls within one lease period or overlaps 2 lease periods, the landlord may immediately terminate the rental agreement and bring an action for summary possession; or

(3) If rent, which includes late fees for rent, other fees and charges, including utility charges, and the Trust Funds assessment, is not received by the landlord by the fifth day after the due date or during the grace period stated in the rental agreement, whichever is longer, the landlord shall notify the tenant in writing, demanding payment and stating that unless the required payment is made within seven (7) days from the date of mailing or personal service, the rental agreement will be terminated. If the tenant remains in default after the 7-day period, whether or not the 7-day period falls within one lease period or overlaps two lease periods, the landlord may terminate the rental agreement and bring an action to recover the rent due and for summary possession.

(c) Whether or not repeated instances of noncompliance fall within one lease period or overlap two or more lease periods, if there are repeated instances of noncompliance by the tenant with a provision of the rental agreement, with any rule or regulation material to the rental agreement, or with a provision of this subchapter, even when corrected by the tenant, a landlord may immediately terminate the rental agreement and bring an action for summary possession and any monies due, or may refuse to

renew the agreement pursuant to §7007 of this subchapter. 'Repeated instances of noncompliance' include:

(1) failure of the tenant on 4 separate occasions within 12 consecutive payment periods, to make a rent payment by the 5th day after the due date or during the grace period stated in the rental agreement, whichever is longer, resulting in notice being sent to the tenant pursuant to subsection (b)(3) of this section;

(2) failure of the tenant on 2 separate occasions within 12 consecutive payment periods to reimburse a landlord within 7 days of notice from the landlord to the tenant that the landlord paid the tenant's utility charge;

(3) tender by the tenant on 2 separate occasions within 12 consecutive payment periods of a bank draft or check which is dishonored by a financial institution for any reason, except for a mistake by the financial institution;

(4) four separate incidents of noncompliance as described in subsection (b)(1) or (2) of this section within a 12-month period; or

(5) any combination of four separate incidents of noncompliance as described in any paragraph of this subsection within a 12-month period.

(d) A landlord may not terminate a rental agreement or refuse to renew a rental agreement pursuant to subsection (c)(1) of this section unless the landlord notifies the tenant after the 3rd separate occasion within 12 consecutive payment periods that a subsequent incident of noncompliance described in subsection (c)(1) of this section may result in either the immediate termination of the rental agreement or the non-renewal of the rental agreement at its expiration.

(e) In an action for summary possession based on nonpayment of rent, the tenant is entitled to raise by defense or counterclaim any claim against the landlord that is related to the rental of the lot.

(f) A notice sent to a tenant advising the tenant that the rental agreement is terminated or will be terminated or will not be renewed must specify the reasons for such action in sufficient detail so that the dates, places, and circumstances concerning the termination are clear. Mere reference to or recital of the language of this section is not sufficient.

(g) A landlord's right to terminate a rental agreement prior to the expiration of the agreement or right to refuse to renew at the expiration of the agreement does not arise until the landlord has complied with the applicable notice provision upon which the landlord is relying for the termination or non-renewal of the agreement.

§7011. Delaware Manufactured Home Relocation Authority.

(a) The Delaware Manufactured Home Relocation Authority ('Authority') is administered by a board of directors made up of nine members, four of whom are appointed by the Governor from a list of at least 10 nominees submitted by the largest not-for-profit association representing manufactured home owners in this State. Of the four, one must be an owner and resident of a manufactured home located in Sussex County, one must be an owner and resident of a manufactured home in Kent County, and one must be the owner and resident of a manufactured home in New Castle County. The fourth must be an owner of, but need not necessarily reside in, a manufactured home located in this State. Another four members are appointed by the Governor from a list of at least 10 nominees submitted by the largest not-for-profit association representing the manufactured home industry in this State. Two out of 4 of these members must reside in this State, and each member must be either a community owner or an agent or designated representative of a community owner. One additional member is appointed by the Governor from the public-at-large. There is no requirement that the at-large member reside in Delaware. All members of the board of directors serve for 6-year terms. Each term ends on June 30. The terms are staggered so that no more than the terms of 3 members end on any June 30. The Governor shall designate one member of the board of directors as the chairperson of the board.

(b) (1) The board of directors of the Authority may employ or retain such persons as are reasonable and necessary to perform the administrative and financial transactions and responsibilities of the Authority and to perform other necessary and proper functions not prohibited by law. The Authority is responsible for all direct and indirect costs for its operations, including, but not limited to, receipts and disbursements, personnel, rental of facilities, and reimbursement to other State agencies for services provided and, therefore, must be fiscally revenue-neutral.

(2) Members of the board of directors of the Authority may be reimbursed from monies of the Authority for actual and necessary expenses incurred by them as members, but may not otherwise be compensated for their services.

(3) There is no civil liability on the part of, and no civil cause of action of any nature against, the Authority, an agent or employee of the Authority, the board of directors of the Authority, or a member of the board of directors of the Authority for any act or omission in the performance of powers and duties under this subchapter unless the act or omission complained of was done in bad faith or with gross or wanton negligence.

(4) Meetings of the board of directors of the Authority are subject to the provisions of the Freedom of Information Act, Chapter 100 of Title 29. All meetings must be conducted at a central location in the State, unless agreed to for a given meeting by 75% of the board members.

(c) The Authority's board of directors shall:

(1) adopt a plan of operation and articles, bylaws, and operating rules;

(2) establish procedures under which applicants for payments from the Authority may be approved;

(3) authorize payments and adjust, eliminate, or reinstate the Trust Fund assessment established in §7012 of this subchapter only if a minimum of 75% of the members of the board of directors approve the payments or assessments.

(d) The Authority and its board of directors may:

(1) sue or be sued;

(2) borrow from private finance sources and issue notes or vouchers in order to meet the objectives of the Authority and those of the Trust Fund established in §7012 of this subchapter.

§7012. Delaware Manufactured Home Relocation Trust Fund.

(a) The Delaware Manufactured Home Relocation Trust Fund (Trust Fund) is established in the Division of Revenue of the Department of Finance for exclusive use by the Delaware Manufactured Home Relocation Authority to fund the Authority's administration and operations. All interest earned from the investment or deposit of monies in the Trust Fund must be deposited into the Trust Fund.

(b) Monies in the Trust Fund may be expended only:

(1) to pay the administrative costs of the Authority; and

(2) to carry out the objectives of the Authority by assisting manufactured home owners who are tenants in a manufactured home community where the community owner intends to change the use of all or part of the land on which the community is located or where the community owner intends to convert the manufactured home community to a manufactured home condominium community or to a manufactured home cooperative community pursuant to Chapter 71 of this title, and by assisting manufactured home community owners with the removal and/or disposal of non-relocatable or abandoned manufactured homes.

(3) After notifying the manufactured home owners who are tenants in a community owner's manufactured home community that the community owner intends to change the land use or to convert the community pursuant to paragraph (b)(2) of this section, if the community owner does not change the land use or convert the community within 3 years of notification, or if the Authority finds there is prima facie evidence under § 7010(c)(2) of this title that the owner did not intend in good faith to change land use, the community owner shall within 30 days of the date the Authority provides written notice to the community owner, reimburse the Authority for whatever moneys the Authority has expended from the Trust Fund with respect to that manufactured home community, along with double the legal interest rate. The date of the mailing of notice by the Authority is deemed the date that a community owner is notified about reimbursing the Authority. However, if the community owner, with due diligence, has not been able to complete the change-in-use process within 3 years, the Authority may grant a reasonable extension to the community owner to complete the process.

(c) The Trust Fund terminates on July 1, 2014 unless terminated sooner or extended by the General Assembly.

(d) The cap on the Trust Fund is $10 million. The cap may be adjusted, eliminated, or reinstated by the board of directors of the Authority at any time, subject to the voting requirements of §7011(c)(3) of this subchapter.

(e) If the Trust Fund ceases to exist, the funds held at the time of dissolution must be liquidated as follows:

(1) 50% of the total funds, on a per capita basis, to tenants of rented lots in manufactured home communities in Delaware who have occupied the lots for at least the 12 months immediately prior to the time of the dissolution; and

(2) 50% of the total funds to landlords owning rented lots at the time of dissolution, prorated on the number of lots actually rented by the landlords for at least the 12 months immediately prior to the time of dissolution.

(f) (1) The board of directors of the Authority shall set a $3.00 monthly assessment for deposit in the Trust Fund for each rented lot in a manufactured home community. The board may adjust, eliminate, or reinstate the assessment, and shall notify landlords and tenants of each adjustment, elimination, or reinstatement pursuant to Board regulations. If the board does not adopt an adjusted assessment on or before January 31, 2006, the board shall eliminate the fee in its entirety.

(2) One-half of the monthly assessment set pursuant to paragraph (1) of this subsection is the obligation of the tenant of the rented lot, and one-half of the assessment is the obligation of the landlord. The landlord shall collect the tenant's portion of the assessment on a monthly basis as additional rent. The landlord shall remit to the Trust Fund both its portion and the tenant's portion of the assessment on a quarterly basis. The landlord is responsible for safeguarding all assessments it collects. Failure by a tenant to pay to the landlord the tenant's portion of the assessment as additional rent is grounds for termination of the rental agreement pursuant to §7010A of this subchapter. The board of directors may place a lien against the property of any person who is required to pay the assessment to the Trust Fund, but fails to do so. An assessment is not due or collectable for a vacant lot.

(3) If a lot is rented for any portion of a month, the full monthly assessment must be paid to the Trust Fund.

(4) If a rental agreement contains a capping provision which limits the amount by which rent may be increased, the Trust Fund assessment is deemed not to be rent for purposes of rent increases.

(g) The Authority may not for any reason, including age, income level, or geography, exempt any landlord or tenant from paying the Trust Fund assessment.

(h) The Trust Fund must be audited annually. If the State Auditor's Office performs the audit, the Authority shall pay to the State from the Trust Fund the cost of the audit. The completed audit must be made available to the public by placing it on a website, by offering it as a hard copy for a fee which reflects reasonable reproduction cost, or in some other manner determined by the Authority.

(i) In addition to providing for an annual audit pursuant to subsection (h) of this section, the Authority shall make available to the public, at least on a quarterly basis, the amount of the payment made to each tenant and landlord, along with a description of the property related to the payment and the reason for the payment.

§7013. Relocation expenses; payments for non-relocatable homes.

(a) If a tenant is required to relocate due to a change in use or conversion of the land in a manufactured home community as set forth in §7010(b) and complies with the requirements of this section, the tenant is entitled to payment from the Trust Fund of the lesser of:

(1) the actual, reasonable expenses of moving the manufactured home and existing appurtenances to a new location within a 25-mile radius of the vacated manufactured home community including, but not limited to, the cost of taking down, moving, and setting up the home in a new location; or,

(2) the maximum relocation payment, which must be established by the Authority's board of directors. The determination by the board of the amount of a relocation payment is final and may not be appealed.

(b) A tenant is not entitled to compensation for relocation under subsection (a) of this section if:

(1) the landlord moves the tenant's manufactured home by mutual consent to another lot in the manufactured home community or to another manufactured home community at the landlord's expense;

(2) the tenant is vacating the manufactured home community and so informed the landlord before notice of the change in use was given;

(3) the tenant abandons the manufactured home as set forth in subsection (g) of this section; or

(4) the tenant has failed to pay the tenant's share of the Trust Fund assessment during the course of the tenancy.

(c) Compensation for non-relocatable homes.

(1) A tenant is entitled to compensation from the Trust Fund for his or her manufactured home if the home, which is on a lot subject to a change in use of land, cannot be relocated. The board of directors of the Authority shall establish criteria for determining whether a home can or cannot be relocated. The criteria must include:

(i) availability of a replacement home site; and

(ii) feasibility of physical relocation.

(2) If the board determines that a manufactured home cannot be relocated pursuant to paragraph (1) of this subsection, the board shall provide compensation to the tenant. The amount of compensation, as determined by a board-approved, certified manufactured home appraiser, is the fair market value of the home as sited and any existing appurtenances, but excludes the value of the underlying land. However, the amount of compensation may not exceed an amount set by the board and which may be adjusted from time to time by the Board, to be paid in exchange for the title of the non-relocatable manufactured home. Prior to receiving payment for a non-relocatable home, the tenant must deliver to the board the current title to the home duly endorsed by the owner or owners of record, valid releases of all liens shown on the title, and a tax release. The board shall then relinquish the title to the landlord to facilitate the removal and/or disposal of the home from the manufactured home community. For the purpose of compensation to the landlord pursuant to §7014 of this subchapter, a home that cannot be relocated is deemed abandoned. The determination of the board as to the amount of compensation is final and may not be appealed.

(d) Except as provided for abandonment in subsection (f) of this section, in order to obtain payment from the Trust Fund for the relocation of a manufactured home, a tenant must submit to the Authority, with a copy to the landlord, an application for payment which includes:

(1) a copy of the notice of termination or nonrenewal of the rental agreement due to change in use of land, as required by §7010(b)(1) of this subchapter; and

(2) a contract with a licensed moving or towing contractor for the moving expenses for the manufactured home.

(e) The Authority shall approve or reject payment to a moving or towing contractor within 30 days after receipt of the information required by this section, and forward a copy of the approval or rejection to the tenant, with a voucher for payment if payment is approved.

(f) In lieu of collecting payment from the Trust Fund pursuant to subsection (a) of this section, a tenant may abandon the manufactured home in the manufactured home community and collect from the Trust Fund $1,500.00 for a single-section home or $2,500.00 for a multi-section home, as long as the tenant delivers to the Authority a current State of Delaware title to the manufactured home duly endorsed by the owner or owners of record, valid releases of all liens shown on the title, and a tax release.

§7014. Payment of funds to landlord for removal and/or disposal of abandoned homes.

(a) A landlord is entitled to receive from the Trust Fund payment in an amount determined by the Board to be sufficient to remove and/or dispose of a non-relocatable or abandoned manufactured home pursuant to §7013(c) and (f) of this subchapter.

(b) Payment for removal and/or disposal of a manufactured home pursuant to subsection (a) of this section must be authorized by the Authority and made in the form of a voucher issued to the Division of Revenue of the Department of Finance, directing the Division to issue a check in a designated amount to the landlord.

(c) If the Trust Fund does not have sufficient monies to make a payment to a landlord pursuant to this section, the Authority shall issue a written promissory note to the landlord for funds due and owing. Promissory notes may be redeemed in order of issuance of the notes as additional monies come into the Trust Fund.

(d) If a landlord realizes a profit from the removal and/or disposal of a manufactured home, the landlord shall reimburse the Trust Fund for any profit gained by the landlord pertaining to that home.

(e) A landlord may not receive payment from the Trust Fund if the landlord has failed to pay the landlord's share of the total Trust Fund assessment during the course of tenancies or has failed to remit the tenants' share as required by §7012(f)(2) of this subchapter.

(f) It is a class A misdemeanor for a landlord or a landlord's agent to file any notice, statement, or other document required under this section which is false or contains a material misstatement of fact.

§7015. Payment of funds to homeowners.

(a) When a payment to a tenant is authorized by the Authority, payment must be made in the form of a voucher issued to the Division of Revenue of the Department of Finance, directing the Division to issue a check in a designated amount to the named tenant.

(b) If the Trust Fund does not have sufficient monies to make a payment to a tenant pursuant to this section, the Authority shall issue a written promissory note to the tenant for funds due and owing. A promissory note may be redeemed in order of issuance of the notes as additional monies come into the Trust Fund.

(c) It is a class A misdemeanor for a tenant or a tenant's agent to file any notice, statement, or other document required under this section which is false or contains a material misstatement of fact.

§7016. Holdover remedies after rental agreement terminates, expires, or is not renewed.

Following a determination by a court of competent jurisdiction that a landlord is entitled to possession of a rented lot in a manufactured home community, if the tenant continued in and/or continues in possession of the lot after the date of termination, expiration, or non-renewal of the rental agreement without the consent of the landlord, the tenant is liable for, and the landlord is entitled to receive, a payment of double the periodic rent under the terminated, expired, or non-renewed rental agreement, but only if the tenant held over and/or holds over in bad faith. Double-rent is computed and prorated for each day the tenant remained in and/or remains in possession of the lot after the date on which the rental agreement terminated, expired, or was not renewed. If a holdover is determined to be in good faith, the landlord is entitled to a payment of the periodic rent under the rental agreement, computed and prorated for each day the tenant remained in and/or remains in possession of the lot after the date on which the rental agreement terminated, expired, or was not renewed.

§7017. Effect of unsigned rental agreement.

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

(b) If the tenant does not sign a rental agreement which has been signed and tendered to him or her by the landlord, acceptance of possession of the rented lot and payment of rent without reservation give to the rental agreement the same effect as if it had been signed by the tenant.

(c) Even if a rental agreement which is given effect by the operation of this section provides for a term longer than 1 year, it operates to create only a 1-year term.

§7018. Security deposits; pet security deposits.

(a) (1) A landlord may require a tenant to pay a security deposit if provided for in the rental agreement.

(2) A landlord may not require a tenant to pay a security deposit in an amount in excess of 1 month's rent unless the tenant agrees to do so and the full amount is specified in the rental agreement.

(b) (1) Every security deposit paid to a landlord must be placed by the landlord in an escrow bank account in a federally-insured financial institution with an office that accepts deposits within the State. The account must be designated as a security-deposits account and may not be used by the landlord for any purposes other than those described in subsection (c) of this section. The landlord shall disclose in the rental agreement the location of the security deposit account. If the landlord changes the location of the security deposit account, the landlord shall notify each tenant of the new location within 30 days of the change. Security deposit principal must be held and administered for the benefit of the tenant, and the tenant's claim to such money has priority over that of any creditor of the landlord, including, but not limited to, a trustee in bankruptcy, even if such money is commingled.

(2) A security deposit paid pursuant to a new rental agreement signed on or after the effective date of this subchapter must be immediately escrowed pursuant to paragraph (1) of this subsection. A security deposit paid as provided for in an existing rental agreement signed prior to the

effective date of this subchapter must be escrowed pursuant to paragraph (1) of this subsection on or before June 30, 2005.

(c) The purposes of a security deposit are:

(1) to reimburse a landlord for actual damages which exceed normal wear and tear to the landlord's property and which were caused by the tenant;

(2) to pay a landlord for all rent, rent arrearage, fees, charges, Trust Fund assessments, and other monies due and owed to the landlord by the tenant;

(3) to reimburse a landlord for all reasonable expenses incurred in renovating and re-renting the landlord's property caused by the premature termination of the rental agreement by the tenant, except for termination pursuant to §7009 of this subchapter.

(d) Within 20 days after the expiration or termination of a rental agreement, the landlord shall provide the tenant with an itemized list of damages, if any, to the landlord's property and the estimated cost of repair for each item. The landlord shall tender payment for the difference between the security deposit and the cost for repair of damage to the landlord's property. Failure to do so constitutes an acknowledgment by the landlord that no payment for repair of damage is due. A tenant's acceptance of a payment submitted with an itemized list of damages constitutes agreement on the damages as specified by the landlord, unless the tenant objects in writing within 10 days of receipt of the landlord's tender of payment to the amount withheld by the landlord.

(e) If a landlord is not entitled to all or any portion of a security deposit, the landlord shall remit to the tenant within 20 days of the expiration or termination of the rental agreement the portion of the security deposit to which the landlord is not entitled.

(f) Penalties.

(1) Failure by a landlord to remit to a tenant the security deposit or the difference between the security deposit and the cost for repair of damage within 20 days from the expiration or termination of the rental agreement entitles the tenant to double the amount wrongfully withheld.

(2) Failure by a landlord to disclose the location of the security deposit account within 20 days of a written request by a tenant or failure by a landlord to deposit a security deposit in a federally-insured financial institution with an office that accepts deposits within the State results in forfeiture of the security deposit by the landlord to the tenant. Failure by a landlord to return the full security deposit to a tenant pursuant to this paragraph within 20 days from the effective date of forfeiture entitles the tenant to double the amount of the security deposit.

(g) All communications and notices required under this section must be directed to a landlord at the address specified in the rental agreement and to a tenant at an address specified in the rental agreement or at a forwarding address, if a forwarding address was provided to the landlord in writing by the tenant. Failure by a tenant to provide a forwarding address relieves the landlord of the responsibility to give notice pursuant to this section and removes the landlord's liability for double the amount of the security deposit. However, the landlord continues to be liable to the tenant for any unused portion of the security deposit if, within one year from the expiration or termination of the rental agreement, the tenant makes a claim in writing to the landlord.

(h) Pet deposits.

(1) A landlord may require a tenant to pay a pet security deposit for each pet if provided for in the rental agreement. Damage to a landlord's property caused by a tenant's pet must first be deducted from the pet security deposit. If the pet deposit is insufficient, pet damages may be deducted from the tenant's non-pet security deposit.

(2) If a non-pet security deposit is insufficient to cover non-pet damages described in subsection (c) of this section, damages may be deducted from the pet security deposit even if such damages were not caused by a pet. A pet security deposit is a type of security deposit and is subject to subsections (b), (d), (e), (f), and (g) of this section.

(3) A landlord may not require a tenant to pay a pet security deposit in an amount in excess of 1 month's rent, unless the tenant agrees to do so and the full amount is specified in the rental agreement.

(4) A landlord may not require a pet security deposit from a tenant if the pet is a certified and trained support animal for a person with a disability who is a resident of a manufactured home on a rented lot.

(5) Notwithstanding legal ownership of a pet, for purposes of this subchapter, a pet that resides in a manufactured home, and/or on the lot where the home is located in a manufactured home community, is deemed owned and controlled by a tenant who resides in the manufactured home.

(i) If a rental agreement so specifies, a landlord may increase a security deposit commensurate with an increase in rent. If an increase of the security deposit exceeds 10 percent of the monthly rent, the tenant may choose to pay the increase in the security deposit prorated over the term of the rental agreement but not to exceed 12 months, except in the case of a month-to-month tenancy, in which case payment of the increase may not be prorated over a period in excess of 4 months unless mutually agreed to by the landlord and tenant.

§7019. Rules.

(a) A landlord may promulgate reasonable written rules concerning the occupancy and use of the premises and the use of the landlord's property, and concerning the behavior of manufactured home community tenants, residents, guests, and visitors, provided that the rules further any of the following purposes:

(1) promoting the health, safety, or welfare of tenants, residents, guests, or visitors;
(2) promoting the residents' quiet enjoyment;
(3) preserving the property values of tenants and/or landlords;
(4) promoting the orderly and efficient operation of the manufactured home community;
(5) preserving the tenants' and/or landlords' property from abuse.

(b) A landlord may not arbitrarily or capriciously enforce a rule. A landlord may choose not to enforce a rule based upon the documented special needs or hardship of a tenant or resident without waiving the right to the later enforcement of the rule as to that tenant or resident or any other tenant or resident.

(c) A landlord may amend an existing rule at any time, but the amended rule is not effective until the date specified in the amended rule or sixty (60) days after the landlord delivers to the tenant written notice of the amended rule, whichever is later.

(1) Within ten (10) days of the landlord's notice of an amended rule, a committee, not to exceed five members, may be chosen by any method agreed to by the tenants of the manufactured home community.

(2) The committee shall meet with the landlord at a mutually convenient time and place to discuss the amended rule.

(3) At the meeting, the landlord shall disclose and explain all material factors and present any supporting documentation for the amended rule.

§7020. Manufactured home standards.

(a) Standards for manufactured homes of new tenants.

(1) A landlord shall adopt reasonable written standards regarding the size, age, quality, appearance, construction, materials, and safety features for a manufactured home entering the landlord's manufactured home community.

(2) A landlord may refuse to allow the placement of a manufactured home on a lot in the manufactured home community if the manufactured home does not comply with the reasonable written standards adopted pursuant to paragraph (1) of this subsection.

(b) Standards for manufactured homes not for sale. A tenant who is residing in a manufactured home community at the time a standard is promulgated must bring his or her manufactured home into compliance with the standard within 9 years of the promulgation of the standard or be subject to a summary possession proceeding pursuant to Chapter 57 of this title. However, if a change in a manufactured home is necessary to protect life or for other safety reason, the landlord may require that the change be made in less than 9 years. Once work begins on the manufactured home, the necessary change must be completed within a reasonable time.

(c) Standards for manufactured homes for resale or transfer of title and retention in the manufactured home community.

(1) A landlord shall adopt reasonable written standards regarding the resale or transfer of title of a manufactured home intended for retention in the landlord's manufactured home community. The standards must relate only to appearance, maintenance, safety, and compliance with State and local housing, building, or health codes, and the 1976 HUD Code. A landlord may not issue standards in which

the age of a manufactured home is the exclusive or dominant criterion prohibiting the home from being sold and retained in the community after the sale is consummated.

(2) If a manufactured home does not meet a landlord's written standards for resale or transfer of title and retention in the manufactured home community, a tenant may attempt to bring the home into compliance with the standards. The landlord shall, within ten (10) days of a written request from the tenant, re-evaluate the home in a reasonable and fair manner.

(d) A standard promulgated pursuant to subsection (a), (b), or (c) of this section may not be arbitrarily or capriciously enforced. A landlord may choose not to enforce a standard based upon the documented special needs or hardship of a tenant without waiving the right to the later enforcement of the standard as to that tenant or any other tenant.

(e) A landlord may at any time establish or amend a standard promulgated pursuant to subsection (a), (b), or (c) of this section, but an established or amended standard promulgated pursuant to subsection (b) or (c) of this section is not effective until the date specified in the established or amended standard or sixty (60) days after the landlord delivers to the tenant written notice of the established or amended standard, whichever is later.

(1) Within ten (10) days of the landlord's notice of the established or amended standard, a committee, not to exceed five members, may be chosen by any method agreed to by the tenants of the manufactured home community.

(2) The committee shall meet with the landlord at a mutually convenient time and place to discuss the established or amended standard.

(3) At the meeting, the landlord shall disclose and explain all material factors and present any supporting documentation for the established or amended standard.

§7021. Rent increases.

A landlord may not increase a tenant's lot rent more than once during any 12-month period, regardless of the term of the tenancy or the term of the rental agreement. A landlord shall give written notice of a lot rent increase to a tenant a minimum of 60 days prior to the effective date of the rent increase.

§ 7021A. Lot Rental Assistance Program.

(a) A homeowner or tenant in a manufactured home community who is eligible for Social Security Disability (SSD) or Supplemental Security Income (SSI) benefits or who is 62 years of age or older is eligible for lot rental assistance from the manufactured home community owner if the following criteria are met:

(1) The homeowner or tenant must have owned his or her manufactured home and/or resided in the home in the manufactured home community prior to July 1, 2006.

(2) The homeowner or tenant must reside full time and exclusively in the manufactured home in the manufactured home community, and the manufactured home must be the homeowner or tenant's only residence.

(3) The lot rent, excluding utility charges and other charges, fees, and assessments that are part of the services rider required under § 7006(a)(9) of this title, must exceed 30% of the income definition, as stated in the Delaware State Housing Authority Fact Book (DSHA Fact Book), or its successor document, for the United States Department of Housing and Urban Development (HUD) for the county median income limits based upon 40% of the county's median income for the number of residents in the home. For purposes of this section, "income" includes the income of all occupants of the manufactured home, whether or not an occupant is a tenant, and of all tenants of the manufactured home, whether or not a tenant is an occupant.

(4) The total liquid assets, including but not limited to bank accounts, stocks, and bonds of the homeowner or homeowners, tenant or tenants, and other residents, may not exceed $50,000.

(5) The homeowner, tenant, and other residents must provide to the community owner all documentation necessary to determine eligibility for lot rental assistance, such as bank records, eligibility letters, tax returns, and brokerage statements.

(6) The homeowner, tenant, and other residents and the manufactured home must be in substantial compliance with all manufactured home community rules, regulations, and standards.

(b) The homeowner, tenant, and other residents may not be recipients of any other rental assistance funding, nor may the rented lot on which they reside be regulated by rent control.

(c) Lot rental assistance or rent credit received by a homeowner or tenant pursuant to this section is not transferable upon the sale of the manufactured home and/or the transfer of the rental agreement to a third-party purchaser.

(d) A homeowner or tenant who qualifies for lot rental assistance based on the criteria in subsection (a) of this section is entitled to lot rental assistance for a term of 1 year. Lot rental assistance for a qualified homeowner or tenant is a credit which is computed as the difference between the then-current lot rent and 30% of the income definition for the county median income, as stated in the DSHA Fact Book for the number of residents in the home; provided, however, that the lot rent for an eligible homeowner or tenant after application of a lot rental assistance credit may not exceed 30% of the income definition for the county median income, as stated in the DSHA Fact Book for the number of residents in the home.

(e) The homeowner or tenant has the responsibility to re-establish annually eligibility for lot rental assistance if that homeowner or tenant believes that the homeowner or tenant remains eligible for lot rental assistance. The homeowner or tenant must re-establish eligibility within 45 days immediately before the anniversary date of the prior determination of eligibility.

(f) (1) A community owner who is required to participate in the lot rental assistance program shall provide notice of the program to all homeowners and tenants in the community, and shall provide, pursuant to paragraph (2)a. or (2)b. of this subsection, renewal notices to all program participants at least 45 days before a participant's term of assistance expires. If the community owner does not provide a renewal notice, the lot rental assistance credit remains in effect until 45 days after the community owner provides notice. Upon receiving notice, a homeowner or tenant has 45 days in which to re-establish program eligibility by providing necessary documents and information to the community owner. If the homeowner or tenant fails to re-establish eligibility within 45 days of notice, the community owner may terminate the lot rental assistance credit.

(2) a. Unless otherwise specified, renewal notice required by this subsection may be served personally upon a homeowner or tenant of a manufactured home community by leaving a copy of the notice at the homeowner's or tenant's dwelling place with an adult person who resides therein.

b. In lieu of personal service, renewal notice required by this subsection may be sent by regular first class mail with proof of mailing or by certified mail, return receipt requested, to the homeowner or tenant at the address of the homeowner or tenant's rented lot, or at an alternative address which the homeowner or tenant provided in writing to the community owner.

(g) During the period of any lot rental assistance, a homeowner or tenant must remain current with payment of rent after the application of the lot rental assistance credit, as well as with payment of utility fees and other charges and assessments. If the homeowner or tenant does not pay all lot rent after the application of the lot rental assistance credit, as well as pay utility fees and other charges and assessments on or before the due date or during the grace period provided under the law or otherwise, then the lot rental assistance credit may be immediately terminated upon notice, and the homeowner or tenant will not be eligible for further lot rental assistance.

(h) A homeowner or tenant receiving lot rental assistance credit must notify the community owner immediately of any substantial change in that homeowner's or tenant's financial situation or in the composition of the household.

(i) Any intentional misrepresentation by an applicant of that applicant's financial situation or living arrangements which, if the truth were known, would have resulted in the denial of lot rental assistance shall result in the immediate termination of all lot rental assistance, and an immediate obligation to reimburse all credits received under the lot rental assistance program to the point of the initial misrepresentation. A community owner may treat the amounts due and owing as a rent delinquency.

(j) A community owner shall treat all documents and information submitted for the lot rental assistance program as confidential and may not disclose the documents or information publicly or use them in any manner other than to determine eligibility under the lot rental assistance program. Any intentional public dissemination of confidential information provided pursuant to the lot rental assistance program is subject to civil relief which is reasonable and appropriate under Delaware law.

(k) Nothing in this section prohibits the owner of a manufactured home community from offering a lot rental assistance program that provides benefits over and above the benefits set forth in this section, or that extends eligibility for participation in the program.

(l) The provisions of this section do not apply to a manufactured home community with 25 or fewer manufactured home lots; provided, however, that an owner of such a manufactured home

community may voluntarily offer a lot rental assistance program to the homeowners and tenants of the community.

(m) For the purpose of benefiting persons aged 62 and older, this section establishes a narrow exception to the prohibition against housing discrimination on the basis of "age" as set forth in Chapter 46 of Title 6, otherwise known as Delaware's Fair Housing Act.

§7022. Manufactured home transfer; rented lot transfer.

(a) This section governs the sale or transfer of title of a manufactured home which the buyer or transferee intends to retain in the manufactured home community.

(b) A rental agreement for a lot in a manufactured home community is not transferable from the tenant who owns the manufactured home on the lot to the buyer or transferee to whom the tenant intends to sell or transfer title to the home, unless the home qualifies for retention in the manufactured home community according to written standards promulgated pursuant to §7020 of this title, and unless the landlord accepts the buyer or transferee as a tenant. Acceptance or rejection of a buyer or transferee under this subsection must be on the same basis by which the landlord accepts or rejects any prospective tenant. A landlord who rejects a prospective tenant must give the rejected prospective tenant a written statement that explains the cause for the rejection.

(c) A tenant who owns a manufactured home in a manufactured home community and plans to sell or transfer title to the home to a buyer or transferee who intends to retain the home in the manufactured home community must notify the landlord in writing 3 weeks prior to the scheduled sale or transfer of title of the manufactured home and the transfer of the lot rental agreement, giving the name and address of the prospective buyer or transferee. Failure on the part of a tenant to so notify the landlord is grounds for termination of the tenant and landlord's rental agreement by the landlord.

(d) If a landlord accepts a prospective tenant, the transfer of an existing rental agreement must be completed using one of the following two methods. The selection of the method is at the exclusive discretion of the tenant/seller of the manufactured home, and the buyer is bound by that selection.

(1) The tenant/seller agrees to an assignment of the lease to the buyer, with all of the existing obligations and benefits, including but not limited to the rental amount under the existing rental agreement, for the remaining term of the agreement. If this option is elected, the existing rental agreement between the tenant/seller and the landlord is simultaneously assigned by the tenant-seller and assumed by the buyer and the buyer becomes the new tenant. Upon the sale, assignment, and assumption, the landlord will amend the existing rental agreement and list the buyer as the new tenant.

(2) The tenant-seller chooses to terminate the existing rental agreement. The buyer may then negotiate the terms of and enter into a new rental agreement for a full term at a rental amount set by the landlord. If this option is elected, the existing rental agreement is terminated upon the execution of the new rental agreement.

(e) Notwithstanding the provisions of this section and of §7020 of this subchapter, written standards which were in effect on January 1, 2003 relating to the sale or transfer of title of a manufactured home for retention in a manufactured home community will apply for a sale or transfer of title during 2003. For a sale or transfer on January 1, 2004 and thereafter, standards promulgated pursuant to §7020 of this subchapter apply. In addition, a buyer or transferee who becomes a tenant in a manufactured home community has 3 years from the date of the resale or transfer to complete changes to his or her manufactured home required under the written standards of the manufactured home community. However, if the changes are necessary to protect life or for other safety reasons, the landlord may require that changes be made in less than 3 years. Further, if a seller-tenant does not make necessary changes to meet the standards prior to sale, the buyer or transferee shall deposit 120% of the estimated cost of the changes necessary to meet the standards into an account jointly controlled by the landlord and the buyer or transferee. Once work begins on the manufactured home, the necessary changes must be completed within a reasonable time.

(f) A buyer or transferee who does not complete required changes pursuant to subsection (e) of this section is subject to a summary possession proceeding pursuant to Chapter 57 of this title.

§7023. Retaliatory acts prohibited.

(a) Retaliatory acts are prohibited.

(b) A retaliatory act is an attempted or completed act on the part of a landlord to pursue an action against a tenant for summary possession, to terminate a tenant's rental agreement, to cause a tenant to

move involuntarily from a rented lot in the manufactured home community, or to decrease services to which a tenant is entitled under a rental agreement, after:

(1) the tenant has complained in good faith to either the landlord or to an enforcement authority about a condition affecting the premises of the manufactured home community which constitutes a violation of this subchapter or a violation of a housing, health, building, sanitation, or other applicable statute or regulation;

(2) an enforcement authority has instituted an enforcement action based on a complaint by the tenant for a violation of this subchapter or a violation of a housing, health, building, sanitation, or other applicable statute or regulation with respect to the premises;

(3) the tenant has formed or participated in a manufactured home tenants' organization or association; or

(4) the tenant has filed a legal action against the landlord or the landlord's agent for any reason.

(c) If a tenant proves that a landlord attempted to commit or committed an act pursuant to subsection (b) of this section within 90 days of the tenant's action under paragraphs 1 through 4 of subsection (b) of this section, the landlord's act is presumed to be a retaliatory act.

(d) Affirmative defenses to a claim that a landlord attempted to commit or committed a retaliatory act include proof by a preponderance of the evidence that:

(1) the landlord had due cause for termination of the rental agreement pursuant to this subchapter and gave the required notice to the tenant;

(2) the tenant's legal action against the landlord relates to a condition caused by the lack of ordinary care by the tenant or by a resident of the tenant's manufactured home or by a guest or visitor on the premises with the tenant's or resident's consent;

(3) the rented lot was in substantial compliance with all applicable statutes and regulations on the date of the filing of the tenant's legal action against the landlord; or

(4) the landlord could not have reasonably remedied the condition complained of by the tenant by the date of the filing of the tenant's legal action against the landlord.

(e) A tenant subjected to a retaliatory act set forth in subsection (b) of this section is entitled to recover the greater of 3 months' rent, or 3 times the damages sustained by the resident, in addition to the court costs of the legal action.

§7024. Delivery of written notice.

(a) Unless otherwise specified, notice required by this subchapter may be served personally upon a tenant of a manufactured home community by leaving a copy of the notice at the tenant's dwelling place with an adult person who resides therein. Notice required by this subchapter may be served personally upon a landlord or upon any other person in the employ of the landlord whose responsibility is to accept such service. If a landlord is a corporation, firm, unincorporated association, or other artificial entity, service of the notice may be made by leaving a copy of the notice at its office or place of business with an agent authorized to accept such notice or authorized by law to receive service of process. Service of notice or process may be obtained through personal service by a special process-server appointed by the court.

(b) In lieu of personal service, notice required by this subchapter may be sent by regular first class mail with proof of mailing or by certified mail, return receipt requested, to the tenant at the address of the tenant's rented lot, or at an alternative address which the tenant provided in writing to the landlord. Notice required by this subchapter may be sent by regular first class mail with proof of mailing or by certified mail, return receipt requested, to the landlord at the landlord's last known dwelling place or at the landlord's last known office or place of business. Proof of mailing regular first class mail on US Postal Service Form 3817 or its successor, or a return receipt, signed or unsigned, for certified mail constitutes valid service of any notice required under this subchapter.

§7025. Enforcement.

(a) It is the duty and obligation of the Consumer Protection Unit, or its successor, of the Attorney General's Office to enforce the provisions of this subchapter. A violation of any provision of this subchapter by a landlord is within the scope of enforcement duties and powers of the Consumer Protection Unit, or its successor, of the Attorney General's Office.

(b) Whenever the Consumer Protection Unit, or its successor, of the Attorney General's Office has reasonable cause to believe that any landlord is engaged in a pattern or practice of violating or failing to comply with the terms of any provision of a rental agreement covered by this chapter, the Attorney General may commence a civil action in any court of competent jurisdiction and seek such relief as the Attorney General's Office deems necessary to enforce and to ensure the compliance with the terms of such agreement.

§7026. Sale or rent of manufactured home community.

A manufactured home community owner shall notify the tenants of the manufactured home community within 20 days of the owner's acceptance of any *bona fide* offer to buy or rent the community.

§7027. Change of use; conversion.

This subchapter governs a change in use of a manufactured home community, as described in §7010(b) of this subchapter, to any use other than a conversion of the community to a manufactured home cooperative or condominium community, which is governed by Chapter 71 of this title.

Subchapter II. Tenant's Receivership

§ 7031. Petition for receivership.

Any tenant or group of tenants may petition for the establishment of a receivership in a Justice of the Peace Court upon the grounds that there has existed for 5 days or more after notice to the landlord:

(1) If the rental agreement or any state or local statute, code, regulation or ordinance places a duty upon the landlord to so provide, a lack of heat, or of running water, or of light, or of electricity or of adequate sewage facilities; or

(2) Any other conditions imminently dangerous to the life, health or safety of the tenant.

§ 7032. Necessary parties defendant.

(a) Petitioners shall join as defendants:

(1) All parties duly disclosed to any of them in accordance with § 7036 of this title; and

(2) All parties whose interest in the property is a matter of public record, and whose interest in the property is capable of being protected in this proceeding.

(b) Petitioners shall not be prejudiced by a failure to join any other interested parties.

§ 7033. Defenses.

It shall be a sufficient defense to this proceeding if any defendant of record establishes that:

(1) The condition or conditions described in the petition do not exist at the time of trial;

(2) The condition or conditions alleged in the petition have been caused by the wilful or grossly negligent acts of 1 or more of the petitioning tenants or members of his or their families, or by persons on the premises with his or their consent; or

(3) Such condition or conditions would have been corrected, were it not for the refusal by any petitioner to allow reasonable access.

§ 7034. Stay of judgment by defendant.

(a) If, after a trial, the court shall determine that the petition should be granted, the court shall immediately enter judgment thereon and appoint a receiver as authorized herein; provided however, prior to the entry of judgment and appointment of a receiver, the owner or any mortgagee or the lienor of record or other person having an interest in the property may apply to the court to be permitted to remove or remedy the conditions specified in the petition. If such person demonstrates the ability to perform promptly the necessary work and posts security for the performance thereof within the time, and in the amount and manner, deemed necessary by the court, then the court may stay judgment and issue an order permitting such person to perform the work within a time fixed by the court and requiring such person to report to the court periodically on the progress of the work. The court shall retain jurisdiction over the matter until the work is completed.

(b) If, after the issuance of an order under subsection (a) of this section, but before the time fixed in such order for the completion of the work prescribed therein, there is reason to believe that the work will not be completed pursuant to the court's order or that the person permitted to do the same is not

proceeding with due diligence, the court or the petitioners, upon notice to all parties to the proceeding, may move that a hearing be held to determine whether judgment should be rendered immediately as provided in subsection (c) of this section.

(c) (1) If, upon a hearing authorized in subsection (b) of this section, the court shall determine that such party is not proceeding with due diligence, or upon the actual failure of such person to complete the work in accordance with the provisions of the order, the court shall appoint a receiver as authorized herein.

(2) Such judgment shall direct the receiver to apply the security posted to executing the powers and duties as described herein.

(3) In the event that the amount of such security should be insufficient to accomplish the above objectives, such judgment shall direct the receiver to collect the rents, profits and issues to the extent of the deficiency. In the event that the security should exceed the amount necessary to accomplish the above objectives, such judgment shall direct the receiver to return the excess to the person posting the security.

§ 7035. Receivership procedures.

(a) The receiver shall be the Division of Consumer Protection of this State, or its successor agency.

(b) (1) Upon its appointment, the receiver shall make within 15 days an independent finding whether or not there is proper cause shown for the need for rent to be paid to it, and for the employment of a private contractor to correct the condition complained of in § 7031 of this title and found by the court to exist.

(2) If the receiver shall make such a finding, it shall file a copy of the finding with the Recorder of Deeds of the county where the property lies and it shall be a lien on that property where the violation complained of exists.

(3) Upon completion of the aforesaid contractual work and full payment to the contractor, the receiver shall file a certification of such with the Recorder of Deeds of the appropriate county, and this filing shall release the aforesaid lien.

(4) The receiver shall forthwith give notice to all lienholders of record.

(5) If the receiver shall make a finding at such time or any other time that for any reason the appointment of the receiver is not appropriate, it shall be discharged upon notification to the court and all interested parties, and shall make legal distribution of any funds in its possession.

§ 7036. Powers and duties of receiver.

The receiver shall have all the powers and duties accorded a receiver foreclosing a mortgage on real property, and all other powers and duties deemed necessary by the court. Such powers and duties shall include, but are not necessarily limited to, collecting and using all rents and profits of the property, prior to and despite any assignment of rent, for the purposes of:

(1) Correcting the condition or conditions alleged in the petition;

(2) Materially complying with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the surrounding grounds;

(3) Paying all expenses reasonably necessary for the proper operation and management of the property including insurance, mortgage payments, taxes and asessments, and fees for the services of the receiver and any agent he should hire;

(4) Compensating the tenants for whatever deprivation of their rental agreement rights resulted from the condition or conditions alleged in the petition; and

(5) Paying the costs of the receivership proceeding.

§ 7037. Discharge of receiver; costs.

(a) In addition to those situations described in § 7035 of this title, the receiver may also be discharged when:

(1) The condition or conditions alleged in the petition have been remedied;

(2) The property materially complies with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the surrounding grounds;

(3) The costs of the above work and any other costs as authorized herein have been paid or reimbursed from the rents and profits of the property; and

(4) The surplus money, if any, has been paid over to the owner.

(b) Upon subsections (a)(1) and (a)(2) of this section being satisfied, the owner, mortgagee or any lienor may apply for the discharge of the receiver after paying to the latter all moneys expended by him and all other costs which have not been paid or reimbursed from the rents and profits of the property.

(c) If the court determines that future profits of the property will not cover the cost of satisfying subsections (a)(1) and (a)(2) of this section, the court may discharge the receiver and order such action as would be appropriate in the situation, including but not limited to terminating the rental agreement; and may order the vacation of the mobile home park within a specified time. In no case shall the court permit repairs which cannot be paid out of the future profits of the property.

CHAPTER 71. CONVERSION OF MANUFACTURED HOME COMMUNITIES TO MANUFACTURED HOME CONDOMINIUM OR COOPERATIVE COMMUINITIES

Sec.

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§ 7101. Purpose of chapter.

This chapter provides a procedure for the orderly transition of a manufactured home community from a single-unit rental to multiple-unit usage as a manufactured home condominium or cooperative community.

§ 7102. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Affected local community" shall mean the municipality or county in which the largest portion of the real property which has been proposed as a conversion project is situated. An "affected local government" shall mean the elected council or other governing body of an affected local community;

(2) "Comparable housing" shall mean a dwelling place or manufactured home community site which is:

a. Decent, safe, sanitary and in compliance with all local and state housing codes;

b. Open to all persons regardless of race, creed, national origin, ancestry, marital status or sex;

c. Provided with facilities equivalent to that provided by the owner in the manufactured home community site which is undergoing conversion, and is equivalent to such manufactured home community in each of the following categories:

1. Apartment size or manufactured home size, or community rental space which can accommodate a manufactured home equal in size to that in which the displaced resident was formerly residing (including substantially equivalent yard space and automobile parking space);

2. Rent range;

3. Special facilities necessary for a handicapped or infirm person if the displaced resident is handicapped or infirm;

d. Located in an area not less desirable than that of the manufactured home community being converted, in regard to each of the following:

1. Accessibility to the tenant's place of employment;

2. Accessibility of community and commercial facilities;

3. Environmental quality and conditions; and

e. In accordance with additional reasonable criteria which the tenant has requested in writing at the time of making any requests under this chapter, as determined by the Attorney General;

(3) "Conversion project" shall mean the area which comprises or formerly comprised a manufactured home community which has been converted to, or which will be converted to or include a

condominium, cooperative or other form of multiple-unit housing (and which includes peripheral areas used for landscaping or recreation);

(4) "Long-term vacancies" shall mean dwelling units in the manufactured home community which were not leased, or not occupied by bona fide tenants for more than 5 months prior to the preliminary notice;

(5) "Manufactured home community" shall mean any manufactured home or trailer community designed to house manufactured homes which are served by utilities on a year-round basis. This chapter shall not apply to a community or camp devoted to recreational vehicles which move to the site under their own power or can be towed to the site by an automobile;

(6) "Multiple-unit usage" means use as a manufactured home condominium or cooperative community;

(7) "Nonpurchasing tenant" shall mean a tenant who has elected not to purchase a unit or units in the proposed conversion project. A "purchasing tenant" shall mean a tenant who has agreed to purchase a unit or units in the proposed conversion project;

(8) "Owner" shall mean the legal entity (including a natural person or group of persons) which owns the real estate on which a manufactured home is located. The word "owners" refers to instances where a manufactured home community is located on 2 or more separate parcels where the owners, or the legal status or character of the owners, differ. The word "owner" shall also include "owners" unless the context indicates otherwise, and shall include any developer or other person acting in concert with, or with the consent of the owner;

(9) "Relocation assistance plan" shall mean a proposed plan of assistance to tenants which is intended to enable such tenants to obtain comparable housing with a minimum of difficulty and expense;

(10) "Tenant" shall mean a person, 18 years of age or older, who has at least a leasehold interest in a manufactured home community and who, for rent or by written or oral contract or other good consideration, is leasing or is purchasing or has purchased a manufactured home or manufactured home site within the community. For purposes of subsection (c) of § 7103 and § 7105 of this title a tenant shall mean an individual who rents a manufactured home site or the head of household where a family rents a site. An owner of a manufactured home community owning manufactured homes or sites within the community is not a "tenant" under this chapter;

(11) "Tenant association" or "tenants' association" shall mean a group of tenants comprising at least half of those tenants residing within a manufactured home community.

§ 7103. Requisites for conversion.

(a) The conversion to multiple-unit usage of any real property on which a manufactured home community is situated shall be permitted only where the vacancy rate of manufactured home sites in the affected local community constitutes 5 percent or more of all manufactured home sites available; or the ratio of multiple-unit manufactured home housing is 25 percent or less of all manufactured home sites available in the affected community all as established according to the records of the appropriate municipal board of assessment and planning and zoning commission or county board of assessment and planning and zoning commission, as the case may be.

(b) No real property on which a manufactured home is located shall be converted into multiple-unit usage unless at least 35 percent of the tenants at the date the conversion plan is filed with the recorder of deeds have agreed to the proposed conversion; provided, however, that in the event of any vote or tally, there shall be only 1 vote for each manufactured home site.

(c) No real property on which a manufactured home community is located shall be converted into multiple-unit usage if the rent for any tenant has been raised during the 6-month period immediately prior to the preliminary notice.

§ 7104. Conversion plan.

Where real property is being utilized as a manufactured community, such real property cannot be converted to multiple-unit usage until the owner of such property has filed a true copy of the conversion plan with the Attorney General; with the office of the Recorder of Deeds of the county or counties in which the land is situated; and has mailed or delivered a copy to the tenant's association, if one is in existence within the manufactured home community at that time. The conversion plan shall contain:

(1) Information for the affected local government including, but not limited to, the following:

a. A description of the boundaries of the real estate which is to be converted;

b. The name and business address of each corporate and noncorporate developer and owner of the property;

c. Where a developer or owner is a corporation, the name and address of each officer and member of the corporation's board of directors;

d. A listing of all stages of the proposed conversion process, including the proposed finishing date for each stage;

e. The developer's assessment of the impact of the proposed conversion on: The immediate surrounding area; local schools; traffic patterns and density; on-street parking; and on utilities and services furnished by the municipality or county;

f. The developer's assessment of the impact of the conversion on the number of available manufactured home rental spaces in the affected local community;

(2) Information needed by present lessees and others who must make a decision concerning whether or not to purchase units in the conversion project, including but not limited to:

a. A description of the rental structure and of each type of unit in the proposed conversion project, together with the specific initial fixed price for each unit, including any proposed fees or charges, and how such price was computed and in conjunction with the tenants' association right of first refusal described in paragraph (2) of subsection (a) of § 7105 of this title and subsection (a) of § 7108 of this title an explanation as to how the specific fixed price for the entire community was calculated explaining in detail the profit to be made by the owner;

b. Information in summary form relating to mortgage financing; estimated down payment for each unit; alternative financing and down payments; monthly payments of principal, interest and real estate taxes; and estimated federal income tax benefits and liabilities;

c. Site plans, including drawings of the property as it would appear after conversion into multiple-unit housing;

d. A copy of each organizational document, including all proposed covenants, conditions and restrictions;

e. The number and location of any proposed off-street parking spaces, enclosed storage spaces, and recreational areas;

f. The extent to which the developer will provide any capital contribution for the maintenance or improvement of common areas;

g. Statement by the owner that he has received a certificate attesting that the proposed conversion project meets all zoning codes of the county and municipality in which the project will be located, or the conversion project is a valid preexisting nonconforming use;

(3) Information relating to nonpurchasing tenants including, but not limited to, a proposed relocation assistance plan; and a list of comparable housing in the area, including available manufactured home and nonmanufactured home housing. The relocation plan shall include information relating to all agencies and organizations which provide alternative housing relocation assistance;

(4) A listing of all tenants of the manufactured home community at the time of the conversion plan, by name; and a listing of those tenants which have agreed to purchase units in the conversion project, together with the signatures of the purchasing tenants.

§ 7105. Notice requirements.

(a) Preliminary notice period. -- Any owner of real estate on which a manufactured home community is located who wishes to convert such property to multiple-unit usage shall provide a written preliminary notice to each tenant, and to the tenants' association, if one is in existence, of the owner's intention to convert the property. The preliminary notice shall not constitute, nor shall it include, a notice to the tenant to terminate his tenancy. Such preliminary notice shall also notify each tenant of the following:

(1) That there is a mandatory 3-year grace period prior to eviction;

(2) That the tenants' association has the exclusive option to purchase that portion of the community which the owner proposes to convert, and must, within 90 days from the date it receives the preliminary notice, and the separate writing described in subsection (a) of § 7108 of this title, notify the owner of its intent to exercise its option;

(3) That if the tenants' association decides not to exercise its option, upon the expiration of the 90-day period, the option shall convert into a right of first refusal meaning that the property shall not be sold to any other purchaser, at any time, at any price or terms without first having been offered on the same terms to the tenants' association;

(4) That no tenant shall be evicted prior to the expiration of the 3-year grace period, except for the following causes:

a. Nonpayment of rent; or

b. Violation of a material provision of the lease.

(b) Grace period. -- After the expiration of 90 days from the date of the preliminary notice or filing of the conversion plan with the Recorder of Deeds, whichever is later, the owner may give final notice to each tenant that the tenant must vacate the premises at the end of the 3-year period, unless the tenant comes within any of the exceptions set forth in this section and § 7111 of this title. From the time of the delivery of the final notice, each tenant shall have a 3-year grace period before the owner may institute legal action for eviction. In any instance where a tenant's lease is for a period of time which extends beyond the expiration date as set forth in the final notice, the grace period shall continue until expiration of such tenant's lease.

(c) Final notice. -- The final notice shall contain a provision stating that each tenant in occupancy at the time of the preliminary notice shall have the exclusive right to purchase a unit in the proposed conversion project, and that such exclusive right to purchase shall continue through the first 90 days after the waiver or termination by the tenants' association of its option, and for such additional time thereafter as the owner shall permit. A copy of the final notice shall also be mailed or delivered to the tenants' association, if such association was in being at the time of the preliminary notice. The final notice shall contain a provision that any person who is a tenant of the manufactured home community, and who elects to purchase a unit in the conversion project, shall not be required to pay more for any unit than the price set forth in the conversion plan, nor more than any other person purchasing the same type of unit. The final notice shall not constitute, nor shall it include, a notice to the tenant to immediately terminate his tenancy.

§ 7106. Approval by Attorney General.

No conversion of real property on which a manufactured home community is situated shall be lawful unless such conversion has received the approval of the Attorney General after a thorough review the conversion plan to determine compliance with this chapter. Where the Attorney General has not acted to approve, conditionally approve or disapprove a conversion plan or prospective conversion within 90 days after receipt of the conversion plan, the conversion plan or prospective conversion shall be deemed to have been approved; provided, however, that the provisions of § 7103 of this title are mandatory, and cannot be waived. The Attorney General may, by a writing addressed to the owner, suspend his decision for an additional 30 days. When the conversion plan is approved, no provision of the plan shall be changed without the written approval of the Attorney General.

§ 7107. Extension and termination of leases.

(a) Any tenant at the time of the preliminary notice grace period shall be entitled to have his lease extended, on the same terms and conditions as the immediately preceding lease, until the expiration of the grace period. Nothing in this subsection shall prevent the owner from increasing rent pursuant to subsection (d) of § 7110 of this title.

(b) After receipt of the final notice, and upon 30 days' written notice to the owner, a tenant may without penalty terminate his existing lease; provided, however, that the owner shall receive a full month's rent for any partial month of tenancy.

§ 7108. Option to purchase; right of first refusal; rescission of contract to purchase; nonpurchasing tenant with children attending school.

(a) Where there is a tenants' association in existence at the time of the preliminary notice, the owners of the real property which is to be converted shall in a separate writing mailed to the association, upon approval of the plan by the Office of the Attorney General, grant to the association the exclusive option to purchase the community for a period of 90 days at the price set forth in the plan. If the tenants' association should exercise its option, it shall have 120 days from the date of its exercise of its option to complete the purchase. If the tenants' association decides not to exercise its options, upon the expiration of the 90-day period, the option shall convert into a right of first refusal meaning that the property shall not be sold to any other purchaser, at any time, at any price or terms, without first having been offered on the same terms to the tenants' association.

(b) Should the tenants' association fail to exercise its option to purchase within the 90-day period, the owner shall grant to the tenant the exclusive option to purchase the unit for a period of 90 days thereafter at the price set forth in the plan. Upon the request of a tenant, the owner shall provide the tenant with a listing of the types of units within the conversion project, and the price for each type of unit. If the tenant should exercise his option, he shall have 120 days from the date of the exercise of his option to complete the purchase. If the tenant decides not to exercise his option, upon the expiration of the 90-day period, the option shall convert into a right of first refusal, meaning that the property shall not be sold to any other purchaser at any time, at any price or terms without first having been offered on the same terms to the tenant.

(c) For a period of 60 days after a purchasing tenant has agreed in writing to purchase a unit within the conversion project, such tenant shall have the right to rescind such contract without the imposition of any penalty or fee. If the tenant rescinds, any renegotiation or new agreement signed by the owner and the purchasing tenant shall be valid and binding, if such renegotiation occurs between the time of rescission and the expiration of the 60-day period set forth in this subsection.

(d) Where the 3-year grace period has expired and a nonpurchasing tenant with children still attending school has failed to move, such tenant shall be permitted to remain until 1 week following the end of the school year; or if any of the children is about to graduate, 1 week after the graduation ceremony; whichever is later.

§ 7109. Rights of nonpurchasing tenants.

(a) All manufactured home sites occupied by nonpurchasing tenants shall be managed by the same manager or agent who manages all other units in the manufactured home community. The owner shall provide to nonpurchasing tenants all services and facilities required by law on a nondiscriminatory basis. The owner shall guarantee such obligation of the manager or agent to provide all such services and facilities for each tenant until such time as the tenant no longer resides on the premises. This obligation will be the obligation of the tenants' association if it exercises its right of first refusal and purchases the community.

(b) Where an owner has given notice of his intent to convert a manufactured home community, each tenant who has not purchased a unit in the proposed conversion project shall, during the remaining term of the rental agreement and any extension thereof, be entitled to the same rights, privileges and services that were enjoyed by tenants prior to the date of the preliminary notice together with those that are granted, offered or provided to purchasers or prospective purchasers of the conversion project.

§ 7110. Rights of tenant during conversion.

(a) After the filing of a conversion plan, during the grace period, no owner may evict or fail to renew the lease of a tenant of a manufactured home community which is the site of a proposed conversion; provided, however, that eviction proceedings may be commenced for nonpayment of rent or a similar breach by a tenant of a contractual obligation to the owner.

(b) The prices, terms and conditions offered to tenants by the owner for the purchase of a unit within the conversion project shall be the same as, or more favorable than, those set forth in the conversion plan and those offered to the general public.

(c) Any tenant who has left the manufactured home community or is about to do so because the owner or his agents are substantially interfering with his comfort, peace or quiet contrary to the terms of this chapter may apply to the Attorney General for assistance. The Attorney General may act on such tenant's behalf to secure restraining actions to abate the disturbance and/or to prohibit the owner from engaging in any course of conduct (including, but not limited to, interruption or discontinuance of essential services) which would substantially interfere with such person's tenancy.

(d) Where the lease of a tenant expires after the conversion plan has been filed, and such tenant continues to rent a site within the manufactured home community, the owner shall not increase the rent on an annual basis more than the average or the prior year's annual increase in rent of the 3 geographically nearest manufactured home communities in the county in which the community is located. The average increase in rent will be determined as of the date on which the lease expires. There shall be no more than 1 rent increase imposed upon the tenant during any 1 calendar year.

§ 7111. Handicapped and elderly tenants.

In addition to the protection provided to tenants under this chapter, the following provisions shall apply on behalf of any tenant who is handicapped or who is 65 years of age or older:

(1) The owner shall supply a list of at least 3 comparable rental units, including manufactured home communities, which have vacancies and which can accommodate such person if such exists, subject, however, to the terms of subsection (c) of § 7112 of this title;

(2) The owner shall supply the address and telephone number of the nearest municipal, state or federal agency which can provide information and assistance to such tenant under the National Housing Act ›12 U.S.C. § 1701 et seq.| and the Uniform Relocation Assistance Act;

(3) Where the tenant remains on the premises at the expiration of the 3-year period, and has in good faith attempted to obtain adequate housing, such tenant shall be permitted to stay on the premises until permanent housing is obtained. Any increase in rent shall be in conformity with the terms of subsection (d) of § 7110 of this title.

§ 7112. Eviction; access to comparable housing.

(a) Where, at the conclusion of the grace period, a tenant is evicted by order of court solely as a result of the conversion, the owner shall pay for all expenses incurred by such tenant in moving into his new residence. If the new residence is in a manufactured home community, such expenses shall include all "setting up" expenses, including connections to all utilities.

(b) Within 18 full months after receiving final notice any tenant may request that the owner provide a list of available comparable housing or comparable manufactured home sites and a reasonable opportunity to examine and rent such comparable housing or manufactured home site.

(c) After the expiration of the 3-year period, the owner may institute an action in the Superior Court for the eviction of any tenant or tenants who still have manufactured homes within the community or who otherwise have continued to reside within the community; or a tenant, group of tenants or tenant association may apply to the Superior Court for a stay of any eviction proceedings. The Court may, in its discretion, authorize 1-year stays of eviction subject to such rent increases as authorized by subsection

(d) of § 7110 of this title until such time as the Court is satisfied that the tenant has been provided a list of comparable housing or comparable manufactured home sites and is satisfied that the tenant has been provided a reasonable opportunity to examine and rent such housing or manufactured home site. Except where the owner has failed to provide such a list of comparable housing or manufactured home sites, or has failed to provide a reasonable opportunity to examine and rent such housing or manufactured home site, the Court shall grant not more than 5 such eviction stays.

§ 7113. Penalties; jurisdiction.

(a) Civil penalties.

(1) Where an owner violates a provision of § 7105 of this title any action taken by the owner to convert the real property on which a manufactured home community is located into multiple-unit usage shall be invalid; provided, however, that the owner, by again giving the preliminary notice required under § 7105 of this title, may again begin the conversion process.

(2) Where the owner fails to give the tenants' association its option to purchase under § 7108 of this title, no subsequent sale or purchase of the real property or of any unit within the conversion project shall be valid. Where the owner fails to provide a tenant with an opportunity to purchase under § 7108 of this title, the tenant shall nevertheless be offered a unit in preference to any nontenant who has agreed to purchase a unit during or subsequent to the time of the tenant's right to purchase.

(3) Any binding agreement entered into by an owner which results in a violation of any provision of this chapter is:

a. Void, if a person residing in the manufactured home community at the time of the preliminary notice was an object of, or was adversely affected by, such violation; or

b. Voidable at the option of any party thereto.

(b) Criminal penalties; jurisdiction. --

(1) Any person who is convicted of a violation of a provision of this chapter shall be fined a sum not less than $100 nor more than $500 for each offense. Where the violation is ongoing and continuous, each day's continuation of such violation shall constitute a separate offense.

(2) The Superior Court shall have jurisdiction over all offenses under this section.

§ 7114. Modification or waiver of chapter.

(a) Except as otherwise provided in this section, any provision in a lease or other agreement which waives or modifies any provision of this chapter shall be void and unenforceable as against public policy. An owner and tenant may, however, agree to a modification or waiver of some or all of the protections afforded to the tenant pursuant to this chapter; provided, however:

(1) The modification or waiver is encompassed in a written contract which is separate from the lease;

(2) The modification or waiver is voluntarily entered into without duress;

(3) The modification or waiver is entered into with full understanding of this chapter, the terms of any contract to which the modification or waiver applies, and the modification or waiver itself;

(4) The modification or waiver is for adequate consideration.

(b) In any action involving a modification or waiver, the owner shall have the burden of proof to establish that the requirements of this chapter and of this section have been met.