

THE RESIDENTIAL LANDLORD-TENANT CODE

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FOREWORD

This study on the residential landlord-tenant code, chapter 521, Hawaii Revised Statutes, was prepared in response to House Resolution No. 96, adopted during the 1986 legislative session.

House Resolution No. 96 requested the Legislative Reference Bureau to review the residential landlord-tenant code in light of the changing rental market and court decisions issued in the fourteen years since the code's enactment in 1972. The focus of this report is on suggested amendments to the code, with supporting chapters on the rental market, court cases, and types of landlord-tenant complaints filed with the office of consumer protection. A legislative history of the code is included as an appendix.

Many individuals gave generously of their time and expertise in the preparation of this report, and the Bureau deeply appreciates their cooperation. The Bureau wishes to acknowledge in particular the following individuals for their valuable assistance: Kate Stanley, The Hawaii Association of Realtors; Thomas Matsuda, Legal Aid Society of Hawaii; Mark Nomura, Office of Consumer Protection; Honorable Richard Lum, District Court of the First Circuit; Gail Tashima, District Court of the First Circuit; Peter Adler, Program on Alternative Dispute Resolution, the Judiciary; Leland Chang, Neighborhood Justice Center; Michael Hazama, Mediation Services of Maui; Stephen Okumura, Hawaii Legal Reporter; and Kai Ohama, Chaney, Brooks & Company.

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Chapter 1

INTRODUCTION

Objective of the Study

House Resolution No. 96 (see Appendix A), adopted during the 1986 Regular Session, requested the Legislative Reference Bureau to make a comprehensive review of the residential landlord-tenant code, chapter 521, Hawaii Revised Statutes. The reasons underlying the request were expressed in the Resolution as follows, in summary:

The residential landlord-tenant code was originally enacted in 1972 after two years of study;

The purpose of the code was to establish a law governing landlord-tenant relations in a manner consistent with then recent court decisions and the then existing rental market;

During the fourteen years since the code was enacted, Hawaii's residential rental market has changed and newer court cases decided;

Therefore, this area of the law deserves another comprehensive review.

Nature and Scope of the Study

The nature and scope of the study can best be described in terms of what has been excluded, leaving an almost exclusive focus on chapter 521, Hawaii Revised Statutes.

The Resolution directed that the study include the relationship of the residential landlord-tenant code with related statutes, including chapter 666, Hawaii Revised Statutes. Chapter 666, entitled "Landlord and Tenant", has its statutory roots in the Civil Code of 1859. Until the enactment of chapter 521 in 1972, all landlord-tenant matters were regulated by chapter 666. Since its enactment, chapter 521 is in virtually all respects a self-contained law with respect to residential landlord-tenant matters. Chapter 521 makes the following reference to chapter 666, in section 521-3(b) which provides:

Every legal right, remedy, and obligation arising out of a rental agreement not provided for in this chapter shall be regulated and determined under chapter 666, and in the case of conflict between any provision of this chapter and a provision of chapter 666, this chapter shall control.

The only pertinent reference to chapter 666 encountered in the research for this study was in the case of Hawaiian Electric Company v. DeSantos, 63 H. 110, 621 P.2d 971 (1980) (see chapter 3), where the supreme court ruled, pursuant to section 521-3(b), that any conflict between chapter 666 and chapter 521 is controlled by the latter. Those persons familiar with residential landlord-tenant matters who were interviewed for this study did not raise any issues relating to chapter 666.

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In light of the foregoing--the apparent peripheral role of chapter 666 in residential landlord-tenant matters and the fact that no input on that chapter was received--chapter 666 is not discussed in the study.

References to the code are made in sections 633-27 and 633-28, Hawaii Revised Statutes, concerning the small claims court. Section 633-27(a) grants exclusive jurisdiction of cases involving the security deposit in a residential landlord-tenant relationship to the small claims court.¹ Section 633-27(c) refers to the court's powers to grant equitable relief to parties to a landlord-tenant disagreement pursuant to chapter 521.² Section 633-28(b) prohibits the appearance of attorneys on behalf of another person in cases between a landlord and tenant involving a security deposit.³ No dissatisfaction with these provisions was raised in interviews with those in the field.

The researcher raised the question of discrimination in housing in her interviews, but the responses indicated that the subject appears to be covered adequately, or as adequately as practicable, in section 515-3, Hawaii Revised Statutes,⁴ and that, whether overt or not, discrimination is a difficult matter to regulate in rental situations. Further legislation is not the immediate answer to what discrimination problems may exist. Therefore, discrimination is not discussed in this study.

In view of the foregoing, no other statutes relating to the code are reviewed for amendment purposes.

The central concern of the study is the existing code and suggested amendments thereto. One new topic, presented in the last chapter, is a proposal for a residential landlord-tenant mediation program on a trial basis.

Organization of the Report

This report is presented in eight chapters:

Chapter 1 is the introduction.

Chapter 2 presents a primarily statistical overview of the rental market in Hawaii based on the number of housing units and vacancy rates. A table of average rental rates for Oahu is also provided.

Chapter 3 provides summaries of all published court decisions relating to the code.

Chapter 4 discusses the office of consumer protection with respect to the code, with a table of types of landlord-tenant complaints filed with that office.

Chapter 5 presents suggested amendments to the code.

Chapter 6 discusses the regulation of security deposits by other states.

Chapter 7 presents the Bureau's proposal for a landlord-tenant mediation program funded by the pooled interest on security deposits.

Chapter 8 presents a summary of findings and recommendations.

Chapter 2

THE RELATIONSHIP BETWEEN THE CODE AND THE RENTAL MARKET

The Resolution requested that this study include the relationship of the code with the present rental market. The Bureau felt that the purpose of examining such a relationship would be to gain a perspective of the relative bargaining powers of the landlord and tenant, that is, which of the two can more readily--or with less hardship--terminate a tenancy which is unsatisfactory or subjected to code violations. Is it the landlord or the tenant who is more likely--or to feel more compelled--to tolerate the other's violations of the code in the present rental market?

Statistics showing the number of housing units and vacancy rates statewide and rental rates for Oahu are presented to give some indicators of the rental market.

Rental units comprise almost 60 per cent of all housing units in Hawaii (218,102 renter occupied and vacant units out of 371,003 total housing units; see Table 1). Seventy-three per cent of the State's housing units (269,845 out of 371,003 units; see Table 2) and 53 per cent of the State's rental units (156,272 out of 218,102 units; see Table 4) are on Oahu.

However, as a recent newspaper article on rents on Oahu stated:¹

...any reading of the rental market is difficult at best. There is no central clearinghouse for information.

While housing reports repeatedly have talked about the low vacancy factor in Honolulu, the managing agents at Chaney Brooks find that this really impacts the "affordable housing" level more than the general marketplace.

It is not difficult to find a rental unit for \$700 to \$800 a month, they say, but very difficult to find something less than \$500 a month.

The same article noted that Mike Sklarz, director of research at Locations, Inc., has been following rents in both apartments and houses for many years and has found that "(r)ents increased more than 55 percent between 1979 and 1984 but then flattened out in 1985." Mr. Sklarz stated:²

It would not surprise us if rents do stay in this area awhile. Unfortunately, as long as new housing production on Oahu continues at its anemic pace, this stability will prove only temporary.

In an article on the impact of the new tax laws on rentals, it was reported that tax reform will adversely affect renters by removing several incentives for investing in real estate, thereby discouraging development of new income-producing properties. Joe Fadrowsky, vice president of Gentry Pacific, Ltd., a development company, was quoted:³ "...with demand

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continuing to grow, if you don't have more apartments coming on stream, the only other variable is rent."

The article noted that:⁴ "(e)ven before shortages occur, landlords may be inclined to hike rents to make up for the squeeze on incomes produced by the loss of tax benefits." Michael Sklarz projected a rise in rents "significantly faster than the rate of inflation." Developer Bruce Stark observed that "current sales tend to be 'not to other investors but to people who will own and live in the units, thus cutting the supply available to the rental market.'"

As stated above, there is no clearinghouse for information on the rental market in Hawaii. Table 4 shows the number of renter occupied and vacant units, but without a vacancy rate, it is difficult, if not impossible, to draw any quantitative conclusions as to the shortage of rental housing. However, to give an extreme example for purposes of extrapolating a rental vacancy rate, the following hypothetical is presented: Assume that the 1985 gross resident vacancy rate of 3.7 per cent, or 12,632 units (342,632 resident housing stock minus 330,000 occupied housing units) is attributable solely to rental units. That is, assume that 60 per cent of the 342,632 housing units existing on April 1, 1985, or 205,579 units, were rental units. If all 12,632 vacancies were attributable to the 205,579 rental units, that would result in a rental vacancy rate of approximately six per cent. A "low" vacancy rate of five per cent or less "has frequently been used as evidence of an emergency housing condition and as justification for enacting rent control...The 5 per cent vacancy standard is derived from theories of the optimal level necessary to maintain equilibrium in the housing market."⁵ Since, in actuality, all vacancies are not in the rental market, the vacancy rate for rental units would be lower, near or below the five per cent vacancy rate considered the threshold for declaring an emergency housing situation for rent control purposes.

That hypothetical and statements such as the above of those in the field would seem to indicate a situation unfavorable to renters--of rising rents and a tightening of the rental market, particularly for tenants seeking housing at lower rents. In such a climate, it would seem that landlords generally are more likely to have the upper hand in the landlord-tenant relationship.

Another element of the rental market is that, considering the average rental rates for Oahu, since a landlord usually requires a security deposit equivalent to one month's rent, moving to different premises requires a major expenditure of funds for the average renter, at least until the security deposit from the prior premises is returned. For a landlord or rental agent who owns or manages multiple rental units, the cumulative amount of security deposits can be sizable.

Number of Housing Units Vacancy Rates, and Average Rental Rates for Oahu

The following text and five tables were taken from: Hawaii State Department of Planning and Economic Development, Housing Unit Estimates for Hawaii, 1970-1986 (Statistical Report 191, July 18, 1986). The sixth table was provided by Michael Sklarz of Locations, Inc.

RELATIONSHIP BETWEEN CODE AND RENTAL MARKET

Housing Unit Estimates for Hawaii, 1970-1986

Hawaii's housing stock stood at 371,003 units as of April 1, 1986, according to the most recent annual estimates prepared by the Department of Planning and Economic Development. This total represented an increase of 1.8 per cent over the preceding year, 11.0 per cent since the 1980 census, and 71.1 per cent since 1970. The 1985-1986 increase was about 6,600 housing units, compared with 5,300 the preceding year.

Only 41.2 per cent of the 1986 stock was owner-occupied, with almost one-fourth of those units on leased land. Private renter-occupied or vacant units accounted for 51.7 per cent of the total, and governmental housing (most of it on military bases) made up the remaining 7.1 per cent. Growth during the past year (April 1, 1985-April 1, 1986)⁶ was greatest for owner occupied housing on land owned in fee simple, up by 2.2 per cent. The number of private rental units increased 2.1 per cent, owner occupied units on leased land grew by 0.4 per cent, and government housing declined 0.5 per cent.

By counties, the most rapid increase was recorded in Maui County, with a one-year rise of 3.2 per cent. Hawaii County was second, at 2.8 per cent, followed by Kauai, at 2.6 per cent. The Oahu inventory rose by only 1.4 per cent.

Much of the increase in the housing stock is attributable to growth in the number of condominium units in rental pools intended for transient occupancy. Statewide, such housing accounted for 22,999 units early in 1986, or 6.2 per cent of the total stock. These nonresident units increased by 97.6 per cent in the six years since the 1980 census and 5.5 per cent in the past year alone, compared with growth rates of only 7.9 per cent (1980-1986) and 1.6 per cent (1985-1986) for the rest of the inventory.

The U.S. Bureau of the Census has estimated that Hawaii had 330,000 households (or occupied housing units) as of July 1, 1985. The corresponding figure for the total resident housing stock on April 1, 1985, was 342,632 units. It thus appears that fewer than 13,000 units were vacant, and that the gross resident vacancy rate was an exceptionally low 3.7 per cent. Between 1980 and 1985, the increase in resident (in contrast to units for transient occupancy) units was only 6.2 per cent, compared with a 9.0 per cent growth in total housing stock, 9.2 per cent in resident population, and 12.2 per cent in households. Housing has thus lagged behind both population growth and household formation.

Definitions and Methodology

The U.S. Bureau of the Census has defined a housing unit as a house, an apartment, a group of rooms, or a single room, occupied as separate living quarters, or if vacant, intended for occupancy. Separate living quarters are those in which the occupants live and eat separately from other persons in the building and have direct

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access from the outside of the building or through a common hall. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements. Both occupied and vacant housing units are included in the housing inventory, except that tents, boats, vans, and the like are included only if they are occupied. Condominium units are included even if occupied by tourists or other nonresidents, but regular hotel units are generally counted only if occupied by persons who consider such units their usual place of residence.

Table 1. TENURE AND CONTROL OF HOUSING: 1970 to 1986

[Condominium units occupied or intended for occupancy by nonresidents are included in these estimates]

Year	All housing units ¹	Owner occupied units ²		Renter occupied and vacant units		
		Land owned	Land leased	Private ³	Federal ⁴	State and County ⁴
1970	216,774	68,422	20,802	106,821	14,439	6,290
1971	228,749	72,086	21,732	113,531	15,089	6,311
1972	238,770	75,939	24,565	117,111	14,959	6,196
1973	250,742	78,878	26,776	123,934	15,071	6,083
1974	266,828	82,494	30,333	131,368	16,373	6,260
1975	284,120	85,264	30,543	145,276	16,386	6,651
1976	298,339	88,284	33,730	152,578	17,225	6,522
1977	306,989	89,980	34,549	158,223	17,493	6,744
1978	315,513	92,989	35,869	161,728	18,653	6,274
1979	324,261	96,273	36,540	165,045	19,022	7,381
1980	334,235	100,478	36,986	170,963	19,437	6,371
1981	342,873	104,677	37,413	174,753	19,427	6,603
1982	348,980	106,147	37,372	179,579	19,392	6,490
1983	353,414	108,761	35,586	183,249	19,304	6,514
1984	359,107	111,767	35,545	185,657	19,294	6,844
1985	364,436	114,548	35,681	187,905	19,280	7,022
1986	371,003	117,090	35,811	191,930	19,264	6,908

1. As of April 1.
2. As indicated by the number of taxpayers claiming home exemptions. The number of owner-occupied housing units reported by the U.S. Census of Housing is somewhat higher than the corresponding number based on taxpayer home exemptions, chiefly because of differences in definitions. Data for 1977-1986 refer to January 1; data for 1970-1976, to July 1.
3. Calculated as a residual after accounting for the known components, some of which pertain to dates other than April 1, and thus not attributable to any specific date.
4. As of April 1. Data include housing units leased from private owners.

Source: Data for 1970-1985 from DPED Statistical Report 177, table 1; data for 1986 from present report (Hawaii State Department of Planning and Economic Development, Housing Unit Estimates for Hawaii, 1970-1986 (Statistical Report 191, July 18, 1986)).

Table 2. HOUSING UNITS STANDING, BY COUNTIES: 1970 TO 1986

[As of April 1. Condominium units occupied or intended for occupancy by nonresidents are included in these estimates]

Year	State total	City and County of Honolulu	Other counties			
			Total	Hawaii	Kauai	Maui
1970	216,774	174,742	42,032	18,972	9,021	14,039
1971	228,749	184,101	44,648	20,061	9,298	15,289
1972	238,770	190,973	47,797	21,648	9,555	16,594
1973	250,742	198,970	51,772	23,578	10,092	18,102
1974	266,828	210,940	55,888	25,282	10,700	19,906
1975	284,120	223,647	60,473	26,694	11,347	22,432
1976	298,339	232,669	65,670	28,131	11,934	25,605
1977	306,989	237,571	69,418	29,453	12,433	27,532
1978	315,513	243,103	72,410	30,579	12,841	28,990
1979	324,261	247,465	76,796	32,283	13,610	30,903
1980	334,235	252,038	82,197	34,215	14,828	33,154
1981	342,873	254,969	87,904	36,180	16,314	35,410
1982	348,980	256,967	92,013	37,738	17,081	37,194
1983	353,414	259,574	93,840	38,702	16,937	38,201
1984	359,107	262,902	96,205	39,762	17,539	38,904
1985	364,436	266,127	98,309	40,820	17,979	39,510
1986	371,003	269,845	101,158	41,944	18,446	40,768

Source: Data for 1970-1985 from DPED Statistical Report 177, table 2; data for 1986 from present report (Hawaii State Department of Planning Economic Development, Housing Unit Estimates for Hawaii, 1970-1986 (Statistical Report 191, July 18, 1986)).

Table 3. RESIDENT AND NONRESIDENT HOUSING UNITS,
BY COUNTIES: 1977 TO 1986

Category and year	State total	City and County of Honolulu	Other counties			
			Total	Hawaii	Kauai	Maui
RESIDENT¹						
1977	301,904	237,059	64,845	29,123	11,843	23,879
1978	308,444	241,573	66,871	30,008	12,062	24,801
1979	315,728	245,101	70,627	31,548	12,623	26,456
1980	322,598	247,152	75,446	33,594	13,395	28,457
1981	328,679	249,330	79,349	34,921	14,458	29,970
1982	334,580	251,280	83,300	36,254	15,402	31,644
1983	340,001	254,827	85,174	36,933	15,931	32,310
1984	341,505	256,015	85,490	37,860	15,941	31,689
1985	342,632	257,111	85,521	38,541	15,903	31,077
1986	348,004	260,007	87,997	39,892	15,872	32,233
NONRESIDENT²						
1977	5,085	512	4,573	330	590	3,653
1978	7,069	1,530	5,539	571	779	4,189
1979	8,533	2,364	6,169	735	987	4,447
1980	11,637	4,886	6,751	621	1,433	4,697
1981	14,194	5,639	8,555	1,259	1,856	5,440
1982	14,400	5,687	8,713	1,484	1,679	5,550
1983	13,413	4,747	8,666	1,769	1,006	5,891
1984	17,602	6,887	10,715	1,902	1,598	7,215
1985	21,804	9,016	12,788	2,279	2,076	8,433
1986	22,999	9,838	13,161	2,052	2,574	8,535

1. Includes all housing units other than condominium units in rental pools and intended for transient occupancy.
2. Condominium units in rental pools and intended for transient occupancy, based on February survey data from the Hawaii Visitors Bureau.

Source: Nonresident units from Hawaii Visitors Bureau, Visitor Plant Inventory, February reports, 1977-1986; resident units calculated as residual, using April 1 estimates of total units in present report (Hawaii State Department of Planning and Economic Development, Housing Unit Estimates for Hawaii, 1970-1986 (Statistical Report 191, July 18, 1986)), table 2.

Table 4. TENURE AND CONTROL OF HOUSING, BY COUNTIES: 1984 TO 1986

[Condominium units occupied or intended for occupancy by nonresidents are included in these estimates]

County	All housing units ¹	Owner occupied units ²		Renter occupied and vacant units ³		
		Land owned	Land leased	Private ⁴	Federal ¹	State and County ¹
1984						
State total	359,107	111,767	35,545	185,657	19,294	6,844
C & C of Honolulu	262,902	76,401	33,627	128,665	19,146	5,063
County of Hawaii	39,762	17,356	1,077	20,276	56	997
County of Kauai	17,539	6,412	167	10,568	64	328
County of Maui	38,904	11,598	674	26,148	28	456
1985						
State total	364,436	114,548	35,681	187,905	19,280	7,022
C & C of Honolulu	266,127	78,320	33,672	129,777	19,138	5,220
County of Hawaii	40,820	17,652	1,121	21,000	50	997
County of Kauai	17,979	6,617	224	10,747	64	327
County of Maui	39,510	11,959	664	26,381	28	478
1986						
State total	371,003	117,090	35,811	191,930	19,264	6,908
C & C of Honolulu	269,845	79,929	33,644	131,984	19,134	5,154
County of Hawaii	41,944	18,210	1,200	21,528	50	956
County of Kauai	18,446	6,809	248	10,995	65	329
County of Maui	40,768	12,142	719	27,423	15	469

1. As of April 1.
2. As indicated by the number of taxpayers claiming home exemptions, as of January 1.
3. Data for both Federal and State agencies include housing units leased by these agencies from private owners. All data are as of April 1.
4. Calculated as a residual after accounting for the known components, some of which pertain to dates other than April 1, and thus are not attributable to any specific date.

Source: Owner occupied units from Honolulu Department of Finance, Property Technical Office; renter occupied and vacant units from DPED Statistical Report 177, table 4, and present study (Hawaii State Department of Planning and Economic Development, Housing Unit Estimates for Hawaii, 1970-1986 (Statistical Report 191, July 18, 1986).

**Table 5. PRIVATE RESIDENTIAL CONSTRUCTION AND DEMOLITION
AUTHORIZED BY PERMITS, BY COUNTIES: 1980 TO 1985**

Category and year authorized	State total	City and County of Honolulu	Other counties			
			Total	Hawaii	Kauai	Maui
New 1-family dwellings:						
1980	4,072	1,650	2,422	1,192	427	803
1981	2,551	768	1,783	1,032	353	398
1982	2,451	891	1,560	800	230	530
1983	3,387	1,562	1,825	880	398	547
1984	4,117	2,197	1,920	900	382	638
1985	4,663	2,313	2,350	979	387	984
New duplex units:						
1980	84	46	38	12	24	2
1981	164	42	122	18	38	66
1982	32	-	-	-	-	-
1983	138	60	78	58	6	14
1984	146	112	34	28	4	2
1985	208	112	96	64	-	32
New apartments:						
1980	5,163	1,854	3,309	727	769	1,813
1981	3,135	1,873	1,262	267	60	935
1982	3,038	2,553	485	245	118	122
1983	1,341	1,220	121	38	73	10
1984	1,134	942	192	153	35	4
1985	2,388	1,744	644	129	84	431
Units demolished:						
1980	766	665	101	63	6	32
1981	686	521	165	21	70	74
1982 ¹	568	443	125	34	1	90
1983 ²	505	385	120	54	4	62
1984	528	429	99	50	5	44
1985 ³	555	455	100	38	12	50

1. Data exclude housing units destroyed by Hurricane Iwa on November 23-24, 1982 (127 in the City and County of Honolulu and 543 in the County of Kauai).
2. Excludes 16 structures destroyed by volcanic activity in Hawaii County.
3. Excludes 11 homes in Hilo destroyed by high winds, February 16, 1986.

Source: Compiled from County building departments by the Hawaii State Department of Planning and Economic Development.

Table 6. AVERAGE RENTAL RATES¹ FOR OAHU 1975 - 1986²

SINGLE FAMILY HOMES ³	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
Windward	\$510	\$380	\$440	\$500	\$700	\$590	\$700	\$800	\$998	\$1081	\$1044	\$1081
Pearl City-Aiea	475	350	400	520	560	625	630	645	885	1096	1000	999
Hawaii Kai	475	445	500	550	770	825	900	1100	1200	1237	1302	1182
Leeward	320	355	350	450	485	485	490	560	804	863	873	806
Makiki-Manoa	440	440	600	750	740	750	760	800	1048	1200	1256	1291
<u>APARTMENTS</u> ⁴												
Salt Lake	275	280	310	400	430	450	460	525	553	749	724	682
Hawaii Kai	340	390	440	540	650	650	700	800	844	950	896	913
Pearlridge	310	310	260	375	460	520	550	620	764	846	740	736
Waikiki	340	360	330	350	475	500	550	560	561	584	621	613
Makiki	230	240	260	275	450	400	525	600	647	751	752	696

1. Midyear scans of 15-30 units per area

2. Through July 1986

3. Three or more bedrooms, partly furnished

4. Two bedroom units except Waikiki (one bedroom units), partly furnished.

SOURCE: Michael Sklarz, Locations, Inc., telephone interview, Sept. 4, 1986

Chapter 3

COURT CASES 1972-1986

This chapter summarizes those cases decided by the Hawaii supreme court and by the small claims division (commonly known as small claims court), of the district court of the first circuit, concerning the landlord-tenant code, chapter 521, Hawaii Revised Statutes, or section 633-27, Hawaii Revised Statutes, relating to security deposit claims in small claims court.

Since all supreme court decisions are published, the seven decisions summarized in part A comprise a complete record of residential landlord-tenant cases decided by that court as reported through February 1986. The cases present no discernible trend or pattern nor do they focus on specific topics. One case concerns retaliatory eviction; two cases concern the exclusive jurisdiction of the small claims court over security deposit claims; three cases concern the demolition of dwellings; and one concerns tenants' remedies for lockouts. Only the last case provides grounds for an amendment to the landlord-tenant code.

The six small claims court decisions discussed in part B are those reported in the Hawaii Legal Reporter, a selective compilation of lower court decisions. The cases are from the period 1976-1977 and are the only lower court landlord-tenant decisions that have been published.¹ The cases all involve disputes over landlords' retention of security deposits, over which the small claims court has exclusive jurisdiction. Four of the cases also involve disputes over termination of a tenancy, and in one case the tenant sought treble damages for "wrongful and wilful" retention of a security deposit.

A. CASES DECIDED BY THE HAWAII SUPREME COURT

"Court" in this part refers to the Hawaii supreme court.

Windward Partners v. Delos Santos, 59 H. 104, 577 P.2d 326 (1978). The landlord instituted summary possession proceedings against eight tenants occupying primarily agricultural land in Waikane Valley. The Court held that the tenants could assert the affirmative defense of retaliatory eviction. The landlord had petitioned the State Land Use Commission requesting the redesignation of the land from "agricultural" to "urban". The Court found that the tenants had exercised their statutory right, pursuant to section 205-4, Hawaii Revised Statutes, to appear before the Commission at a public hearing and present testimony relevant to land use changes of their land. The tenants had testified against the landlord's petition.

Subsequent to the Commission's decision to deny redesignation of the land, the landlord notified tenants of the termination of their tenancies. Section 521-74(a), Hawaii Revised Statutes, prohibits eviction of tenants who complain of housing or health code violations. The Court agreed with the landlord that the conduct of the tenants did not fall within any of the actions enumerated under section 521-74(a), Hawaii Revised Statutes. However, the court cited section 521-3(a), Hawaii Revised Statutes, which provides that the principles of law and equity supplement the provisions of chapter 521, Hawaii

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Revised Statutes, and thus held that the tenants, who had exercised their statutory right in protection of their property interest by opposing the redesignation of their land, could assert the affirmative defense of retaliatory eviction. The Court further ruled that proof as to retaliatory eviction would not mean that the tenants would be entitled to remain in possession in perpetuity, but subsequent dissipation of the landlord's illegal purpose and the landlord's legitimate reasons for terminating a tenancy would be a factual question to be decided by the trier of fact.

Chambers v. Leavey, 60 H. 52, 587 P.2d 807 (1978). The Court affirmed a circuit court's dismissal of a tenant's petition for a writ of mandamus against the landlord and the judge of the small claims court who denied the tenant's claim for the return of the security deposit. Under section 633-27, Hawaii Revised Statutes, the small claims court has exclusive jurisdiction over security deposit disputes between landlord and tenant. Furthermore, the law prohibits any appeal from a judgment of the small claims court (section 633-28(a), Hawaii Revised Statutes). The Court held that the tenant's petition for a writ of mandamus constituted an attempt to take an appeal not provided by statute, which the tenant was not entitled to do, and that the record failed to show any grounds entitling the tenant to the extraordinary remedy of a writ of mandamus.

Lau v. Bautista, 61 H. 144, 598 P.2d 161 (1979). The Honolulu City and County Building Department ordered the landlords to demolish their building because it was unsafe. The landlords sought to terminate the tenancies of their tenants by sending notices to vacate. The tenants subsequently withheld their rent. The landlords brought an action for summary possession based on the tenants' failure to pay rent (section 521-68(a), Hawaii Revised Statutes). The Court held that where a landlord brings an action for summary possession based on a tenant's failure to pay rent, the tenant may assert the landlord's breach of an implied warranty of habitability as an affirmative defense. On remand, the Court required that a determination be made as to whether the landlords were responsible for the structures being in "substandard conditions" requiring demolition, and if so, that a determination be made as to whether such responsibility constituted a breach of the implied warranty of habitability.

City and County of Honolulu v. Toyama, 61 H. 156, 598 P.2d 168 (1979). On September 26, 1975, the Honolulu City and County Building Department sent notices to correct to the City Department of Housing and Community Development (DHCD) regarding buildings at three locations on Beretania and River Streets. The notice to correct regarding one building directed DHCD "to correct" deficient conditions, but DHCD decided to demolish the structure. The notices to correct regarding the other buildings directed DHCD "to demolish" the structures. The Court deemed the latter to also be cases of voluntary demolition because the Building Department and DHCD were both departments of the executive branch of the City and supervised by the City's managing director. Section 521-71(a), Hawaii Revised Statutes (1976 version), required, in cases of voluntary demolition of dwelling units, a notice of termination of the rental agreement 90 days in advance of the anticipated demolition. All of the tenants received a notice to vacate between October 1 and 7, 1975. However, the record did not disclose the date of the "anticipated demolition". The circuit court had granted the City judgment for summary possession. The Court ruled that the trial court erred because the record did not show that the tenants received notice

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"ninety days in advance of the anticipated demolition" as required by the statute.

Sherman v. Sawyer, 63 H. 55, 621 P.2d 346 (1980). Tenants filed a four count complaint in circuit court, two of the counts concerning the landlord's failure to return their security deposit. The circuit court granted the landlord's motion to dismiss all four counts, finding that it lacked jurisdiction over all the causes of action. The Court held that, under section 633-27, Hawaii Revised Statutes, the small claims division of the district court has exclusive jurisdiction over security deposit claims. Because of this exclusive jurisdiction, the circuit court has no jurisdiction to hear security deposit claims, and such claims cannot be joined to other claims over which the circuit court may have jurisdiction as such joinder would improperly extend the jurisdiction of the circuit court. The Court held that the circuit court properly dismissed the claims relating to the security deposit for lack of jurisdiction but that the other counts should have been tried in that court and remanded the case for further proceedings on those counts.

Hawaiian Electric Company v. DeSantos, 63 H. 110, 621 P.2d 971 (1980). Pursuant to section 521-71(a), Hawaii Revised Statutes, Hawaiian Electric Company (HECO), by letter dated April 15, 1975, notified residents of its property in Heeia Kea, Oahu, of its intent to demolish the dwelling units, giving the tenants 90 days (or until July 15) to vacate. On May 19, 1975, HECO sent a second letter to the tenants postponing the eviction date from July 15 to August 1. On July 2, 1975, HECO sent another letter to the tenants advising that their tenancies would terminate as originally scheduled on July 15. The Court held that HECO's second letter of May 19 had the effect of "re-issuing" or "amending" the 90-day notice of April 15 and thus HECO was obligated to give a 90-day notice of termination beginning on May 19, 1975.

HECO argued that it had the right to evict the tenants under section 666-1, Hawaii Revised Statutes, because the premises were in a state of disrepair in violation of the original leases. The Court disagreed. Since it was determined that section 521-71(a), Hawaii Revised Statutes, controlled this fact situation in view of HECO's anticipated demolition of the dwelling units, chapter 521, Hawaii Revised Statutes, controlled these proceedings. Under section 521-3(b), Hawaii Revised Statutes, any conflict between chapter 666 and chapter 521, Hawaii Revised Statutes, is controlled by the latter.

Kaiama v. Aguilar, 67 H. (No. 9893), 696 P.2d 839 (1985). Tenants were locked out by the landlords for what the landlords felt was a breach of the rental agreement. The tenants brought action under section 521-63(c), Hawaii Revised Statutes, which provides in pertinent part:

"If the landlord removes or excludes the tenant from the premises overnight without cause or without court order so authorizing, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to two months rent or free occupancy for two months, and the cost of suit, including reasonable attorney's fees."

The circuit court found that the lockout was without cause or court order and that the tenants were entitled to the remedies under section 521-63(c), Hawaii Revised Statutes. However, the circuit court held that such

relief was not mandatory and denied recovery, specifically two months' rent and costs, for the tenants.

The Court reversed the circuit court, holding that neither the plain meaning of the statute nor its legislative history admitted an interpretation granting a court the discretionary power to deny the remedies provided by the Legislature for tenants who are locked out without cause or court order.

B. CASES DECIDED BY THE SMALL CLAIMS DIVISION, DISTRICT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

"Court" in this part refers to the small claims division, district court of the first circuit.

Wu v. Chang, 77-1 HLR 76-147 (1976). Fifteen days after termination of a tenancy, the landlord returned a portion of the tenant's security deposit, retaining the balance for an itemized list of repair and cleaning costs. The court found that, under section 521-44(c), Hawaii Revised Statutes, the landlord failed to give the requisite notice for retention of security deposit within 14 days after termination of the rental agreement and granted judgment to the tenant. However, the court permitted the landlord to assert a counterclaim for repair and cleaning costs and entered judgment in the landlord's favor to the extent of proven damages.

The court weighed the argument that the Legislature intended to promote the prompt return of the security deposit and if the deposit were to be retained, to require timely notice of retention, and that this intent would be frustrated if the landlord could recoup costs against the security deposit even if the landlord failed to give the requisite 14-day notice. The court held that if that were the legislative intent, such intent would have to be expressed in more explicit language than that contained in section 521-44(c), Hawaii Revised Statutes, since the law generally does not favor the forfeiture of a right to damages.

Gerth and Walter v. Salter, 77-1 HLR 76-337 (1976). Two issues were raised in this case: (1) termination of a rental agreement based on unauthorized entry by the landlord under section 521-73(c), Hawaii Revised Statutes, and (2) failure to give notice of retention of security deposit under section 521-44(c), Hawaii Revised Statutes.

(1) Tenants were on a month-to-month tenancy requiring 28 days' notice to terminate. On September 20, 1976, the tenants orally notified the landlord that they were going to vacate their apartment immediately because the landlord had entered the tenants' apartment without their consent in mid-August. The tenants were informed in late August of this unauthorized entry by a summer employee of the landlord.

The landlord denied the tenants' accusation. Believing that the tenants were basing their accusation on information from current tenants, the landlord had the remaining tenants sign a statement the landlord prepared refuting the accusation of unauthorized entry.

The landlord's position was that the tenants' accusation was a pretext to vacate without giving the required notice. On August 30, 1976, the landlord and tenants had entered into an agreement for the tenants to do yardwork in

return for a reduction of monthly rent. On September 22, 1976, the tenants signed an agreement to rent an apartment elsewhere. The court held that the evidence concerning entry by the landlord was unclear, but even if it had been established, the tenants' agreement to do yardwork after they had allegedly been informed of the landlord's unauthorized entry indicated condonation and estopped them from asserting such entry as a reason for termination of the rental agreement. The court also noted that the tenants' signing of a rental agreement at another location almost contemporaneously with their notice to vacate raised questions concerning the asserted justification for termination. Thus, the tenants' claim for a refund of rental for the remaining days in September after they vacated was denied. (As the apartment was re-rented from October, the landlord did not claim any loss of rent resulting from tenants' termination).

(2) The landlord claimed that the tenants were not given the 14-day notice of security deposit retention because within that period, on October 13, 1976, tenants filed their claim for the return of their security deposit in small claims court. The court held that this was not sufficient reason for failure to give the required notice and granted the tenants their security deposit, offset by the landlord's proven claims for a replacement key, new lock, and mopping and waxing the floor. The court disallowed the landlord's claims for the following as not properly chargeable against the security deposit: effort to obtain signatures of other tenants on petition, effort required to show apartment to prospective tenants, and "personal insult" of the tenants' accusation.

Edwards v. Hong, 77-1 HLR 76-343 (1976). The tenant gave the landlord due notice that the tenant was going to vacate on September 30, 1976. On October 1, 1976, the tenant asked for a three-day extension to clean. On October 3, 1976, the tenant vacated the premises. On October 18, 1976, the tenant received an itemized list of charges against the tenant's security deposit and was returned the remainder of the security deposit. The tenant brought action to claim the entire security deposit because the landlord had not given the tenant the 14-day notice of retention of security deposit.

The court disagreed, holding that when the tenant asked for the three-day extension, the tenant in effect agreed to extend the original termination date of September 30, 1976, to October 3, 1976. The 14th day thereafter was October 17, 1976, which was a Sunday. Under section 1-29, Hawaii Revised Statutes, Sunday is excluded in the computation of time in which to do any act provided by law. The landlord's notice was therefore timely, and even if it were not, the tenant was not exculpated from responsibility for damages caused by the tenant which the landlord can prove.

Roddenberry v. Greenstein, 77-1 HLR 77-295 (1977). Two issues were raised in this case: (1) the responsibility of a sublessor with respect to a security deposit, and (2) whether vacating premises because of fear of physical harm from a sublessor constitutes "wrongful quit".

In February 1976, Hillery Greenstein ("defendant") and Harry Bowman rented a house and sublet a room to Cindy Roddenberry ("plaintiff"). The plaintiff paid the defendant a security deposit. On October 1, 1976, the plaintiff moved out. A new tenant rented the room from October 10, 1976. Two weeks after the plaintiff moved out, she received a partial return of her

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security deposit, as the defendant had kept a portion as rent for October 1-10. The plaintiff contested the charge for rent.

(1) On the first issue, the court ruled that under section 521-8, Hawaii Revised Statutes, the definition of "landlord" includes "sublessor" and thus, as a sublessor, the defendant was required to give the plaintiff, the sublessee, written notice of the particulars of the retention of security deposit, which she failed to do.

(2) As to the second issue, the plaintiff testified that she vacated her room because she had been verbally harassed by Harry Bowman and feared for her physical safety. Under section 521-70(d), Hawaii Revised Statutes, if a tenant wrongfully quits the dwelling unit, the landlord is entitled to the amount of rent accrued during the period necessary to re-rent the dwelling unit. The court found that the plaintiff's fear was not groundless. Thus, the vacation of premises was for cause and was not a wrongful quit. Accordingly, the court ruled that the defendant-sublessor was not entitled to rent accrued during the ten days that the unit was vacant.

Mallis and Tanelian v. Turner, 77-1 HLR 77-421 (1977). Two issues were covered in this case: (1) the timeliness of the tenants' notice to vacate, and (2) the timeliness of notice of retention of security deposit.

(1) The tenants entered into a six-month rental agreement with the landlord to rent premises from May 1, 1976, to October 31, 1976, and made a security deposit. The tenants vacated the premises on October 31, 1976. On November 19, 1976, the landlord gave the tenants a written accounting of charges against their security deposit and returned the remainder of the deposit. Among the charges was rent for November 1-12, 1976.

The landlord, Jim Turner, testified that on September 30, plaintiff Lynn Tanelian indicated to him that she might want to continue her tenancy on a month-to-month basis after October, and it was not until October 12 that she indicated definitely that she would be leaving at the end of October. The landlord believed himself entitled to a 30-day notice to vacate from October 12 and thus charged rent for November 1-12. At the trial the landlord acknowledged that the statute, section 521-71(a), Hawaii Revised Statutes, required a 28-day notice and thus he should have charged rent only to November 10. (The opinion stated "October 10" but this was obviously an error. 77-1 HLR at 77-423.)

The court ruled that section 521-71(a), Hawaii Revised Statutes, applies only to month-to-month tenancies and thus would not apply to the six-month tenancy in this case. By its terms, the rental agreement was to expire on October 31 and no notice of intention to terminate was necessary. The court found that evidence that the parties had reached an agreement to create a new month-to-month tenancy from November was, "at best, equivocal" (77-1 HLR at 77-423) and disallowed the rental charge for November 1-12.

(2) As for the timeliness of the landlord's notice of retention of security deposit on November 19, 1976, the court found that the deadline should have been November 15, November 14 being a Sunday. However, the landlord had considered November 12 to be the termination of the rental agreement, and he would have had 14 days thereafter to provide such notice. The court held that, though in error, the landlord had acted in good faith,

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and under the circumstances the date of the notice was in substantial compliance with the statute.

Grana v. Wright, 77-2 HLR 77-553 (1977). The tenant filed a claim against the landlord for (1) the return of the security deposit of \$200, and (2) treble damages for "wrongfully and wilfully" retaining a security deposit as provided under section 521-44(h)(1), Hawaii Revised Statutes.

(1) The tenant, David Grana, vacated his apartment after due notice and never received the security deposit nor any written notification from the landlord, Mitch Wright, concerning its retention. The landlord testified that he had intended to return the security deposit but did not because he was concerned over a potential claim against him by the tenant over an electric bill.

The tenant had shared an electric meter with an adjoining neighbor, and the two had worked out an arrangement for sharing payment of the electric bill. During one month the tenant was hospitalized, and he felt that he should not be expected to pay his full share. He paid the landlord the full amount of the electric bill but felt an adjustment with his neighbor was in order. The landlord testified that he believed the tenant might demand a refund from him if the tenant was unable to resolve the issue with his neighbor and so retained the security deposit. The tenant eventually resolved the issue with his neighbor, but communication between the tenant and the landlord was poor and this action resulted.

The court found that the landlord not only had failed to provide the 14-day notice of retention of security deposit but that there was no evidence of damage, need for clean-up, or other reason for withholding the security deposit, and accordingly ruled that the tenant was entitled to the return of the deposit.

(2) As for damages, section 521-44(h)(1), Hawaii Revised Statutes, provides that where a security deposit retention is wrongful and wilful, the court "may" award damages triple the amount of the security deposit improperly retained. Section 521-44(h)(2), Hawaii Revised Statutes, provides that where the retention is wrongful (but not wilful), the court "shall" award damages equal to the amount of the security deposit wrongfully retained.

In the court's opinion, a landlord wrongfully retains a security deposit when none of the statutory grounds for retention exist, when the landlord does not have probable cause to believe that the retention was necessary or appropriate, or when the landlord does not have a separate equal or superior claim to offset the retention. Under the circumstances, the court found that the landlord's retention of the security deposit was wrongful.

As to whether the retention was "wilful" as well, the court cited a tax case which interpreted a wilful act as one done "voluntarily and intentionally and with the specific intent to do something which the law forbids, that is to say with [the] bad purpose either to disobey or disregard the law." (U.S. v. Pomponio, 20 Cr. L. Rptr. 4029 (1976), cited at 77-2 HLR 77-559.) The court found no evidence that the landlord was not acting in good faith, though erroneously, or that the landlord had committed an intentional violation of a known legal duty, and thus the landlord's retention of the

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security deposit was not "wilful" within the meaning of section 521-44(h)(1), Hawaii Revised Statutes. Accordingly, the court denied treble damages.

Conclusion

In conclusion, while each case turns on its facts, the decisions do serve to clarify those sections of the code which have been the subject of litigation. Of the supreme court cases, the Kaiama decision interpreting section 521-63(c) has possibly the greatest impact on the reading of the code. The small claims court cases are instructive with regard to the common problem of security deposit disputes. While it may be burdensome for the small claims court to issue a written decision in every landlord-tenant case, the benefits of such written decisions are evident in their guidance for others in similar situations.

Chapter 4

THE OFFICE OF CONSUMER PROTECTION AND THE LANDLORD-TENANT CODE

The Role of the Office of Consumer Protection

Prior to the enactment of the landlord-tenant code in 1972, the office of consumer protection voluntarily assisted tenants by investigating and mediating their complaints under the old landlord-tenant laws.¹ When the code was enacted in 1972, the office of consumer protection was required to serve as counsel for certain indigent tenants under section 521-76, Hawaii Revised Statutes, which provided as follows:

Office of consumer protection to provide counsel for certain tenants. In any proceeding brought by or for a landlord against a tenant under this chapter, other than actions brought in the small claims court, the court shall inform the tenant of his right to counsel, and if the court determines that the tenant is unable to afford his own counsel and is unable to obtain counsel through a nonprofit organization authorized to provide administrative support to lawyers who provide legal services to indigents, the court may notify the office of consumer protection which shall provide counsel for the tenant in the proceedings.

This role of the office of consumer protection underwent a significant change in 1976. Under Act 77, Session Laws of Hawaii 1976, section 521-76, Hawaii Revised Statutes, was repealed, and section 521-77, Hawaii Revised Statutes, was adopted in its place. Section 521-77 provides as follows:

Investigation and resolution of complaints by the office of consumer protection. The office of consumer protection may receive, investigate and attempt to resolve any dispute arising under this chapter.

There were apparently two catalysts for the change. One was the office of consumer protection itself, and the other was an opinion issued by the disciplinary board of the Hawaii supreme court.

To avoid potential conflicts of interest under section 521-76, Hawaii Revised Statutes, the office of consumer protection, hereinafter "the office", had instituted a policy of providing only general assistance to landlords who requested specific information. Consequently, many complaints were registered against the office by landlords for not receiving specific assistance. Landlords claimed that they were being discriminated against and were being unfairly treated by the office in not obtaining the same services provided to tenants. The office therefore proposed the repeal of section 521-76, Hawaii Revised Statutes, so that it could provide assistance to both landlords and tenants, and furthermore, to be better able to mediate landlord-tenant disputes by not advocating one position over another and thereby being more objective in resolving the complaints.²

In a formal opinion issued in February, 1976, the disciplinary board of the Hawaii supreme court declared that lawyers employed by a state

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government agency who investigate and litigate matters involving members of the public and "who by law are authorized and required to represent certain indigent persons assigned to them by the courts, must not place themselves in any conflict of interest situation by rendering specific legal advice at any time to members of the public although they may provide general information on state laws."³

In its standing committee report recommending the bill which became Act 77, Session Laws of Hawaii 1976, the House Committee on Consumer Protection felt that the office of consumer protection was providing a valuable service to both landlords and tenants in providing information regarding the landlord-tenant code and in attempting to resolve landlord-tenant disputes. The Committee felt that the bill would allow that office to continue to offer such services by repealing the law requiring that office to provide counsel for indigent tenants, thus removing the possible conflict of interest situation caused by the existing law. In repealing that law, the Committee was mindful of the fact that the Legal Aid Society was authorized to represent indigent tenants in landlord-tenant disputes.⁴ The Senate Committee on Consumer Protection felt that the bill conformed with the original intent and purpose of chapter 521, Hawaii Revised Statutes, which was to establish a balance of rights and responsibilities between Hawaii's landlords and tenants.⁵

Thus, the present role of the office of consumer protection in landlord-tenant disputes is one of providing informal mediation, as well as dispensing information. When a complaint is filed by a tenant, a staff member attempts to contact the landlord and have the parties reach a resolution. When the matter cannot be resolved, the tenant is advised to seek a remedy in small claims court. As a matter of policy, written complaints are taken only from tenants as they are considered consumers while landlords are not. However, the office does assist both landlords and tenants with information relating to the landlord-tenant code.⁶ There is no "formal" mediation process such as is utilized at the Neighborhood Justice Center.

Ratio of Landlord-Tenant Complaints to Total Complaints 1981-1986

The following table shows the number of landlord-tenant complaints filed in comparison with the total number of complaints filed with the office of consumer protection from 1981 to the present.

<u>Year</u>	<u>Landlord-Tenant Complaints Filed</u>	<u>Total Complaints Filed</u>
1981	428	2472
1982	459	2347
1983	464	2830
1984	487	3373
1985	450	2989
1986 (to 12/9/86)	318	2975

OFFICE OF CONSUMER PROTECTION AND THE LANDLORD-TENANT CODE

Types of Landlord-Tenant Complaints Received

The office of consumer protection gave the researcher permission to examine its landlord-tenant case files for this study. The researcher randomly drew 261 case files for the period 1981-1985. The following is a summary of the types of complaints tallied. Many complaints alleged more than one category of complaint; therefore, the number of complaints tallied for the nine categories total more than the number of complaints tallied by year. As can readily be seen, problems with security deposits consistently generate the highest number of complaints.

A RANDOM SAMPLING OF LANDLORD-TENANT COMPLAINTS
RECEIVED BY THE OFFICE OF CONSUMER PROTECTION 1981-1985

Year/ No. of Complainants	Security Deposit Refund	Non- Disclosure (absentee landlord)	Access/ Entry	Termination/ Eviction	Maintenance/ Repair	Lockout	Rent Increase	Retention of Property	Other
1981 - 48	30		3	7	10		3	1	8
1982 - 51	23		4	11	13	2	3	1	9
1983 - 56	38		1	4	13		3		7
1984 - 58	38	1	3	6	17		3		11
1985 - 48	29	1	1	7	8	1	1		9
Total: 261	158	2	12	35	61	3	13	2	44

Complaints according to island source

- Oahu - 249
- Maui - 7
- Hawaii - 4
- Kauai - 1

Chapter 5

SUGGESTED AMENDMENTS TO THE LANDLORD-TENANT CODE

This chapter consists of two parts: part A presents suggested amendments to present sections of the code, and part B presents suggested additions to the code. The suggested amendments in part A were, for the most part, brought to the researcher's attention by persons interviewed for this study. The suggested additions in part B based on other states' statutes were found by the researcher in the course of reviewing other states' landlord-tenant laws and are presented for the Legislature's consideration.

A. SUGGESTED AMENDMENTS TO PRESENT SECTIONS OF THE CODE

§521-44 Security deposits.

(b) The landlord may require as a condition of a rental agreement a security deposit to be paid by or for the tenant for the items in subsection (a) above and no others, in an amount not in excess of a sum equal to one month's rent. The landlord may not require or receive from or on behalf of a tenant at the beginning of a rental agreement any money other than the money for the first month's rent and a security deposit as provided in this section. The security deposit shall not be construed as payment of the last month's rent by the tenant. Any such security deposit shall be held by the landlord for the tenant and the claim of the tenant to the security deposit shall be prior to the claim of any creditor of the landlord, including a trustee in bankruptcy, even if the security deposits are commingled.

Amendment: Add a provision permitting the security deposit to be used as the last month's rent by mutual consent, in writing, of the landlord and tenant if the tenant gives sufficient notice, perhaps 45 days, of vacating the premises. The amendment should contain safeguards to protect the landlord from financial loss for accommodating the tenant in this manner; for example, specifically retaining the landlord's rights to sue the tenant for damages for cause when the tenant vacates the premises.

Reason: Currently, the security deposit cannot be construed as payment of the last month's rent by the tenant, and the landlord has up to 14 days in which to return the security deposit to the tenant. The combination of these two provisions can create a hardship for those tenants, particularly low-income tenants, who may not have enough extra money to pay for the security deposit and first month's rent on a new rental place while their security deposit is tied up for 14 days by the previous landlord. This amendment would give the statute the flexibility to permit such an arrangement.

§521-44 Security deposits.

(c) At the termination of a rental agreement in which the landlord required and received a security deposit if the landlord proposes to retain any amount of the security deposit for any of the purposes specified in subsection (a), the landlord shall so notify the tenant, in writing, unless the tenant had wrongfully quit the dwelling unit, together with the particulars of and grounds for the

SUGGESTED AMENDMENTS

retention, including written evidence of the costs of remedying tenant defaults, such as estimates or invoices for material and services or of the costs of cleaning, such as receipts for supplies and equipment or charges for cleaning services. The security deposit, or the portion of the security deposit remaining after the landlord has claimed and retained amounts authorized under this section, if any, shall be returned to the tenant not later than fourteen days after the termination of the rental agreement. If the landlord does not furnish the tenant with the written notice and other information required by this subsection, within fourteen days after the termination of the rental agreement, the landlord shall not be entitled to retain the security deposit or any part of it, and the landlord shall return the entire amount of the security deposit to the tenant.

Amendment: Clarify the 14-day deadline for returning the security deposit and furnishing of the notice of retention of the security deposit.

Reason: Common business practice usually permits the postmarked date on a mailed item to be the equivalent of date of delivery. There has been a reported instance of a judge requiring the security deposit to be in the tenant's hands by the fourteenth day.

Suggested language (to be added after the last sentence of section 521-44(c), patterned after the last sentence of section 521-66): "A return of the security deposit or the furnishing of the written notice and other required information complies with the requirements of this subsection if mailed to the tenant, at an address supplied to the landlord by the tenant, by certified mail, return receipt requested, and postmarked before midnight of the fourteenth day after the date of the termination of the rental agreement."

Amendment: Impose a statute of limitations on the period in which the tenant may bring an action against the landlord on the landlord's complete or partial retention of the security deposit, perhaps 90 or 120 days, or up to six months.

Reason: While unlikely, it is possible that a tenant may wait an unreasonable amount of time before claiming the unjustified retention of the security deposit by the landlord. "The primary purpose of a statute of limitations is to compel the exercise of a right of action within a reasonable time so that the opposing party has a fair opportunity to defend," while the evidence to advance or rebut claims and the memory of witnesses are still fresh.¹

§521-44 Security deposits.

(h) In any action in the small claims division of the district court pursuant to subsection (g) where the court determines that:

- (1) The landlord wrongfully and wilfully retained a security deposit or part of a security deposit, the court may award the tenant damages in an amount equal to three times the amount of the security deposit, or part thereof, wrongfully and wilfully retained and the cost of suit.
- (2) The landlord wrongfully retained a security deposit or part of a security deposit, the court shall award the tenant damages in an amount equal to the amount of the security deposit, or part thereof, wrongfully retained and the cost of suit.

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- (3) The landlord was entitled to retain the security deposit or a part of it, the court shall award the landlord damages in an amount equal to the amount of the security deposit, or part thereof, in dispute and the cost of suit.
- (4) In any such action, neither the landlord nor the tenant may be represented by an attorney, including salaried employees of the landlord or tenant.

Amendment: In paragraphs (2) and (3) amend "shall" in "the court shall award" to "in its discretion may".

Reason: To allow the court discretion in awarding damages and costs. The landlord or tenant may have sincerely believed to have acted in good faith in retaining or claiming a refund of the security deposit, but if the court rules otherwise, the court should not be compelled to award additional damages and costs if that would work an unjust hardship on the losing party.

§521-53 Access.

(b) The landlord shall not abuse this right of access nor use it to harass the tenant. Except in case of emergency or where impracticable to do so, the landlord shall give the tenant at least two days notice of the landlord's intent to enter and shall enter only during reasonable hours.

Amendment: Where a rental unit is for sale, allow the landlord to enter the premises on less than two days' notice, for example on 24 hours' notice or any period permitted by the tenant, strictly for the purpose of showing the premises to a prospective buyer, if agreed upon by the tenant in the rental agreement.

Reason: To allow flexibility.

§521-63 Tenant's remedy of termination at any time; unlawful removal or exclusion.

(a) If any condition within the premises deprives the tenant of a substantial part of the benefit and enjoyment of the tenant's bargain under the rental agreement, the tenant may notify the landlord in writing of the situation and, if the landlord does not remedy the situation within one week, terminate the rental agreement. The notice need not be given when the condition renders the dwelling unit uninhabitable or poses an imminent threat to the health or safety of any occupant. The tenant may not terminate for a condition caused by the want of due care by the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

Amendment: Allow the tenant to continue tenancy at an agreed upon reduced rent as an alternate remedy.

Reason: Because of the tight rental market in Hawaii, the single remedy of termination of tenancy can cause severe hardship on the tenant.

§521-63 Tenant's remedy of termination at any time; unlawful removal of exclusion.

(c) If the landlord removes or excludes the tenant from the premises overnight without cause or without court order so authorizing, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to two

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months rent or free occupancy for two months, and the cost of suit, including reasonable attorney's fees. If the rental agreement is terminated, the landlord shall comply with section 521-44(c). The court may also order any injunctive or other equitable relief it deems proper. If the court determines that the removal or exclusion by the landlord was with cause or was authorized by court order, the court may award the landlord the cost of suit, including reasonable attorney's fees if the attorney is not a salaried employee of the landlord or the landlord's assignee.

Amendment: Delete "overnight" in the first sentence.

Reason: The requirement that a tenant be locked out overnight before a remedy under this section can be available creates unnecessary hardship. Generally, if a landlord goes to the extent of locking out a tenant, the landlord's intention is clear without the tenant having to be deprived of shelter overnight.

Amendment: Define "cause" in the first sentence.

Reason: Landlords have interpreted "cause" to include nonpayment of rent. There have been cases in which the tenant has been locked out without court order or due process when the rent has been one day overdue. Nonpayment of rent should not be included within the meaning of the term "cause" because there are specific remedies for the nonpayment of rent under section 521-68. "Cause", in this context, should only include extreme emergency situations justifying the deprivation of due process and which are not remedied by any other section in the code.

Amendment: In the second half of the first sentence, insert "shall" before "recover" so that the phrase reads: "...in either case, shall recover an amount...".

Reason: The Hawaii supreme court has ruled that the remedies provided for in the statute are not discretionary but mandatory. See the case of Kaiama v. Aguilar in chapter 3, part A.

Amendment: Include utility shut-off or diminishment as equivalent to termination.

Reason: Utility shut-off or diminishment deprives a tenant of the use of the premises as much as a lockout but is not specifically prohibited in the code.

See discussion of utility shut-off provisions under part B.

§521-64 Tenant's remedy of repair and deduction for minor defects.

(a) The landlord, upon written notification by the department of health or other state or county agencies that there exists a condition on the premises which constitutes a health or safety violation, shall commence repairs of the condition within five business days of the notification with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence the repairs within five business days for reasons beyond the landlord's control the landlord shall inform the tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence. Health or safety violations for the purpose of this section means any condition on the premises which is in noncompliance with section 521-42(a)(1).

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(b) If the landlord fails to perform in the manner specified in subsection (a), the tenant may:

- (1) Immediately do or have done the necessary repairs in a workmanlike manner, and upon submission to the landlord of receipts amounting to at least the sum deducted, deduct from the tenant's rent not more than \$300 for the tenant's actual expenditures for work done to correct the health or safety violation; or
- (2) Submit to the landlord, at least five business days before having the work done, written signed estimates from each of two qualified workmen and proceed to have done the necessary work by the workman who provides the lower estimate; provided that the landlord may require in writing a reasonable substitute workman or substitute materials, and upon submission to the landlord of receipts amounting to at least the sum deducted, the tenant may deduct \$300 or one month's rent, whichever is greater, for the tenant's actual expenditures for work done to correct the health or safety violation.

(c) The landlord, upon written notification by the tenant of any defective condition on the premises which is in material noncompliance with section 521-42(a) or with the rental agreement, shall commence repairs of the condition within twelve business days of the notification with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence repairs within twelve business days for reasons beyond the landlord's control the landlord shall inform the tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence. In any case involving repairs, except those required due to misuse by the tenant, to electrical, plumbing, or other facilities, including major appliances provided by the landlord pursuant to the rental agreement, necessary to provide sanitary and habitable living conditions, the landlord shall commence repairs within three business days of receiving oral or written notification, with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence repairs within three business days for reasons beyond the landlord's control the landlord shall inform the tenant of the reasons for the delay and set a reasonable tentative date on which repairs will commence.

(d) If the landlord fails to perform in the manner specified in subsection (c), the tenant may immediately do or have done the necessary work in a workmanlike manner and upon submission to the landlord of receipts amounting to at least the sums deducted, deduct from the tenant's rent not more than \$300 for the tenant's actual expenditures for work done to correct the defective condition.

(e) At the time the tenant initially notifies the landlord under subsection (c), the tenant shall list every condition that the tenant knows or should know of noncompliance under subsection (c), in addition to the objectionable condition that the tenant then intends to correct or have corrected at the landlord's expense. Failure by a tenant to list such a condition that the tenant knew of or should have known of shall estop the tenant from requiring the landlord to correct it and from having it corrected at the landlord's expense under this section for a period of six months

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after the initial notification to the landlord. Total correction and repair work costs under this section chargeable to the landlord's expense during each six-month period shall not exceed an amount equal to three months' rent.

(f) In no event may a tenant repair a dwelling unit 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 other person on the premises with the tenant's consent.

(g) Before correcting a condition affecting facilities shared by more than one dwelling unit, the tenant shall notify all other tenants sharing such facilities of the tenant's plans, and shall so arrange the work as to create the least practicable inconvenience to the other tenants.

Amendment: Review, for consistency, the time limits for correction of the various violations.

Reason: Subsections (a) and (c) contain time limits for the landlord to commence repairs, and subsection (b) requires a minimum interval for the tenant to submit written estimates to the landlord prior to the tenant commencing repairs, as follows:

<u>Subsec.</u>	<u>Situation</u>	<u>No. of Days</u>
(a)	Notification from a state or county agency re noncompliance with 521-42(a)(1)	5
(b)(2)	Landlord's failure to comply with 521-64(a)	5
(c)	Notification from a tenant re noncompliance with 521-42(a) or the rental agreement	12
(c)	Repairs to facilities necessary for sanitary and habitable living conditions	3

Section 521-42(a)(1) to (6) provides as follows:

§521-42 Landlord to supply and maintain fit premises.

- (a) The landlord shall at all times during the tenancy:
- (1) Comply with all applicable provisions of any state or county law, code, ordinance, or regulation, noncompliance with which would have the effect of endangering health or safety, governing maintenance, construction, use, or appearance of the dwelling unit and the premises of which it is a part;
 - (2) Keep common areas of a multi-dwelling unit premises in a clean and safe condition;
 - (3) Make all repairs and arrangements necessary to put and keep the premises in a habitable condition;
 - (4) Maintain all electrical, plumbing, and other facilities and appliances supplied by the landlord in good working order and condition, subject to reasonable wear and tear;
 - (5) Except in the case of a single family residence, provide and maintain appropriate receptacles and conveniences for the removal of normal amounts of rubbish and garbage, and

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arrange for the frequent removal of such waste materials;
and

- (6) Except in the case of a single family residence, or where the building is not required by law to be equipped for the purpose, provide for the supplying of running water as reasonably required by the tenant.

The consequences of violating any of the above conditions will vary in severity as to health and safety. It does not seem logical to apply the same 12-day limitation for correcting all such violations.

Under section 521-64(a) the landlord is given 5 days after notification by a state or county agency to commence repairs of any condition in noncompliance with section 521-42(a)(1). Assuming that the agency was apprised of the noncompliance by a tenant, it may be argued that by the time the agency notifies the landlord, the time interval would approximate the 12 days after the tenant's notification to the landlord (assuming the tenant notified the agency and the landlord at the same time). However, 12 days does seem an inordinate amount of time to commence correcting a noncomplying condition relating to health and safety. On the other hand, it may be argued that a brief 3-day period applies to "electrical, plumbing, or other facilities", the most likely sources of hazardous conditions, and therefore, that the most urgent repairs should commence in 3 days. In any event, the correlation between sections 521-42(a) and 521-64 should be examined.

In section 521-42(a)(1), the element of "appearance" seems incongruous in the context of health and safety. The Uniform Residential Landlord and Tenant Act, in the equivalent subsection (section 2.104(a)(1)), concisely focuses on the issue of health and safety by stating simply:

- (a) A landlord shall:
(1) comply with the requirements of applicable building and housing codes materially affecting health and safety;

Perhaps such language would better serve the purpose of the statute.

Amendment: Delete the \$300 ceiling in (b)(1) and (d) and the language "\$300 or one month's rent, whichever is greater" in (b)(2) and allow the tenant to deduct up to a maximum of one month's rent for repairs under the statute.

Reason: Deleting the maximum \$300 will more realistically reflect current costs. Amending the language in (b)(2) will give access to more money to devote to repairs since one month's rent will usually be greater, possibly considerably greater, than \$300.

§521-71 Termination of tenancy; landlord's remedies for holdover tenants.

- (a) When the tenancy is month to month, the landlord or the tenant may terminate the rental agreement upon the landlord's or the tenant's notifying the other at least twenty-eight days in advance of the anticipated termination. Before a landlord terminates a month-to-month tenancy where the landlord contemplates voluntary demolition of the dwelling units, or conversion to horizontal property regime under chapter 514A, the landlord shall provide notice to the tenant at least one hundred twenty days in advance of

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the anticipated demolition or anticipated termination, and shall comply with the provisions relating to conversions provided in section 514A-105. If notice is revoked or amended and reissued, the one hundred twenty-day period shall begin from the date it was reissued or amended.

Amendment: Require that notifications of termination of tenancy be in writing.

Reason: In practice, many landlords already give tenants such notifications in writing, and courts prefer such writing. Codifying the requirement will make the practice uniform and protect both landlords and tenants. Furthermore, other important notices within the code are required to be in writing.

§521-73 Landlord's and tenant's remedies for abuse of access.

(a) The tenant shall be liable to the landlord for any damage proximately caused by the tenant's unreasonable refusal to allow access as provided in section 521-53(a).

Amendment: Amend the provision to allow the landlord alternative remedies to damages.

Reason: See the case of Century 21, Beachcomber Realty, Inc., and Cobblestone Properties, Inc. v. Ludwig Michely, in Appendix D.

Suggested language:² "If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney's fees."

§521-78 Rent trust fund.

(a) At the request of either the tenant or the landlord in any court proceeding in which the payment or nonpayment of rent is in dispute, the court shall order the tenant to deposit any disputed rent as it becomes due into the court as provided under subsection (c), and in the case of a proceeding in which a rent increase is in issue, the amount of the rent prior to the increase; provided that the tenant shall not be required to deposit any rent where the tenant can show to the court's satisfaction that the rent has already been paid to the landlord; provided further that if the parties had executed a signed, written instrument agreeing that the rent could be withheld or deducted, the court shall not require the tenant to deposit rent into the fund. No deposit of rent into the fund ordered under this section shall affect the tenant's rights to assert either that payment of rent was made or that any grounds for nonpayment of rent exist under this chapter.

(b) If the tenant is unable to comply with the court's order under subsection (a) in paying the required amount of rent into the court, the landlord shall have judgment for possession and execution shall issue accordingly. The writ of possession shall issue to the sheriff or to a police officer of the circuit where the premises are situated, commanding the sheriff or police officer to remove all persons from the premises, and to put the landlord, or the landlord's agent, into the full possession thereof.

Amendment: Require a hearing for the tenant to show cause why the writ of possession should not be issued.

Reason: Subsection (b) gives the landlord an automatic judgment for possession if the tenant is unable to deposit disputed rent into the court. The section should be amended so as not to deprive the tenant of property without due process.

B. SUGGESTED ADDITIONS TO THE CODE

Utility Shut-off

The Uniform Residential Landlord and Tenant Act (Uniform Act) contains three sections with specific reference to the provision of utilities, in addition to the section equivalent to section 521-42, "Landlord to supply and maintain fit premises." The addition of any or all of the following sections should be considered. In adapting the language for Hawaii "heat", of course, would be omitted.

The language in section 4.107 relating to diminishment of services may be included in section 621-63(c). It may be argued that the opening language in section 521-63(a) ("If any condition within the premises deprives the tenant of a substantial part of the benefit and enjoyment of the tenant's bargain under the rental agreement,...") would cover utility shut-off or diminishment of services, but the language contained in the following sections serves the salutary purpose of specificity.

It should be noted that the following sections apparently were not considered by the Legislature in enacting the landlord-tenant code in 1972.³ Hawaii's Landlord-Tenant Code was approved on May 30, 1972. The Uniform Act was approved by the National Conference of Commissioners on Uniform State Laws in August, 1972.

§4.104. Wrongful Failure to Supply Heat, Water, Hot Water, or Essential Services

If contrary to the rental agreement or Section 2.104⁴ the landlord wilfully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential service, the tenant may give written notice to the landlord specifying the breach and may

- (1) procure reasonable amounts of heat, hot water, running water, electric, gas, and other essential service during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent; or
- (2) recover damages based upon the diminution in the fair rental value of the dwelling unit; or
- (3) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

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

(c) If the tenant proceeds under this section, he may not proceed under Section 4.101⁵ or Section 4.103⁶ as to that breach.

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

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

§4.107. Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion, or Diminution of Service

If a landlord unlawfully removes or excludes the tenant from the premises or wilfully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric, gas, or other essential service, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than [3] months' periodic rent or [threefold] the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated the landlord shall return all security recoverable under Section 2.101⁷ and all prepaid rent.

§4.207. Recovery of Possession Limited

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

Chapter 6

THE REGULATION OF SECURITY DEPOSITS BY OTHER STATES

Bills have regularly been introduced in the Legislature requiring landlords to pay interest on tenants' security deposits.¹ None of the bills have been successful.

Testimony presented in 1985 against one such bill² typifies the objections that have been raised against such a measure. The statements, from landlord advocates,³ focused on the landlord's or rental agent's increased administrative costs for the following: the additional accounting and periodic review of separate interest-bearing accounts, opening and closing each account at the commencement and termination of each tenancy, preparing and filing the appropriate federal and state tax information, and complying with the requirements of financial institutions regarding minimum balances, early withdrawals, and maximum number of free checks issued (when deductions are made from the deposit). Questions were raised as to the treatment of security deposit interest in such situations as when a unit is rented to two or more unrelated persons, and when a security deposit dispute is taken to small claims court and the landlord is credited with a portion of the deposit. One testifier noted that whether disputed or not, if the landlord retains any portion of the deposit, the landlord will then be required to file at least two informational tax returns to reflect the pro-rata interest between the tenant, the landlord, vendors, and anyone else who received a portion of the deposit.⁴

Another testifier estimated that the increased administrative duties entailed would cost the landlord about \$25 a month for each account or about \$300 a year, and this increase would be passed on to the tenant in terms of higher rents. If a tenant had a security deposit of \$1,000, interest would accrue to about \$52 in one year. Thus, requiring interest on security deposits is "not economically beneficial to the tenant, burdensome to the landlord, and would have the economic consequence of raising rents".⁵

The office of consumer protection testified in support of the bill, noting however that the bill could be viewed as inequitable to those landlords who own one or very few rental units.⁶

Because the subject of interest on security deposits is one that is likely to be raised again in the Legislature, it would be helpful to examine the subject as it is dealt with by the other states.

The statutes of each state were searched for provisions relating to the regulation of security deposits as to the payment of interest or establishment of separate accounts. Thirteen states require the payment of interest on security deposits. Three states make such interest payment optional. Ten states do not require the payment of interest but require that security deposit moneys be placed in separate accounts. A summary of the most relevant provisions relating to interest on or accounting of security deposits follows. The numbers after the state names refer to statutory sections. The complete texts of the provisions are contained in Appendix F.

REGULATION OF SECURITY DEPOSITS

A. STATES WHICH REQUIRE INTEREST ON SECURITY DEPOSITS

1. CONNECTICUT [47a-21(h)(1),(2),(4); (i)] - The landlord must place the security deposit into an escrow account and pay interest at an annual rate of not less than 5.25 per cent. Accrued interest is paid annually or credited toward the next rental payment.

2. ILLINOIS [80-121, 122] - A landlord of 25 or more units must pay interest on each security deposit annually by cash or credit to be applied to rent due at an annual rate of 5 per cent on any deposit held for more than 6 months.

3. MARYLAND [8-203(e),(f)] - The landlord must maintain all security deposits in a separate interest bearing account. Simple interest to accrue every 6 months at an annual rate of 4 per cent on all deposits of \$50 or more.

4. MASSACHUSETTS [186:15B(3)] The landlord must place the security deposit in a separate interest bearing account. If a security deposit is held for one year or longer, the landlord must pay interest, beginning with the first day of the tenancy, at an annual rate of 5 per cent, payable to the tenant at the end of each year of the tenancy.

5. MINNESOTA [504.20, subd. 2] - The landlord must pay simple interest on the security deposit at an annual rate of 5.5 per cent.

6. NEW HAMPSHIRE [540-A:6-I,II,IV] - The landlord must place the security deposit in a separate account or post a bond. The landlord may mingle security deposits in a single account. A landlord who holds a security deposit for one year or longer must pay interest at a rate of 5 per cent or the interest rate paid on regular savings accounts in the financial institution in which the deposit is placed, whichever is larger, from the date the landlord receives the deposit.

7. NEW JERSEY [46:8-19] - A landlord of 10 or more units must: (1) invest security deposit money in shares of insured money market funds based and registered in New Jersey whose investments are instruments maturing in one year or less, or (2) place the money in a financial institution in accounts bearing a variable rate of interest, established at least quarterly which is similar to the average rate of interest on active interest bearing money market transaction accounts paid by the institution under 12 C.F.R. Part 1204.108,⁷ or equal to similar accounts of an investment company described in (1), less an amount not to exceed one per cent a year of the amount so invested or deposited for the costs of servicing and processing the accounts. The Commissioner of Banking may apply these provisions to landlords of less than 10 rental units where it is practicable to so require.

Landlords not covered by the foregoing requirements must place security deposits in an interest bearing account. All security deposits of a landlord may be placed in one interest bearing or dividend yielding account. The landlord is entitled to receive as administration expenses one per cent a year on the deposit or 12.5 per cent of the aggregate interest yield, whichever is greater, less any service fee charged by the financial institution. The

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balance belongs to the tenant and may be paid to the tenant in cash, be credited towards rent, or be permitted to compound to the tenant's benefit.

8. NEW MEXICO [47-8-18(A)] - Under the terms of an annual rental agreement, if the tenant pays a security deposit in excess of one month's rent, the landlord must pay annually to the tenant an interest equal to the passbook interest permitted to savings and loan associations in New Mexico by the federal home loan bank board.

9. NEW YORK [Gen. Oblig. 7-103(1),(2)] - The security deposit must be held in trust by the landlord and not be commingled with the landlord's personal funds. A landlord of property containing 6 or more family dwelling units must place the security deposits in an interest bearing account earning interest at the prevailing rate. The landlord of a building with fewer than 6 units may voluntarily deposit the security deposits in an interest bearing account. Landlords who deposit security deposits in interest bearing accounts are entitled to receive, as administration expenses, one per cent a year on the money so deposited. The balance of the interest belongs to the tenant and shall either be paid annually to the tenant, applied to rent, or held in trust by the landlord until repaid at the end of the lease term.

10. NORTH DAKOTA [47-16-07.1(1),(2)] - The landlord must place the security deposit in a separate interest bearing account, the deposit and interest to be paid to the tenant upon termination of the lease. The landlord is not required to pay interest on security deposits if the period of occupancy was less than 9 months.

11. OHIO [5321.16(A)] - Any security deposit in excess of \$50 or one month's rent, whichever is greater, shall bear interest on the excess at the rate of 5 per cent a year if the tenancy is for 6 months or more, and shall be computed and paid annually by the landlord to the tenant.

12. RHODE ISLAND [34-18-18(a)(1),(4),(8)] - The landlord must place the security deposits in a separate savings account. On any tenancy of more than 6 months, the security deposit must accumulate interest at an annual rate of 5 per cent, and the interest must be paid to the tenant annually or upon termination of the rental.

Effective 1-1-87 [34-18-19] - No interest requirement.

13. VIRGINIA [55-248.11(b)] - The landlord must accrue interest in 6-month increments at an annual rate of 5 per cent on all property or money held as security, such interest to be paid upon termination of the tenancy. No interest is required unless the security has been held by the landlord for a period exceeding 13 months after the date of the rental agreement for continuous occupancy of the same dwelling unit.

B. STATES IN WHICH THE PAYMENT OF INTEREST ON SECURITY DEPOSITS IS OPTIONAL

1. FLORIDA [83.49(1),(2),(9)] - A landlord who rents 5 or more units must do one of three things with the security deposit: (1) hold the money in a separate non-interest-bearing account in a Florida banking institution; (2)

REGULATION OF SECURITY DEPOSITS

hold the money in a separate interest-bearing account in a Florida banking institution with the tenant receiving at least 75 per cent of the annualized average interest rate payable on such account or simple interest at an annual rate of 5 per cent, whichever the landlord elects; or (3) post a surety bond and pay the tenant simple annual interest of 5 per cent. In those cases where interest is required to be paid, the landlord must pay the interest due at least once annually directly to the tenant or credit against the current month's rent.

2. IOWA [562A.12(2)] - The landlord must place all security deposits in a financial institution. All deposits may be held in a common trust account which may be an interest bearing account. Any interest earned during the first 5 years of a tenancy is the property of the landlord.

3. PENNSYLVANIA [511.1, 511.2, 511.3] - The landlord must place any security deposit over \$100 in an escrow account, interest bearing or non-interest bearing. If the landlord requires a security deposit during the third or subsequent year of a tenancy, such deposit must be placed in an interest bearing escrow account and the landlord is entitled to receive as administrative expenses one per cent a year on the money so deposited. The balance of the interest must be paid to the tenant annually. In lieu of depositing escrow funds, the landlord may secure a bond.

C. STATES WHICH DO NOT REQUIRE INTEREST BUT REQUIRE THE ESTABLISHMENT OF SEPARATE ACCOUNTS FOR SECURITY DEPOSITS

1. ALASKA [34.03.070(c)] - The landlord must place the security deposit, wherever practicable, in a trust account or licensed escrow agent.

2. DELAWARE [5511(b)] - The landlord must place the security deposit in an escrow bank account.

3. GEORGIA [44-7-31, 32(a)] - The landlord must place the security deposit in an escrow account. As an alternative, the landlord may post a surety bond.

4. KENTUCKY [383.580(1)] - The landlord must place all security deposits in a separate account.

5. MAINE [6037(2), 6038] - The landlord must place all security deposits in separate accounts or a single escrow account. The law does not apply to owner-occupied buildings of 5 or fewer units.

6. MICHIGAN [554.604] - The landlord must place the security deposit in a financial institution. The deposit may be used for any purpose if the landlord posts a bond.

7. NORTH CAROLINA [42-50] - The landlord must place the security deposit in a trust account or furnish a bond from an insurance company.

8. OKLAHOMA [115(A)] - The landlord must place the security deposit in an escrow account.

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9. TENNESSEE [66-28-301(a)] - The landlord must place all security deposits in a separate account.

10. WASHINGTON [59.18.270] - The landlord must place all security deposits in a trust account in a financial institution or licensed escrow agent. Unless otherwise agreed in writing, the landlord is entitled to receive the interest paid on such deposits.

Chapter 7

A LANDLORD-TENANT MEDIATION PROGRAM: A PROPOSAL

The general opinion voiced by persons interviewed by the researcher for this study was that the landlord-tenant code is basically an effective, workable law, and that no significant changes are called for. An equally universal opinion was that problems in the landlord-tenant area arise in the court system. Complaints focused on the inconsistency among judges in applying the code and perceptions of apparent capriciousness in judicial rulings. For landlords, the time lag involved in evicting a tenant is frustrating and costly.

In other areas of the law, there has been a growing awareness that alternatives other than litigation should be explored. Recent examples in Hawaii include: Act 107, Session Laws of Hawaii 1984, (codified as sections 121 through 127, Hawaii Revised Statutes), mandating that internal disputes involving condominiums be settled by arbitration; the establishment of the judiciary's program on alternative dispute resolution, and that program's promulgation of Hawaii arbitration rules to govern the court annexed arbitration program in the first circuit court; Act 2, First Special Session Laws of Hawaii 1986, section 21, establishing a court annexed arbitration program for civil actions in tort with a probable jury award value of \$150,000 or less; and a proposal by the Hawaii State Bar Association for mandatory mediation in divorce cases.

In a preliminary draft of this study, the Bureau proposed that a program for alternative dispute resolution--specifically mediation--in residential landlord-tenant cases be instituted on a trial basis. The program would be limited to those cases which fall within the jurisdiction of the small claims court. The Bureau believes that the monetary value of such cases--and the interpersonal relationship that generally exists between a residential landlord and tenant--make such cases appropriate for mediation.

Mediation, briefly, is a process in which an impartial third party, trained in dispute resolution skills, assists the disputants in voluntarily reaching an agreement outlining steps to resolve the dispute. The mediator has no authority to force the parties to come to an agreement, and if and when an agreement is reached, the parties themselves will have formulated the agreement. Mediation incorporates a contractual resolution to a dispute.

Mediation services are often offered through non-profit community organization at no cost to disputants. The goals of mediation in a typical neighborhood dispute center include the following: (1) relieving overcrowded court dockets of cases that could better be handled by alternative dispute resolution techniques, thereby increasing satisfaction of potential litigants with the dispute resolution process, and improving respect for the legal system in general; (2) reducing costs to potential litigants by permitting disputes to be resolved more quickly and flexibly than through formal litigation; (3) providing participants the opportunity to control and affect their own settlements, which is more likely to result in compliance with settlement terms and may encourage the incorporation of conflict resolution techniques into their future interactions.¹

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A first-hand view of the appropriateness of mediation in landlord-tenant cases was given in the following observations made by the executive director of Mediation Services of Maui, Inc.:²

- (1) We find that many of the landlord-tenant type cases emanate in situations where the landlord is not fully aware of the provisions of the landlord-tenant code. There have been instances in which they have not even been aware of the existence of such a code.
- (2) Problems seem to arise with greater frequency in cases where the rental unit is a cottage on the landlord's premises, a room in his/her home, or the only rental unit the landlord owns. Also prevalent are disputes between a tenant and a subtenant. There seems to be greater likelihood of actions which are considered arbitrary being taken by the landlord in these situations.
- (3) Understandably, there is a higher preponderance of landlords refusing to participate in mediation because they feel there is "nothing to mediate", or "they know they are right", or "I would prefer that the tenant take me to court."

We find, however, that some of our reality testing reveals that if the landlord knows that the tenant is seriously considering court action, he/she is more inclined to consider mediation.

- (4) While the tenants are usually the initiators of requests for mediation, they seem to be less inclined to take the matter to court for a variety of reasons:
 - (A) A basic inclination not to want to get involved in exercising this option.
 - (B) Fear of retaliatory action by the landlord primarily in the form of eviction.
 - (C) A sense of power imbalance between the landlord and tenant.
 - (D) Uncertainty about the outcome and/or the step-by-step procedures to effectuate a satisfactory outcome.
 - (E) The stakes involved are not great enough to take such action.
- (5) The primary focus of these types of cases is in the resolution of the substantive issue. Attention is given to the "relationship" aspect of the problem. However, while the participants feel free about verbalizing their desire for improved relationships, the bottom line is the substantive issue whether it be the rental, deposit, or repairs.
- (6) Concern is expressed periodically about the enforcement of the provisions of the code. Some of the clients seem to feel the

LANDLORD-TENANT MEDIATION PROGRAM

need for provisions which are designed to enforce the code other than through court action.

Among the recommendations in the Bureau's proposal was that a landlord-tenant mediation program be funded by the pooled interest generated on security deposits, in a manner similar to the Interest on Lawyers' Trust Accounts (IOLTA) program whose funds are used for public charitable and educational purposes. Each landlord would be required to place all security deposits, whether of one or multiple tenancies, in an interest-bearing account and to report and transfer the interest to the program annually. Funds would be disbursed to the nonprofit mediation centers in each county in proportion to their present landlord-tenant caseloads and reviewed annually. This part of the proposal would be contingent upon obtaining tax exemption of such interest as is the interest in IOLTA.

It was also suggested that the non-profit mediation centers on Oahu, the Big Island, Maui, and Kauai, already established and experienced in the mediation of disputes including landlord-tenant cases, be the designated mediators in the proposed landlord-tenant mediation program.

However, when the preliminary draft of the mediation proposal was circulated among those whose input had been sought in the preparation of this study, responses ranged from the opinion that a landlord-tenant mediation program was unnecessary to the opinion that the Bureau's proposal was premature in its specifics and warranted further study.

In discussions with this researcher, Peter Adler, the director of the judiciary's program on alternative dispute resolution, strongly recommended that the Legislature establish a commission to undertake a two- to three-year study on the advisability and feasibility of a landlord-tenant mediation program. The Bureau agrees that more data and controlled experiments over time are necessary to make a valid determination to recommend, or not to recommend, the establishment of a landlord-tenant mediation program. In keeping with the proposed study's experimental nature, the Legislature or commission should ensure that input is received from the broadest range of affected parties, including landlords, tenants, property managing agents, the judiciary, the mediation centers, and, if funding by security deposit interest is contemplated along the lines of IOLTA, the financial institutions who would be handling such accounts.

Chapter 8

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Findings

1. As of July 1, 1985, the U.S. Bureau of the Census estimated the gross resident vacancy rate for all housing in Hawaii (owner-occupied and rental units) to be an exceptionally low 3.7 per cent. Between 1980 and 1985, the increase in such housing units has lagged behind both population growth and household formation.

2. Rental units comprise almost 60 per cent of all housing units in Hawaii. Seventy-three per cent of the State's housing units and 58 per cent of the State's rental units are on Oahu. Average rental rates on Oahu in mid-1986 ranged from \$806 to \$1,291 for a single-family home, and from \$682 to \$913 for a two-bedroom apartment.

3. There is no central clearinghouse for information on the rental market in Hawaii. However, real estate professionals observe a situation of rising rents and a tightening of the rental market, particularly for tenants seeking housing at lower rents. In such a climate, it would seem that landlords are more likely to have the upper hand in the landlord-tenant relationship.

4. Hawaii supreme court cases relating to the landlord-tenant code have not resulted in any landmark decisions. The most significant ruling may be the clarification that wrongful eviction results in mandatory, not discretionary, remedies for the tenant.

5. A recent ruling in the district court that a landlord's only remedy for a tenant's unreasonable refusal to allow access is damages, calls for a legislative review of section 521-73(a), Hawaii Revised Statutes, to consider other remedies such as injunctive relief to compel access or termination of the rental agreement.

6. The statutory role of the office of consumer protection changed, in 1976, from one of providing counsel for certain indigent tenants to a more neutral role of receiving, investigating, and attempting to resolve disputes arising under the code. As of December 9, 1986, out of 2,975 complaints filed with the office in 1986, 318 concerned landlord-tenant matters. Out of a random sampling of 261 landlord-tenant cases filed during the period 1981-1985, 158 involved security deposit disputes.

7. Legislation to require landlords to pay interest on security deposits in Hawaii is regularly introduced. The primary objection to such a law by landlords is that the increased administrative costs would require raising rents in excess of whatever interest a tenant may receive. A survey of other states' laws on this subject shows the following: thirteen states require the payment of interest on security deposits, and three states make such interest payment optional. Ten states do not require the payment of interest but require that security deposit moneys be placed in separate accounts or that the landlord must post a bond.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

8. The general opinion voiced by those interviewed for this study was that the landlord-tenant code is basically an effective, workable law and that no significant changes are called for. An equally universal opinion was that problems in the landlord-tenant area arise with the court system. There is a growing awareness that alternatives other than litigation should be explored. In Hawaii, with respect to tort, divorce, and condominium laws, there have been established several mediation and arbitration programs to handle such cases.

Recommendations

Two areas of recommendations have been presented in this study--(1) amendments to the landlord-tenant code, and (2) a proposal for further study relating to a pilot mediation program. These subjects do not lend themselves to capsulization. The suggested amendments to the code require a close reading of both the present law and the proposed changes as presented in chapter 5, and an understanding of the mediation proposal requires the information as set forth in chapter 7. The reader is therefore referred to those chapters for the study's recommendations.

FOOTNOTES

Chapter 1

1. Section 633-27(a) reads in its entirety:

"All district courts, except as otherwise provided, shall exercise jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction, shall be known and referred to as the small claims division of the district court; provided that the jurisdiction of the court when sitting as a small claims division of the district court shall be confined to:

(1) Cases for the recovery of money only where the amount claimed does not exceed \$2,500 exclusive of interest and costs, except as provided by section 633-30;

(2) Cases involving disagreement between landlord and tenant about the security deposit in a residential landlord-tenant relationship; and

(3) Cases for the return of leased or rented personal property worth \$1,500 or less where the amount claimed owed for such lease or rental does not exceed \$2,500 exclusive of interest and costs.

This chapter shall not abridge or affect the jurisdiction of the district courts under paragraphs (1) and (3) to determine cases under the ordinary procedures of the court, it being optional with the parties to such cases to elect the procedure of the small claims division of the district court or the ordinary procedures, as provided by rule of court. In cases arising under paragraph (2) the jurisdiction of the small claims division of the district court shall be exclusive."

2. Section 633-27(c) reads in its entirety:

"The small claims division of the district court may grant monetary relief and equitable relief except that:

(1) Monetary relief shall not include punitive damages; and

(2) Except as specifically provided in section 633-8, equitable relief shall be granted only as between parties to a landlord-tenant disagreement pursuant to chapter 521, and shall be limited to orders to repair, replace, refund, reform, and rescind."

3. Section 633-28(b) reads in its entirety:

"Notwithstanding any provision of law requiring the licensing of practitioners, any person may, with the approval of the court, appear on behalf of oneself or another in the small claims division of the district court; provided in cases involving disagreement between landlord and tenant about the security deposit in a residential landlord-tenant relationship, licensed practitioners are prohibited to appear on behalf of another person. The services of an

unlicensed person appearing under this subsection shall be without compensation, either by way of direct fee, contingent fee, or otherwise. In the event the services are rendered for compensation this subsection is inapplicable and the rendering of the services constitutes the unlawful practice of law, except as otherwise provided."

4. Section 515-3, Hawaii Revised Statutes, provides as follows:

"It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesman, because of race, sex, color, religion, marital status, parental status, ancestry, or a physical handicap:

(1) To refuse to engage in a real estate transaction with a person;

(2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

(3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

(4) To refuse to negotiate for a real estate transaction with a person;

(5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to the person's attention, or to refuse to permit the person to inspect real property;

(6) To print, circulate, post, or mail, or cause to be so published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto; or

(7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith; provided that it shall not be a discriminatory practice under this section to exclude a person based on parental status, or to so advertise or otherwise state, from a real estate transaction or housing accommodation developed specifically for the elderly. For the purposes of this section an elderly person is a person who is sixty-two years of age or older. Nothing in this section shall affect covenants, bylaws, or administrative provisions established in accordance with

chapter 514A or established under organizational documents and proprietary leases for housing cooperatives, placing restrictions based upon parental status, existing prior to April 19, 1984."

Chapter 2

1. Sunday Star Bulletin & Advertiser, October 5, 1986, p. F-1.
2. Ibid.
3. Ibid., p. D-4.
4. Ibid.
5. Monica R. Lett, Rent Control: Concepts, Realities, and Mechanisms (New Brunswick, N.J.: Rutgers University, The Center for Urban Policy Research, 1976), p. 39.
6. Telephone conversation with Karen Yamashita, Research and Economic Analysis Division, Department of Planning and Economic Development, Sept. 10, 1986.
3. Disciplinary Board of the Hawaii Supreme Court, Formal Op. 76-2-6 (1976).
4. House Standing Committee Report No. 726-76 on Senate Bill No. 1784-76, S.D. 2, H.D. 1, Eighth Legislature, 1976, State of Hawaii.
5. Senate Standing Committee Report No. 160-76 on Senate Bill No. 1784-76, S.D. 1, Eighth Legislature, 1976, State of Hawaii.
6. Telephone interview with Mark Nomura, Director, Office of Consumer Protection, September 22, 1986.

Chapter 5

1. 51 Am. Jur. 2d Limitations §17 (1970).
 2. From the Uniform Residential Landlord and Tenant Act (4.302); similar statutory language is found in Arizona (33-1376(A)); Kansas (58-2571); Montana (70-24-424); Nebraska (76-1438(1)); Nevada (118A.500); Oregon (91.860); Virginia (55-248.38).
 3. Senate Bill 1502, Sixth Legislature, 1972, State of Hawaii; Patricia K. Putman, The Law of Landlord and Tenant in Hawaii; A Proposed Residential Landlord-Tenant Code, University of Hawaii, Legislative Reference Bureau (Honolulu: 1971).
 4. Landlord to Maintain Premises. See Appendix E, item 1, for full text.
 5. Noncompliance by the Landlord--In General. See Appendix E, item 2, for full text.
 6. Self-Help for Minor Defects. See Appendix E, item 3, for full text.
 7. Security Deposits; Prepaid Rent. See Appendix E, item 4, for full text.
- ## Chapter 3
1. The decisions were written by Judge Bertram M. Kanbara who was designated to hear landlord-tenant and small claims cases pursuant to section 604-1, Hawaii Revised Statutes, which states in pertinent part:

The district court of the first circuit shall consist of fourteen judges,....One of the district judges shall hear landlord-tenant and small claims matters, provided that when in the discretion of the chief justice of the supreme court the urgency or volume of cases so requires, he may authorize the judge to substitute for or act in addition to or otherwise in place of any other district judge of the district court of the first circuit.

Chapter 6

- Since Judge Kanbara's tenure, there has not been a specially designated judge to hear landlord-tenant and small claims matters. Any district court judge, whether regular or per diem, may be assigned to hear such cases. (Interview with Judge Richard M.C. Lum, Administrative Judge, District Court of the First Circuit, July 24, 1986.)
- ## Chapter 4
1. Senate Standing Committee Report No. 160-76 on Senate Bill No. 1784-76, S.D. 1, Eighth Legislature, 1976, State of Hawaii.
 2. Testimony of Walter T. Yamashiro, Director, Office of Consumer Protection, to the House Committee on Consumer Protection and Commerce, House Bill No. 2132-76, February 5, 1976.
 1. In the last five years, for example, the following bills amending section 521-44, Hawaii Revised Statutes, to require interest on security deposits have been introduced: Senate Bill Nos. 682 and 881, Eleventh Legislature, 1981; Senate Bill No. 1095, Twelfth Legislature, 1983; House Bill Nos. 590 and 849 and Senate Bill No. 305, Thirteenth Legislature, 1985, and Senate Bill No. 2114, Thirteenth Legislature, 1986.
 2. Of the four bills on security desposit interest introduced in the Thirteenth Legislature, only testimony on Senate Bill No. 305 was filed with the State Archives.
 3. Testimonies of Clarice Johnson, Chairman, and Donald Brough, Member, Landlord/Tenant Subcommittee, Governmental Affairs Committee, Hawaii Association of Realtors; and Aaron M. Chaney, Managing Director, Chaney, Brooks &

Company, on Senate Bill No. 305 before the Senate Committee on Consumer Protection and Commerce, January 17, 1986.

4. Testimony of Donald Brough, p. 2.
5. Testimony of Clarice Johnson, pp. 2-3.
6. Testimony of Mark M. Nomura, Director, Office of Consumer Protection, on Senate Bill No. 305 before the Senate Committee on Consumer Protection and Commerce, January 17, 1986, p. 1.
7. 12 C.F.R. §1204.108, a regulation of the Depository Institutions Deregulation Committee (DIDC), relates to maximum rates of interest payable by depository institutions. However, the Depository Institutions Deregulation Act of 1980 mandates that on March 31, 1986, the DIDC be terminated. Accordingly, the regulations of the DIDC are revoked, effective 4-1-86. 51 Fed. Reg. 9767 (1986).

Chapter 7

1. Margaret Krash and Peter W. Salsich, Jr., "The Use of Mediation in the Resolution of Small Claims, Landlord/Tenant, and Neighborhood Disputes," St. Louis Bar Journal, Spring 1986, p. 36.
2. Letter from Michael Hazama, Executive Director, Mediation Services of Maui, Inc., to Claire Marumoto, July 14, 1986.

HOUSE OF REPRESENTATIVES
THIRTEENTH LEGISLATURE, 1986
STATE OF HAWAII

H. R. NO. 96

HOUSE RESOLUTION

REQUESTING A STUDY OF THE RESIDENTIAL LANDLORD-TENANT CODE.

WHEREAS, the residential landlord-tenant code, chapter 521, Hawaii Revised Statutes, was originally enacted in 1972 after two years of study, deliberation, and research by several legislative committees, and after input from numerous interested groups and persons; and

WHEREAS, its purpose was to establish a comprehensive residential landlord-tenant code under which the law governing residential landlord and tenant relations would be restated in a manner consistent with then recent court decisions and with the then existing residential rental market; and

WHEREAS, during the fourteen years since the residential landlord-tenant code was enacted, Hawaii's residential rental market has changed and newer court cases decided; and

WHEREAS, accordingly, this area of the law deserves another comprehensive review; now, therefore,

BE IT RESOLVED by the House of Representatives of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1986, that the Legislative Reference Bureau is requested to make a comprehensive review of the residential landlord-tenant code, chapter 521, Hawaii Revised Statutes; and

BE IT FURTHER RESOLVED that the review include the relationship of the code with the present rental market in Hawaii, and with pertinent court decisions and related statutes, including chapter 666, Hawaii Revised Statutes; and

BE IT FURTHER RESOLVED that Legislative Reference Bureau solicit input from interested persons and organizations, including the Office of Consumer Protection, the Hawaii Bar Association and the Hawaii Association of Realtors; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau report its findings and recommendations, including drafts of recommended legislation, to the Legislature twenty days before the convening of the Regular Session of 1987; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be sent to the Legislative Reference Bureau, the Director of the Office of Consumer Protection, the President of the Hawaii Bar Association, and the President of the Hawaii Association of Realtors.

OFFERED BY: Carrie G. Starkman
Ramon M. Luch

Appendix B

[CHAPTER 521] RESIDENTIAL LANDLORD-TENANT CODE

Part I. General Provisions and Definitions

Section

- 521-1 Short title
- 521-2 Purposes; rules of construction
- 521-3 Supplementary general principles of law, other laws, applicable
- 521-4 Construction against implicit repeal
- 521-5 Severability
- 521-6 Territorial application
- 521-7 Exclusions from application of chapter
- 521-8 Definitions
- 521-9 Notice, notification, knowledge, etc.
- 521-10 Duties; obligation of good faith
- 521-11 Time; reasonable time

Part II. Rent

- 521-21 Rent
- 521-22 Term of rental agreement

Part III. Limitations on Rental Agreements and Practices

- 521-31 Waiver; agreement to forego rights; settlement of claims
- 521-32 Separation of rents and obligations to property forbidden
- 521-33 Landlord's waiver of liability prohibited
- 521-34 Authorization to confess judgment prohibited
- 521-35 Attorney's fees
- 521-36 Effect of termination
- 521-37 Subleases and assignments
- 521-38 Tenants subject to rental agreement; notice of conversions

Part IV. Landlord Obligations

- 521-41 Landlord to supply possession of dwelling unit
- 521-42 Landlord to supply and maintain fit premises
- 521-43 Rental agreement, disclosure
- 521-44 Security deposits
- 521-45 Limitation of landlord and management liability

Part V. Tenant Obligations

- 521-51 Tenant to maintain dwelling unit
- 521-52 Tenant to use properly
- 521-53 Access
- 521-54 Tenant to use and occupy
- 521-55 Tenant's responsibility to inform landlord
- 521-56 Disposition of tenant's abandoned possessions

Part VI. Remedies and Penalties

- 521-61 Tenant's remedies for failure by landlord to supply possession
- 521-62 Tenant's remedy of termination at beginning of term
- 521-63 Tenant's remedy of termination at any time; unlawful removal or

exclusion.

- 521-64 Tenant's remedy of repair and deduction for minor defects
- 521-65 Tenant's remedies for fire or casualty damage
- 521-66 Tenant's right to refund of rent, etc., on termination; return of security deposit
- 521-67 Tenant's remedy for failure by landlord to disclose
- 521-68 Landlord's remedies for failure by tenant to pay rent
- 521-69 Landlord's remedies for tenant's waste, failure to maintain, or unlawful use
- 521-70 Landlord's remedies for absence, misuse, abandonment and failure to honor tenancy before occupancy
- 521-71 Termination of tenancy; landlord's remedies for holdover tenants
- 521-72 Landlord's remedies for improper use
- 521-73 Landlord's and tenant's remedies for abuse of access
- 521-74 Retaliatory evictions and rent increases prohibited
- 521-75 Unconscionability
- 521-76 Repealed
- 521-77 Investigation and resolution of complaints by the office of consumer protection
- 521-78 Rent trust fund

PART I. GENERAL PROVISIONS AND DEFINITIONS

[§521-1] Short title. This chapter shall be known and may be cited as the Residential Landlord-Tenant Code. [L 1972, c 132, pt of §1]

[§521-2] Purposes; rules of construction. (a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this chapter are:

- (1) To simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants of dwelling units;
- (2) To encourage landlords and tenants to maintain and improve the quality of housing in this State; and
- (3) To revise the law of residential landlord and tenant by changing the relationship from one based on the law of conveyance to a relationship that is primarily contractual in nature. [L 1972, c 132, pt of §1]

[§521-3] Supplementary general principles of law, other laws, applicable. (a) Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law relative to capacity to contract, principal and agent, real property,

public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

(b) Every legal right, remedy, and obligation arising out of a rental agreement not provided for in this chapter shall be regulated and determined under chapter 666, and in the case of conflict between any provision of this chapter and a provision of chapter 666, this chapter shall control.

(c) Nothing in this chapter shall be applied to interfere with any right, obligation, duty, requirement, or remedy of a landlord or tenant which is established as a condition or requirement of any program receiving subsidy from the government of the United States. To the extent that any provision of this chapter is inconsistent with such a federal condition or requirement then as to such subsidized project the federal condition or requirement shall control. [L 1972, c 132, pt of §1]

[§521-4] Construction against implicit repeal. This chapter being a general law intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [L 1972, c 132, pt of §1]

[§521-5] Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [L 1972, c 132, pt of §1]

[§521-6] Territorial application. This chapter applies to rights, remedies, and obligations of the parties to any residential rental agreement wherever made of a dwelling unit within this State. [L 1972, c 132, pt of §1]

§521-7 Exclusions from application of chapter. Unless created solely to avoid the application of this chapter, this chapter shall not apply to:

- (1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, geriatric, educational, religious, or similar services.
- (2) Residence in a structure directly controlled and managed by the University of Hawaii for housing students or faculty of the University of Hawaii or residence in a structure

erected on land leased from the University of Hawaii by a nonprofit corporation for the exclusive purpose of housing students or faculty of the University of Hawaii.

- (3) Occupancy under a bona fide contract of sale of the dwelling unit or the property of which it is a part where the tenant is, or succeeds to the interest of, the purchaser.
- (4) Residence by a member of a fraternal organization in a structure operated without profit for the benefit of the organization.
- (5) Transient occupancy on a day to day basis in a hotel or motel.
- (6) Occupancy by an employee of the owner or landlord whose right to occupancy is conditional upon such employment or by a pensioner of the owner or landlord.
- (7) A lease of improved residential land for a term of fifteen years or more, measured from the date of the commencement of the lease.
- (8) Occupancy by the prospective purchaser after an accepted offer to purchase and prior to the actual transfer of the owner's rights. [L 1972, c 132, pt of §1; am L 1986, c 112, §1]

§521-8 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Action" with reference to a judicial proceeding includes recoupment, counterclaim, setoff, and any other proceedings in which rights are determined, including an action for possession.

"Apartment building" means a structure containing one or more dwelling units, except:

- (1) A single-family residence, or
- (2) A structure in which all tenants are roomers or boarders.

"Dwelling unit" means a structure, or part of a structure, which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, to the exclusion of all others.

"Landlord" means the owner, lessor, sublessor, assigns or successors in interest of the dwelling unit or the building of which it is a part and in addition means any agent of the landlord.

"Normal wear and tear" means deterioration or depreciation in value by ordinary and reasonable use but does not include items that are missing from the dwelling unit.

"Owner" means one or more persons, jointly or severally, in whom is vested:

- (1) All or any part of the legal title to property; or
- (2) All or any part of the beneficial ownership and a right to present use and enjoyment of the property; and includes a mortgagee in possession.

"Person" includes an individual, corporation, government or governmental agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

"Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility whose use is promised to the tenant.

"Rental agreement" means 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 dwelling unit and premises.

"Roomer" or "boarder" means a tenant occupying a dwelling unit:

- (1) Which lacks at least one major bathroom or kitchen facility, such as a toilet, refrigerator, or stove,
- (2) In a building where one or more such major facilities are supplied to be used in common by the occupants of the tenant's dwelling unit and by the occupants of one or more other dwelling units, and
- (3) In a building in which the landlord resides.

"Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single family residence if it has direct access to a street or thoroughfare and does not share hot water equipment or any other essential facility or service with any other dwelling unit.

"Tenant" means any person who occupies a dwelling unit for dwelling purposes under a rental agreement. [L 1972, c 132, pt of §1; am L 1975, c 10, §1]

[§521-9] Notice, notification, knowledge, etc. (a) A person has notice of a fact when:

- (1) He has actual knowledge of it; or
- (2) He has received a notice or notification of it; or
- (3) From all the facts and circumstances known to him at the time in question he has reason to know of it.

(b) A person knows or has knowledge of a fact when he has actual knowledge of it. The terms "discover" or "learn" or terms of similar import refer to knowledge rather than reason to know. The time and circumstances under which a notice or notification ceases to be effective are not determined by this chapter.

(c) A person notifies or gives a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not the other actually comes to know of it. A person receives a notice or notification when:

- (1) It comes to his attention; or
- (2) It is delivered at the place of business through which the rental

agreement was made or at any place held out as the place for receipt of such communications.

(d) Notice, knowledge, or a notice or notification received by a person other than an individual is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction or from the time it should have been brought to his attention, whichever time is earlier. [L 1972, c 132, pt of §1]

[§521-10] Duties; obligation of good faith. Every duty imposed by this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement. [L 1972, c 132, pt of §1]

[§521-11] Time; reasonable time. (a) Whenever this chapter requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(b) What is a reasonable time for taking any action depends on the nature, purpose, and circumstances of the action. [L 1972, c 132, pt of §1]

PART II. RENT

§521-21 Rent. (a) The landlord and tenant may agree to any consideration, not otherwise prohibited by law, as rent. In the absence of such agreement, and subject to section 521-71(c) in the case of holdover tenants, the tenant shall pay to the landlord the fair rental value for the dwelling unit.

(b) Rents 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 one month or less, and for longer terms in equal monthly installments payable at the beginning of each month.

(c) Except as otherwise provided in subsection (b), rent shall be uniformly apportionable from day to day.

(d) When the tenancy is from month to month, the amount of rent for such tenancy shall not be increased by the landlord without written notice given forty-five consecutive days prior to the effective date of the increase.

(e) When the tenancy is less than month to month, the amount of rent for such tenancy shall not be increased by the landlord without written notice given fifteen consecutive days prior to the effective date of the increase. [L 1972, c 132, pt of §1; am L 1974, c 180, §1; am L 1978, c 124, §1]

[§521-22] Term of rental agreement. The landlord and tenant may agree in writing to any

period as the term of the rental agreement. In the absence of such agreement, the tenancy shall be month to month or, in the case of boarders, week to week. [L 1972, c 132, pt of §1]

PART III. LIMITATIONS ON RENTAL AGREEMENTS AND PRACTICES

[§521-31] Waiver; agreement to forego rights; settlement of claims. (a) Except as otherwise provided in this chapter, a tenant or landlord may not waive or agree to forego rights or remedies under this chapter.

(b) A claim by a tenant against a landlord for violation of this chapter or a claim by a landlord against a tenant for default or breach of duty imposed by this chapter, if disputed in good faith, may be settled by agreement.

(c) A claim, whether or not disputed, against a tenant or landlord may be settled for less value than the amount claimed.

(d) A settlement in which the tenant or landlord waives or agrees to forego rights or benefits under this chapter is invalid if the court, as a matter of law, finds the settlement to have been unconscionable at the time it was made. The competence of the tenant or landlord, any deception or coercion practiced against the tenant or landlord, the nature and extent of the legal advice received by the tenant or landlord, and the nature and value of the consideration are relevant to the issue of unconscionability. [L 1972, c 132, pt of §1; am imp L 1984, c 90, §1]

[§521-32] Separation of rents and obligations to property forbidden. Any agreement, conveyance, or trust instrument which authorizes a person other than the beneficial owner to act as the landlord of a dwelling unit shall operate, regardless of its terms, to authorize and require such person to use rents to conform with this chapter and any other law, code, ordinance, or regulation concerning the maintenance and operation of the premises. [L 1972, c 132, pt of §1]

[§521-33] Landlord's waiver of liability prohibited. A provision in a rental agreement exempting or limiting the landlord, or requiring the tenant to indemnify the landlord, from liability for damages to persons or property caused by or resulting from the acts or omissions of the landlord, the landlord's agents, servants, or employees, in or about the dwelling unit covered thereby or in or about the premises of which it is a part is void. [L 1972, c 132, pt of §1; am imp L 1984, c 90, §1]

[§521-34] Authorization to confess judgment prohibited. A tenant may not authorize any person to confess judgment on a claim arising out of a rental agreement of any

dwelling unit. An authorization in violation of this section is void. [L 1972, c 132, pt of §1]

§521-35 Attorney's fees. (a) A rental agreement may provide for the payment by the tenant of the costs of a suit, for unpaid rent, and reasonable attorney's fees not in excess of twenty-five per cent of the unpaid rent after default and referral to an attorney not a salaried employee of the landlord or the landlord's assignee.

(b) A rental agreement may further provide that reasonable attorney's fees and costs may be awarded to the prevailing party in all other matters arising under this chapter.

(c) A provision in violation of this section is unenforceable. [L 1972, c 132, pt of §1; am imp L 1984, c 90, §1; am L 1986, c 103, §1]

[§521-36] Effect of termination. Except as otherwise provided in this chapter, whenever a landlord or tenant exercises a right to terminate a rental agreement, the obligations of each party to the rental agreement shall cease upon the final discharge of all obligations imposed by the rental agreement and by this chapter. [L 1972, c 132, pt of §1]

[§521-37] Subleases and assignments. (a) Unless otherwise agreed to in a written rental agreement and except as otherwise provided in this section, the tenant may sublet the tenant's dwelling unit or assign the rental agreement to another without the landlord's consent.

(b) Subsection (a) does not apply to a tenant of a dwelling unit administered, owned, or subsidized by the United States, the State, a county, or any agency thereof.

(c) A written rental agreement may provide that the tenant's right to sublet the tenant's dwelling unit or assign the rental agreement is subject to the consent of the landlord. [L 1972, c 132, pt of §1; am imp L 1984, c 90, §1]

§521-38 Tenants subject to rental agreement; notice of conversions. When a period of tenancy is pursuant to any rental agreement and where a landlord contemplates conversion to horizontal property regime under chapter 514A, the landlord:

- (1) Shall provide notice to the tenant at least one hundred twenty days in advance of the termination of the rental agreement, and
- (2) Shall comply with the provisions relating to such conversions provided in section 514A-105. [L 1980, c 189, §1; am L 1981, c 211, §1]

PART IV. LANDLORD OBLIGATIONS

[§521-41] Landlord to supply possession of dwelling unit. The landlord shall, at the beginning of the agreed term, deliver possession of the dwelling unit to the tenant in the agreed condition unless otherwise agreed prior to delivery of possession. The landlord may bring an action for possession against any person wrongfully in possession including a holdover tenant. [L 1972, c 132, pt of §1]

§521-42 Landlord to supply and maintain fit premises. (a) The landlord shall at all times during the tenancy:

- (1) Comply with all applicable provisions of any state or county law, code, ordinance, or regulation, noncompliance with which would have the effect of endangering health or safety, governing maintenance, construction, use, or appearance of the dwelling unit and the premises of which it is a part;
- (2) Keep common areas of a multi-dwelling unit premises in a clean and safe condition;
- (3) Make all repairs and arrangements necessary to put and keep the premises in a habitable condition;
- (4) Maintain all electrical, plumbing, and other facilities and appliances supplied by the landlord in good working order and condition, subject to reasonable wear and tear;
- (5) Except in the case of a single family residence, provide and maintain appropriate receptacles and conveniences for the removal of normal amounts of rubbish and garbage, and arrange for the frequent removal of such waste materials; and
- (6) Except in the case of a single family residence, or where the building is not required by law to be equipped for the purpose, provide for the supplying of running water as reasonably required by the tenant.

Prior to the initial date of initial occupancy, the landlord shall inventory the premises and make a written record detailing the condition of the premises and any furnishings or appliances provided. Duplicate copies of this inventory shall be signed by the landlord and by the tenant and a copy given to each tenant. In an action arising under this section, the executed copy of the inventory shall be presumed to be correct. If the landlord fails to make such an inventory and written record, the condition of the premises and any furnishings or appliances provided, upon the termination of the tenancy shall be rebuttably presumed to be the same as when the tenant first occupied the premises.

(b) The landlord and tenant may agree that the tenant is to perform specified repairs,

maintenance tasks, and minor remodeling only if:

- (1) The agreement of the landlord and tenant is entered into in good faith and is not for the purpose of evading the obligations of the landlord;
- (2) The work to be performed by the tenant is not necessary to cure noncompliance by the landlord with section 521-42(a)(1); and
- (3) The agreement of the landlord and tenant does not diminish the obligations of the landlord to other tenants. [L 1972, c 132, pt of §1; am L 1976, c 90, §1; am L 1981, c 235, §1; am imp L 1984, c 90, §1]

§521-43 Rental agreement, disclosure. (a) A landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

- (1) Each person authorized to manage the premises; and
- (2) Each person who is an owner of the premises or who is authorized to act for or on behalf of the owner for the purpose of service of process and receiving and receipting for rents, notices, and demands.

The information required to be furnished shall be kept current and shall be enforceable against any successor landlord, owner, or manager.

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

- (1) Service of process and receiving and receipting for rents, notices, and demands; and
- (2) Performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for the purpose all rent collected from the premises.

(c) Any owner or landlord not dealing directly with the tenant shall be responsible for compliance with this section by an owner or landlord dealing directly with the tenant and shall be estopped from any objection to a failure to serve process upon an owner or landlord in any proceeding arising under this chapter when such failure is due to failure to comply with this section. The owner or landlord who deals directly with the tenant and fails to comply with this section shall be deemed an agent of every other landlord under the rental agreement for performing the obligations of the landlord under this chapter and under the rental agreement.

(d) In the case of a written rental agreement, the landlord shall furnish a copy of the lease or rental agreement to the tenant.

(e) The landlord shall furnish to the tenant a written receipt for rents paid at the time of said payment. Cancelled checks shall also constitute and fulfill the requirement of a

written receipt. If rent is paid by check, the landlord shall furnish a receipt therefor, provided such receipt is requested by the tenant.

(f) Any owner or landlord who resides without the State or on another island from where the rental unit is located must designate on the written rental agreement an agent residing on the same island where the unit is located to act in the owner's or landlord's behalf. In the case of an oral rental agreement, such information shall be supplied to the tenant, on demand, in a written statement.

(g) Subsections (a) and (b) to the contrary notwithstanding, the information required to be disclosed to a tenant may, instead of being disclosed in the manner described in subsections (a) and (b), be disclosed as follows:

- (1) In each multi-unit single-owner dwelling structure containing an elevator, a printed or typewritten notice containing the information required by subsections (a) and (b) shall be placed and continuously maintained in every elevator and in one other conspicuous place;
- (2) In each multi-unit single-owner dwelling structure not containing an elevator, a printed or typewritten notice containing the information required by subsections (a) and (b) shall be placed and continuously maintained in at least two conspicuous places;
- (3) In each multi-unit dwelling structure, a printed or typewritten notice containing the information required by subsections (a) and (b) shall be posted within the unit in a conspicuous place. [L 1972, c 132, pt of §1; am L 1974, c 180, §2; am L 1975, c 33, §1 and c 104, §1; am L 1976, c 90, §2; am imp L 1984, c 90, §1]

§521-44 Security deposits. (a) As used in this section "security deposit" means money deposited by or for the tenant with the landlord to be held by the landlord to:

- (1) Remedy tenant defaults for accidental or intentional damages resulting from failure to comply with section 521-51, for failure to pay rent due, or for failure to return all keys furnished by the landlord at the termination of the rental agreement;
- (2) Clean the dwelling unit or have it cleaned at the termination of the rental agreement so as to place the condition of the dwelling unit in as fit a condition as that which the tenant entered into possession of the dwelling unit; and
- (3) Compensate for damages caused by a tenant who wrongfully quits the dwelling unit.

(b) The landlord may require as a condition of a rental agreement a security deposit to be paid by or for the tenant for the items in subsection (a) above and no others, in an amount not in excess of a sum equal to one month's rent. The landlord may not require or receive from or on behalf of a tenant at the beginning of a rental agreement any money other than the money for the first month's rent and a security deposit as provided in this section. The security deposit shall not be construed as payment of the last month's rent by the tenant. Any such security deposit shall be held by the landlord for the tenant and the claim of the tenant to the security deposit shall be prior to the claim of any creditor of the landlord, including a trustee in bankruptcy, even if the security deposits are commingled.

(c) At the termination of a rental agreement in which the landlord required and received a security deposit if the landlord proposes to retain any amount of the security deposit for any of the purposes specified in subsection (a), the landlord shall so notify the tenant, in writing, unless the tenant had wrongfully quit the dwelling unit, together with the particulars of and grounds for the retention, including written evidence of the costs of remedying tenant defaults, such as estimates or invoices for material and services or of the costs of cleaning, such as receipts for supplies and equipment or charges for cleaning services. The security deposit, or the portion of the security deposit remaining after the landlord has claimed and retained amounts authorized under this section, if any, shall be returned to the tenant not later than fourteen days after the termination of the rental agreement. If the landlord does not furnish the tenant with the written notice and other information required by this subsection, within fourteen days after the termination of the rental agreement, the landlord shall not be entitled to retain the security deposit or any part of it, and the landlord shall return the entire amount of the security deposit to the tenant.

(d) For the purposes of this section if a tenant is absent from the dwelling unit for a continuous period of twenty days or more without written notice to the landlord the tenant shall be deemed to have wrongfully quit the dwelling unit; provided that the tenant shall not be considered to be absent from the dwelling unit without notice to the landlord during any period for which the landlord has received payment of the rent. In addition to any other right or remedy the landlord has with respect to such a tenant the landlord may retain the entire amount of any security deposit the landlord has received from or on behalf of such tenant.

(e) The landlord shall not require the delivery of any postdated check or other negotiable instrument to be used for payment of rent.

(f) If the landlord who required and received a security deposit transfers the landlord's interest in the dwelling unit,

whether by sale, assignment, death, appointment of a receiver, or otherwise, the landlord's successor in interest is bound by this section. The original landlord shall provide an accounting of the security deposits received for each dwelling unit to the landlord's successor at or before the time of the transfer of the landlord's interest; within twenty days thereafter the landlord's successor shall give written notice to each tenant of the amount of the security deposit credited to the tenant. In the event the landlord's successor fails to satisfy the requirements of this subsection, it shall be presumed that the tenant has paid a security deposit equal to no less than one month's rent at the rate charged when the tenant originally rented the dwelling unit and the landlord's successor shall be bound by this amount in all further matters relating to the security deposit.

(g) If the landlord and the tenant disagree about the right of the landlord to claim and retain the security deposit or any portion of it, either the landlord or the tenant may commence an action in the small claims division of the district court, as provided in chapter 633 and the rules of court thereunder, to adjudicate the matter.

(h) In any action in the small claims division of the district court pursuant to subsection (g) where the court determines that:

- (1) The landlord wrongfully and wilfully retained a security deposit or part of a security deposit, the court may award the tenant damages in an amount equal to three times the amount of the security deposit, or part thereof, wrongfully and wilfully retained and the cost of suit.
- (2) The landlord wrongfully retained a security deposit or part of a security deposit, the court shall award the tenant damages in an amount equal to the amount of the security deposit, or part thereof, wrongfully retained and the cost of suit.
- (3) The landlord was entitled to retain the security deposit or a part of it, the court shall award the landlord damages in an amount equal to the amount of the security deposit, or part thereof, in dispute and the cost of suit.
- (4) In any such action, neither the landlord nor the tenant may be represented by an attorney, including salaried employees of the landlord or tenant. [L 1972, c 132, pt of §1; am L 1974, c 180, §3; am L 1975, c 101, §1; am imp L 1984, c 90, §1; am L 1986, c 12, §1]

§521-45 Limitation of landlord and management liability. (a) Unless otherwise agreed, a landlord who conveys premises which include a dwelling unit subject to a rental agreement in a good faith sale to a person not

connected with the landlord discloses, in writing, in any form of contract for the sale of such premises is relieved of liability under the rental agreement and under this chapter as to events occurring subsequent to the conveyance.

(b) The new owner who purchases the premises referred to in subsection (a) is liable under the rental agreement and under this chapter.

(c) Unless otherwise agreed, a person who is a manager of premises which include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and under this chapter as to events occurring subsequent to the termination of the person's management. [L 1972, c 132, pt of §1; am L 1976, c 90, §3; am imp L 1984, c 90, §1]

PART V. TENANT OBLIGATIONS

[§521-51] Tenant to maintain dwelling unit. Each tenant shall at all times during the tenancy:

- (1) Comply with all provisions primarily applicable to tenants of any state or county law, code, ordinance, or regulation, noncompliance with which would have the effect of endangering health or safety, governing maintenance, use, or appearance of the dwelling unit and that part of the premises which the tenant occupies and uses;
- (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 tenant's dwelling unit all rubbish, garbage, and other organic or flammable waste in a clean and safe manner;
- (4) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
- (5) Properly use and operate all electrical and plumbing fixtures and appliances in the dwelling unit or used by the tenant;
- (6) Not permit any person on the premises with the tenant's permission to wilfully destroy, deface, damage, impair, or remove any part of the premises which include the dwelling unit or the facilities, equipment, or appurtenances thereto, nor oneself do any such thing;
- (7) Keep the dwelling unit and all facilities, appliances, furniture, and furnishings supplied therein by the landlord in fit condition, reasonable wear and tear excepted; and
- (8) Comply with all obligations, restrictions, rules, and the like which are in accordance with section 521-52 and which the landlord can demonstrate are reasonably necessary for the preservation of the property

and protection of the persons of the landlord, other tenants, or any other person. [L 1972, c 132, pt of §1; am imp L 1984, c 90, §1]

[§521-52] Tenant to use properly. (a) The tenant shall comply with all obligations or restrictions, whether denominated by the landlord as rules, or otherwise, concerning the tenant's use, occupancy, and maintenance of the tenant's dwelling unit, appurtenances thereto, and the premises of which the dwelling unit is a part, if:

- (1) Such obligations or restrictions are brought to the attention of the tenant at the time of the tenant's entry into the rental agreement; or
- (2) Such obligations or restrictions, if not so known by the tenant at the time of the tenant's entry into the rental agreement, are brought to the attention of the tenant and, if they work a substantial modification of the tenant's bargain under the rental agreement, are consented to in writing by the tenant.

(b) No such obligation or restriction shall be enforceable against the tenant unless:

- (1) It is for the purpose of promoting the convenience, safety, or welfare of the tenants of the property, or for the preservation of the landlord's property from abusive use, or for the fair distribution of services and facilities held out for the tenants generally;
- (2) It is reasonably related to the purpose for which it is established;
- (3) It applies to all tenants of the property in a fair manner; and
- (4) It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply.

(c) If the dwelling unit is an apartment in a horizontal property regime the tenant shall comply with the bylaws of the association of apartment owners and if the dwelling unit is an apartment in a cooperative housing corporation the tenant shall comply with the bylaws of the corporation. [L 1972, c 132, pt of §1; am imp L 1984, c 90, §1]

[§521-53] Access. (a) The tenant shall not unreasonably withhold the tenant's consent to the landlord to enter into the dwelling unit in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply services as agreed; or exhibit the dwelling unit to prospective purchasers, mortgagees, or tenants.

(b) The landlord shall not abuse this right of access nor use it to harass the tenant. Except in case of emergency or where impracticable to do so, the landlord shall give

the tenant at least two days notice of the landlord's intent to enter and shall enter only during reasonable hours.

(c) The landlord shall have no other right of entry, except by court order, unless the tenant appears to have abandoned the premises, or as permitted by section 521-70(b). [L 1972, c 132, pt of §1; am imp L 1984, c 90, §1]

[§521-54] Tenant to use and occupy. The landlord may require, in the rental agreement, that the tenant must notify the landlord of any anticipated extended absence from the dwelling unit no later than the first day of such absence. [L 1972, c 132, pt of §1]

[§521-55] Tenant's responsibility to inform landlord. Any defective condition of the premises which comes to the tenant's attention, which the tenant has reason to believe is unknown to the landlord, and which the tenant has reason to believe is the duty of the landlord or of another tenant to repair, shall be reported by the tenant to the landlord as soon as practicable. [L 1972, c 132, pt of §1; am imp L 1984, c 90, §1]

§521-56 Disposition of tenant's abandoned possessions. (a) When the tenant, within the meaning of section 521-70(d) or section 521-44(d), has wrongfully quit the premises, or when the tenant has quit the premises pursuant to a notice to quit or upon the natural expiration of the term, and has abandoned personalty which the landlord, in good faith, determines to be of value, in or around the premises, the landlord may sell such personalty, in a commercially reasonable manner, store such personalty at the tenant's expense, or donate such personalty to a charitable organization. Before selling or donating such personalty, the landlord shall make reasonable efforts to apprise the tenant of the identity and location of, and the landlord's intent to sell or donate such personalty by mailing notice to the tenant's forwarding address, or to an address designated by the tenant for the purpose of notification or if neither of these is available, to the tenant's previous known address. Following such notice, the landlord may sell the personalty after advertising the sale in a daily paper of general circulation within the circuit in which the premises is located for at least three consecutive days, or the landlord may donate the personalty to a charitable organization; provided that such sale or donation shall not take place until fifteen days after notice is mailed, after which the tenant is deemed to have received notice.

(b) The proceeds of the sale of personalty under subsection (a) shall, after deduction of accrued rent and costs of storage and sale, including the cost of advertising, be held in trust for the tenant for thirty days, after

which time the proceeds shall be forfeited to the landlord.

(c) When the tenant has quit the premises any personalty in or around the premises left unsold after conformance to subsection (a) or otherwise left abandoned by the tenant and determined by the landlord to be of no value may be disposed of at the landlord's discretion without liability to the landlord. [L 1974, c 180, §6; am L 1981, c 154, §1]

PART VI. REMEDIES AND PENALTIES

§521-61 Tenant's remedies for failure by landlord to supply possession. (a) If the landlord fails to put the tenant into possession of the dwelling unit in the agreed condition at the beginning of the agreed term:

- (1) The tenant shall not be liable for the rent during any period the tenant is unable to enter into possession;
- (2) At any time during the period the tenant is so unable to enter into possession the tenant may notify the landlord that the tenant has terminated the rental agreement; and
- (3) The tenant shall have the right to recover damages in the amount of reasonable expenditures necessary to secure adequate substitute housing, the recovery to be made either by action brought in the district court or by deduction from the rent upon submission to the landlord of receipts totaling at least
 - (A) The amount of abated rent; plus
 - (B) The amount claimed against the rent; or
- (4) If the inability to enter results from the wrongful holdover of a prior occupant, the tenant may maintain a summary proceeding in the district court for possession.

(b) In any district court proceeding brought by the tenant under this section the court may award the tenant substitute housing expenditures, reasonable court costs, and attorney's fees. [L 1972, c 132, pt of §1; am L 1976, c 90, §4; am imp L 1984, c 90, §1]

[§521-62] Tenant's remedy of termination at beginning of term. If the landlord fails to conform to the rental agreement, or is in material noncompliance with section 521-42(a), the tenant may, on notice to the landlord, terminate the rental agreement and vacate the dwelling unit at any time during the first week of occupancy. The tenant shall retain such right to terminate beyond the first week 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 which would justify termination by the tenant under this section. [L 1972, c 132, pt of §1; am imp L 1984, c 90, §1]

§521-63 Tenant's remedy of termination at any time; unlawful removal or exclusion. (a) If any condition within the premises deprives the tenant of a substantial part of the benefit and enjoyment of the tenant's bargain under the rental agreement, the tenant may notify the landlord in writing of the situation and, if the landlord does not remedy the situation within one week, terminate the rental agreement. The notice need not be given when the condition renders the dwelling unit uninhabitable or poses an imminent threat to the health or safety of any occupant. The tenant may not terminate for a condition caused by the want of due care by the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

(b) If the condition referred to in subsection (a) was caused wilfully or negligently by the landlord, the tenant may recover any damages sustained as a result of the condition.

(c) If the landlord removes or excludes the tenant from the premises overnight without cause or without court order so authorizing, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to two months rent or free occupancy for two months, and the cost of suit, including reasonable attorney's fees. If the rental agreement is terminated, the landlord shall comply with section 521-44(c). The court may also order any injunctive or other equitable relief it deems proper. If the court determines that the removal or exclusion by the landlord was with cause or was authorized by court order, the court may award the landlord the cost of suit, including reasonable attorney's fees if the attorney is not a salaried employee of the landlord or the landlord's assignee. [L 1972, c 132, pt of §1; am L 1981, c 235, §2; am imp L 1984, c 90, §1]

§521-64 Tenant's remedy of repair and deduction for minor defects. (a) The landlord, upon written notification by the department of health or other state or county agencies that there exists a condition on the premises which constitutes a health or safety violation, shall commence repairs of the condition within five business days of the notification with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence the repairs within five business days for reasons beyond the landlord's control the landlord shall inform the tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence. Health or safety violations for the purpose of this section means any condition on the premises which is in noncompliance with section 521-42(a)(1).

(b) If the landlord fails to perform in the manner specified in subsection (a), the tenant may:

- (1) Immediately do or have done the necessary repairs in a workmanlike

manner, and upon submission to the landlord of receipts amounting to at least the sum deducted, deduct from the tenant's rent not more than \$300 for the tenant's actual expenditures for work done to correct the health or safety violation; or

- (2) Submit to the landlord, at least five business days before having the work done, written signed estimates from each of two qualified workmen and proceed to have done the necessary work by the workman who provides the lower estimate; provided that the landlord may require in writing a reasonable substitute workman or substitute materials, and upon submission to the landlord of receipts amounting to at least the sum deducted, the tenant may deduct \$300 or one month's rent, whichever is greater, for the tenant's actual expenditures for work done to correct the health or safety violation.

(c) The landlord, upon written notification by the tenant of any defective condition on the premises which is in material noncompliance with section 521-42(a) or with the rental agreement, shall commence repairs of the condition within twelve business days of the notification with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence repairs within twelve business days for reasons beyond the landlord's control the landlord shall inform the tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence. In any case involving repairs, except those required due to misuse by the tenant, to electrical, plumbing, or other facilities, including major appliances provided by the landlord pursuant to the rental agreement, necessary to provide sanitary and habitable living conditions, the landlord shall commence repairs within three business days of receiving oral or written notification, with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence repairs within three business days for reasons beyond the landlord's control the landlord shall inform the tenant of the reasons for the delay and set a reasonable tentative date on which repairs will commence.

(d) If the landlord fails to perform in the manner specified in subsection (c), the tenant may immediately do or have done the necessary work in a workmanlike manner and upon submission to the landlord of receipts amounting to at least the sums deducted, deduct from the tenant's rent not more than \$300 for the tenant's actual expenditures for work done to correct the defective condition.

(e) At the time the tenant initially notifies the landlord under subsection (c), the tenant shall list every condition that the tenant knows or should know of noncompliance under subsection (c), in addition to the

objectionable condition that the tenant then intends to correct or have corrected at the landlord's expense. Failure by a tenant to list such a condition that the tenant knew of or should have known of shall estop the tenant from requiring the landlord to correct it and from having it corrected at the landlord's expense under this section for a period of six months after the initial notification to the landlord. Total correction and repair work costs under this section chargeable to the landlord's expense during each six-month period shall not exceed an amount equal to three months' rent.

(f) In no event may a tenant repair a dwelling unit 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 other person on the premises with the tenant's consent.

(g) Before correcting a condition affecting facilities shared by more than one dwelling unit, the tenant shall notify all other tenants sharing such facilities of the tenant's plans, and shall so arrange the work as to create the least practicable inconvenience to the other tenants. [L 1972, c 132, pt of §1; am L 1974, c 180, §4; am L 1975, c 104, §2; am L 1976, c 90, §5; am L 1981, c 235, §3; am L 1982, c 211, §1; am imp L 1984, c 90, §1]

[§521-65] Tenant's remedies for fire or casualty damage. When the dwelling unit or any part of the premises or appurtenances reasonably necessary to the benefit and enjoyment thereof is rendered partially or wholly unusable by fire or other casualty which occurs without wilful fault on the part of the tenant or a member of the tenant's family, the tenant may:

- (1) Immediately quit the premises and notify the landlord of the tenant's election to quit within one week after quitting, in which case the rental agreement shall terminate as of the date of quitting, but 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 quitting or impossibility of further occupancy; or
- (2) If continued occupancy is otherwise lawful, vacate any part of the premises rendered unusable by the fire or other casualty, in which case the tenant's liability for rent shall be no more than the fair rental value of that part of the premises which the tenant continues to use and occupy. [L 1972, c 132, pt of §1; am imp L 1984, c 90, §1]

[§521-66] Tenant's right to refund of rent, etc., on termination; return of security deposit. When a tenant exercises a right to terminate the rental agreement pursuant to section 521-62, 521-63, or 521-65 the landlord

shall return to the tenant, not later than fourteen days after the termination, the amount of any advance rent paid apportionable to the remaining days of the term and the amount of any security deposit that the landlord is not authorized to retain pursuant to section 521-44. A return of advance rent or of a security deposit complies with the requirements of this section if it is mailed to the tenant, at an address supplied to the landlord by the tenant, by certified mail, return receipt requested, and postmarked before midnight of the fourteenth day after the date of the termination of the rental agreement. [L 1972, c 132, pt of §1]

[§521-67] Tenant's remedy for failure by landlord to disclose. If the landlord fails to comply with any disclosure requirement specified in section 521-43 within ten days after proper demand therefor by the tenant, the landlord shall be liable to the tenant for \$100 plus reasonable attorney's fees. [L 1972, c 132, pt of §1]

§521-68 Landlord's remedies for failure by tenant to pay rent. (a) A landlord or the landlord's agent may, any time after rent is due, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in the notice, not less than five business days after receipt thereof, the rental agreement will be terminated. If the tenant cannot be served with notice as required, notice may be given the tenant by posting the same in a conspicuous place on the dwelling unit. If the tenant remains in default, the landlord may thereafter bring a summary proceeding for 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 notified the tenant of the landlord's intention to bring such an action. [L 1972, c 132, pt of §1; am L 1978, c 167, §1; am imp L 1984, c 90, §1]

§521-69 Landlord's remedies for tenant's waste, failure to maintain, or unlawful use. (a) If the tenant is in material noncompliance with section 521-51, the landlord, upon learning of any such noncompliance and after notifying the tenant in writing of the noncompliance and allowing a specified time not less than ten days after receipt of the notice, for the tenant to remedy the noncompliance:

- (1) May terminate the rental agreement and bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession if the tenant is in material noncompliance with section 521-51(1); or

- (2) May remedy the tenant's failure to comply and bill the tenant for the actual and reasonable cost of such remedy if the noncompliance can be remedied by the landlord by cleaning, repairing, replacing a damaged item, or the like, which bill shall be treated by all parties as rent due and payable on the next regular rent collection date or, if the tenancy has terminated, immediately upon receipt by the tenant.

No allowance of time to remedy noncompliance shall be required when noncompliance by the tenant causes or threatens to cause irreparable damage to any person or property. If the tenant cannot be served with notice as required, notice may be given the tenant by posting the same in a conspicuous place on the dwelling unit.

(b) The landlord may terminate the rental agreement and bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession for any material noncompliance with section 521-51 by a roomer or boarder if the roomer or boarder fails to comply within the time specified in the notice.

(c) The landlord may bring an action or proceeding for waste or for breach of contract for damage suffered by the tenant's wilful or negligent failure to comply with the tenant's obligations under section 521-51. [L 1972, c 132, pt of §1; am L 1976, c 90, §6; am L 1978, c 167, §2; am L 1983, c 146, §1; am imp L 1984, c 90, §1]

§521-70 Landlord's remedies for absence, misuse, abandonment and failure to honor tenancy before occupancy. (a) If the rental agreement provides for notification of the landlord by the tenant of an anticipated extended absence and the tenant fails to make reasonable efforts to comply with such requirement, the tenant shall indemnify the landlord for any damage resulting from such absence.

(b) The landlord may, during any extended absence of the tenant, enter the dwelling unit as reasonably necessary for purposes of inspection, maintenance, and safe-keeping or for the purposes permitted by section 521-53(a).

(c) Unless otherwise provided in the rental agreement, use of the dwelling unit by the tenant for any other purpose than as the tenant's abode, or nonuse of the dwelling unit, constitutes a breach of the tenant's obligations under section 521-52 and entitles the landlord to proceed as provided in section 521-72.

(d) If the tenant wrongfully quits the dwelling unit and unequivocally indicates by words or deeds the tenant's intention not to resume the tenancy, the tenant shall be liable to the landlord for the lesser of the following amounts for such abandonment:

- (1) The entire rent due for the remainder of the term; or
- (2) All rent accrued during the period reasonably necessary to reread the

dwelling unit at the fair rental, plus the difference between such fair rent and the rent agreed to in the prior rental agreement and a reasonable commission for the renting of the dwelling unit. This paragraph applies if the amount calculated hereunder is less than the amount calculated under paragraph (1) whether or not the landlord rerents the dwelling unit.

(e) If the tenant unequivocally indicates by words or deed the tenant's intention not to honor the tenancy before occupancy, the tenant shall be liable to the landlord for the lesser of the following amounts:

- (1) All monies deposited with the landlord;
- (2) One month's rent at the rate agreed upon in the rental agreement;
- (3) All rent accrued from the agreed date for the commencement of the tenancy until the dwelling unit is rerented at the fair rental, plus the difference between such fair rent and the rent agreed to in the prior rental agreement, plus reasonable costs, and a reasonable commission for the rerenting of the dwelling unit. This paragraph applies if the amount calculated hereunder is less than the amounts calculated under paragraphs (1) or (2), whether or not the landlord rerents the dwelling unit. [L 1972, c 132, pt of §1; am L 1974, c 180, §5; am imp L 1984, c 90, §1]

§521-71 Termination of tenancy; landlord's remedies for holdover tenants. (a) When the tenancy is month to month, the landlord or the tenant may terminate the rental agreement upon the landlord's or the tenant's notifying the other at least twenty-eight days in advance of the anticipated termination. Before a landlord terminates a month-to-month tenancy where the landlord contemplates voluntary demolition of the dwelling units, or conversion to horizontal property regime under chapter 514A, the landlord shall provide notice to the tenant at least one hundred twenty days in advance of the anticipated demolition or anticipated termination, and shall comply with the provisions relating to conversions provided in section 514A-105. If notice is revoked or amended and reissued, the one hundred twenty-day period shall begin from the date it was reissued or amended.

(b) When the tenancy is less than month to month, the landlord or the tenant may terminate the rental agreement upon the landlord's or the tenant's notifying the other at least ten days before the anticipated termination.

(c) Whenever the term of the rental agreement expires, whether by passage of time, by mutual agreement, by the giving of notice as provided in subsection (a) or (b), or by the exercise by the landlord of a right to terminate given under this chapter, if the tenant

continues in possession after the date of termination without the landlord's consent, the tenant shall be liable for and shall pay to the landlord a sum not to exceed twice the monthly rent under the previous rental agreement, computed and prorated on a daily basis, for each day the tenant remains in possession for any period up to one month. If the tenant remains in possession for a period longer than one month, the tenant shall be liable for and shall pay to the landlord a sum equal to the monthly rent under the previous rental agreement for each additional month or fraction thereof. The landlord may bring a summary proceeding for recovery of the possession of the dwelling unit at any time during the first sixty days of holdover, except that the landlord's acceptance of rent in advance after the first month of holdover shall create a month-to-month tenancy in the absence of an agreement between the parties to the contrary at the time of such acceptance.

(d) Any notice of termination initiated for the purposes of evading the obligations of the landlord under subsections 521-21(d) or (e) shall be void. [L 1972, c 132, pt of §1; am L 1975, c 104, §3; am L 1978, c 124, §2; am L 1979, c 95, §1; am L 1980, c 189, §4; am L 1982, c 211, §2; am imp L 1984, c 90, §1]

§521-72 Landlord's remedies for improper use. (a) If the tenant breaches any rule authorized under section 521-52, the landlord may notify the tenant in writing of the tenant's breach. The notice shall specify the time, not less than ten days, within which the tenant is required to remedy the breach and shall be in substantially the following form:

"(Name and address of tenant)
(date)

You are hereby notified that you have failed to perform according to the following rule:

(specify rule allegedly breached)

Be informed that if you (continue violating) (again violate) this rule after (a date not less than ten days after this notice), the landlord may terminate the rental agreement and sue for possession of your dwelling unit."

No allowance of time to remedy the breach of any rule authorized under section 521-52 shall be required when the breach by the tenant causes or threatens to cause damage to any person or constitutes a violation of section 521-51(1) or (6).

(b) If the breach complained of continues or recurs after the date specified in the notice, the landlord may bring a summary proceeding for possession within thirty days after such continued or recurring breach. [L 1972, c 132, pt of §1; am L 1976, c 90, §7; am L

§521-73 Landlord's and tenant's remedies for abuse of access. (a) The tenant shall be liable to the landlord for any damage proximately caused by the tenant's unreasonable refusal to allow access as provided in section 521-53(a).

(b) Except for an entry under an emergency such as fire, the landlord shall be liable to the tenant for any theft, casualty, or other damage proximately caused by an entry into the dwelling unit by the landlord or by another person with the permission or license of the landlord:

- (1) When the tenant is absent and has, after having been notified by the landlord of a proposed entry or entries, refused consent to any such specific entry;
- (2) Without the tenant's actual consent when the tenant is present and able to consent; or
- (3) In any other case, when the damage suffered by the tenant is proximately caused by the landlord's negligence.

(c) In the event of repeated demands by the landlord for unreasonable entry, or any entry by the landlord or by another with the landlord's permission or license which is unreasonable and not consented to by the tenant:

- (1) The tenant may treat such actions as grounds for termination of the rental agreement;
- (2) Any circuit court judge on behalf of one or more of the tenants may issue an injunction against a landlord to enjoin violation of this subsection;
- (3) Any circuit court judge hearing a dispute as set out in subsection (2) may also assess a fine not to exceed \$100.

(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 by a tenant to a particular entry, shall be void. [L 1972, c 132, pt of §1; am L 1975, c 104, §4; am imp L 1984, c 90, §1]

§521-74 Retaliatory evictions and rent increases prohibited. (a) Notwithstanding that the tenant has no written rental agreement or that it has expired, so long as the tenant continues to tender the usual rent to the landlord or proceeds to tender receipts for rent lawfully withheld, no action or proceeding to recover possession of the dwelling unit may be maintained against the tenant, nor shall the landlord otherwise cause the tenant to quit the dwelling unit involuntarily, nor demand an increase in rent from the tenant; nor decrease the services to which the tenant has been entitled, after:

- (1) The tenant has complained in good faith to the department of health,

landlord, building department, office of consumer protection, or any other governmental agency concerned with landlord-tenant disputes of conditions in or affecting the tenant's dwelling unit which constitutes a violation of a health law or regulation or of any provision of this chapter; or

- (2) The department of health or other governmental agency has filed a notice or complaint of a violation of a health law or regulation or any provision of this chapter; or
- (3) The tenant has in good faith requested repairs under section 521-63 or 521-64.

(b) Notwithstanding subsection (a), the landlord may recover possession of the dwelling unit if:

- (1) The tenant is committing waste, or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of the tenant's rental agreement;
- (2) The landlord seeks in good faith to recover possession of the dwelling unit for immediate use as the landlord's own abode or that of the landlord's immediate family;
- (3) The landlord seeks in good faith to recover possession of the dwelling unit for the purpose of substantially altering, remodeling, or demolishing the premises;
- (4) The complaint or request of subsection (a) relates only to a condition or conditions caused by the lack of ordinary care by the tenant or another person in the tenant's household or on the premises with the tenant's consent;
- (5) The landlord has received from the department of health certification that the dwelling unit and other property and facilities used by or affecting the use and enjoyment of the tenant were on the date of filing of the complaint or request in compliance with health laws and regulations;
- (6) The landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser corresponding to paragraph (2) or (3); or
- (7) The landlord is seeking to recover possession on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant previous to the complaint or request of subsection (a).

(c) Any tenant from whom possession has been recovered or who has been otherwise involuntarily dispossessed, in violation of this section, is entitled to recover the damages sustained by the tenant and the cost of suit, including reasonable attorney's fees.

(d) Notwithstanding subsection (a), the landlord may increase the rent if:

- (1) The landlord has received from the department of health certification that the dwelling unit and other property and facilities used by and affecting the use and enjoyment of the tenant were on the date of filing of the complaint or request of subsection (a) in compliance with health laws and regulations;
- (2) 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's complying with the complaint or request, not less than four months prior to the demand for an increase in rent; and the increase in rent does not exceed the prorated portion of the net increase in taxes or costs;
- (3) The landlord has completed a capital improvement of the dwelling unit or the property of which it is a part and the increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the dwelling units benefited by the improvement;
- (4) The complaint or request of subsection (a) relates only to a condition or conditions caused by the want of due care by the tenant or another person of the tenant's household or on the premises with the tenant's consent; or
- (5) 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 dwelling units in the landlord's building or, in the case of a single-family residence or where there is no similar dwelling unit in the building, does not exceed the market rental value of the dwelling unit. [L 1972, c 132, pt of §1; am L 1975, c 104, §5; am L 1981, c 235, §4; am imp L 1984, c 90, §1]

[§521-75] Unconscionability. (a) In any court action or proceeding with respect to a rental agreement, if the court as a matter of law finds the agreement or any provision of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable provision, or it may so limit the application of any unconscionable provision as to avoid any unconscionable result.

(b) If it is claimed or appears to the court that the rental agreement or any provision thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present

evidence as to its setting, purpose, and effect to aid the court in making the determination.

(c) For the purposes of this section, an act or practice expressly permitted by this chapter is not in itself unconscionable. [L 1972, c 132, pt of §1]

§521-76 REPEALED. L 1976, c 77, §1.

[§521-77] Investigation and resolution of complaints by the office of consumer protection. The office of consumer protection may receive, investigate and attempt to resolve any dispute arising under this chapter. [L 1976, c 77, §2]

§521-78 Rent trust fund. (a) At the request of either the tenant or the landlord in any court proceeding in which the payment or nonpayment of rent is in dispute, the court shall order the tenant to deposit any disputed rent as it becomes due into the court as provided under subsection (c), and in the case of a proceeding in which a rent increase is in issue, the amount of the rent prior to the increase; provided that the tenant shall not be required to deposit any rent where the tenant can show to the court's satisfaction that the rent has already been paid to the landlord; provided further that if the parties had executed a signed, written instrument agreeing that the rent could be withheld or deducted, the court shall not require the tenant to deposit rent into the fund. No deposit of rent into the fund ordered under this section shall affect the tenant's rights to assert either that payment of rent was made or that any grounds for nonpayment of rent exist under this chapter.

(b) If the tenant is unable to comply with the court's order under subsection (a) in paying the required amount of rent into the court, the landlord shall have judgment for possession and execution shall issue accordingly. The writ of possession shall issue to the sheriff or to a police officer of the circuit where the premises are situated, commanding the sheriff or police officer to remove all persons from the premises, and to put the landlord, or the landlord's agent, into the full possession thereof.

(c) The court in which the dispute is being heard shall accept and hold in trust any rent deposited under this section and shall make such payments out of money collected as provided herein. The court shall order payment of such money collected or portion thereof to the landlord if the court finds that the rent is due and has not been paid to the landlord and that the tenant did not have any basis to withhold, deduct, or otherwise set off the rent not paid. The court shall order payment of such money collected or portion thereof to the tenant if the court finds that the rent is not due or has been paid, or that the tenant had a basis to withhold, deduct, or otherwise set off the rent not paid.

(d) The court shall, upon finding that either the landlord or the tenant raised the issue of payment or nonpayment of rent in bad faith, order that person to pay the other party reasonable interest on the rent deposited into the court. [L 1978, c 75, §2; am L 1981, c 235, §5; am imp L 1984, c 90, §1]

Appendix C

AMENDMENTS TO THE LANDLORD-TENANT CODE 1972-1986

Presented here are amendments made, through 1986, to the following sections of the original Landlord-Tenant Code enacted in 1972. Merely technical amendments, unless part of substantive amendments, have been omitted. Asterisks indicate portions of the amended sections omitted from the acts.

§521-7 Exclusions from application of chapter.

1986

Unless created solely to avoid the application of this chapter, this chapter shall not apply to:

* * *

(8) Occupancy by the prospective purchaser after an accepted offer to purchase and prior to the actual transfer of the owner's rights. (Act 112)

§521-8 Definitions.

1975

As used in this chapter, unless the context clearly requires otherwise:

* * *

(5) "Normal wear and tear" means deterioration or depreciation in value by ordinary and reasonable use but does not include items that are missing from the dwelling unit. (Act 10)

§521-21 Rent.

1974

* * *

(d) When the tenancy is from month to month, the amount of rent for such tenancy shall not be increased by the landlord without written notice given twenty-eight days preceding the end of such tenancy. (Act 180)

1978

(d) When the tenancy is from month to month, the amount of rent for such tenancy shall not be increased by the landlord without written notice given [twenty-eight days preceding the end of such tenancy.] forty-five consecutive days prior to the effective date of the increase.

(e) When the tenancy is less than month to month, the amount of rent for such tenancy shall not be increased by the landlord without written notice given fifteen consecutive days prior to the effective date of the increase. (Act 124)

§521-35 Attorney's fees.

1986

* * *

(b) A rental agreement may further provide that reasonable attorney's fees and costs may be awarded to the prevailing party in all other matters arising under this chapter. * * * (Act 103)

§521-38 Tenants subject to rental agreement; notice of conversions.

1980 (New)

When a period of tenancy is pursuant to any rental agreement and where a landlord contemplates conversion to horizontal property regime under chapter 514A, the landlord:

- (1) Shall provide notice to the tenant at least ninety days in advance of the termination of the rental agreement, and
- (2) Shall comply with the provisions relating to such conversions provided in section 514A-105. (Act 189)

Effective period. L 1980, c 189, §6, provides: "This Act [enacting this section and sections 514A-101 to 514A-108 and amending sections 514A-49 and 521-171] shall take effect upon its approval [May 30, 1980], terminate on December 31, 1985, and shall apply to projects for which a notice of intent has not been filed with the real estate commission prior to the effective date [May 30, 1980]."

1981

When a period of tenancy is pursuant to any rental agreement and where a landlord contemplates conversion to horizontal property regime under chapter 514A, the landlord:

- (1) Shall provide notice to the tenant at least [ninety days] one hundred twenty days in advance of the termination of the rental agreement, and
- (2) Shall comply with the provisions relating to such conversions provided in section 514A-105. (Act 211)

Application of 1981 amendment. L 1981, c 211, §3, provides that the act "shall apply to projects for which a notice of intent has not been filed with the real estate commission prior to the effective date [June 19, 1981]."

§521-42 Landlord to supply and maintain fit premises.

1976

- (a) The landlord shall at all times during the tenancy:
- (1) Comply with all applicable provisions of any state or county law, code, ordinance, or regulation, noncompliance with which would have the effect of endangering health or safety, governing maintenance, construction, use, or appearance of the dwelling unit and the premises of which it is a part;
 - (2) Keep common areas of a multi-dwelling unit premises in a clean and safe condition;
 - (3) Make all repairs and arrangements necessary to put and keep the premises in a habitable condition;
 - (4) Maintain all electrical, plumbing, and other facilities and appliances supplied by him in good working order and condition, subject to reasonable wear and tear;
 - (5) Except in the case of a single family residence, provide and maintain appropriate receptacles and conveniences for the removal of normal amounts of rubbish and garbage, and arrange for the frequent removal of such waste materials; and
 - (6) Except in the case of a single family residence, or where the building is not required by law to be equipped for the purpose, provide for the supplying of running water as reasonably required by the tenant.

Prior to the initial date of initial occupancy, the landlord shall inventory the premises and make a written record detailing the condition of the premises and any furnishings or appliances provided. Duplicate copies of this inventory shall be signed by the landlord and by the tenant and a copy given to each tenant. In an action arising under this section, the executed copy of the inventory shall be presumed to be correct. * * * (Act 90)

1981

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

Prior to the initial date of initial occupancy, the landlord shall inventory the premises and make a written record detailing the condition of the premises and any furnishings or appliances provided. Duplicate copies of this inventory shall be signed by the landlord and by the tenant and a copy given to each tenant. In an action arising under this section, the executed copy of the inventory shall be presumed to be correct. If the landlord fails to make such an inventory and written record, the condition of the premises upon the termination of the tenancy shall be presumed to be the same as when the tenant first occupied the premises. (Act 235)

§521-43 Rental agreement, disclosure.

1974

* * *

(d) In the case of a written rental agreement, the landlord shall furnish a copy of the lease or rental agreement to the tenant.

(e) The landlord shall furnish to the tenant a written receipt for rents paid at the time of said payment. Cancelled checks shall also constitute and fulfill the requirement of a written receipt. If rent is paid by check, the landlord shall furnish a receipt therefor, provided such receipt is requested by the tenant. (Act 180)

1975

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

- (1) The name and usual address of each person authorized to manage the premises; and
- (2) The name and usual address of each person who is an owner of the premises or who is authorized to act for and on behalf of the owner for the purposes of service of process and of receiving and receipting rents, notices, and demands.

(b) In the case of an oral rental agreement the landlord shall, on demand, furnish the tenant with a written statement containing the information specified in subsection (a).] A landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

- (1) Each person authorized to manage the premises; and
- 2 Each erson who is an owner of the remises or who s authorized to act for or on behalf of the owne for t e purpose of service of process and receiving and receipting for rents, notices, and demands.

The information required to be furnished shall be kept current and shall be enforceable against any successor landlord, owner, or manager.

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

- (1) Service of process and receiving and receipting for rents, notices, and demands; and
- (2) Performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for the purpose all rent collected from the premises. (Act 33)

1975

* * *

(f) Any owner or landlord who resides without the State or on another island from where the rental unit is located must

designate on the written rental agreement an agent residing on the same island where the unit is located to act in his behalf. In the case of an oral rental agreement, such information shall be supplied to the tenant, on demand, in a written statement.
(Act 104)

1976

* * *

(g) Subsections (a) and (b) to the contrary notwithstanding, the information required to be disclosed to a tenant may, instead of being disclosed in the manner described in subsections (a) and (b), be disclosed as follows:

- (1) In each multi-unit single-owner dwelling structure containing an elevator, a printed or typewritten notice containing the information required by subsections (a) and (b) shall be placed and continuously maintained in every elevator and in one other conspicuous place;
- (2) In each multi-unit single-owner dwelling structure not containing an elevator, a printed or typewritten notice containing the information required by subsections (a) and (b) shall be placed and continuously maintained in at least two conspicuous places.
- (3) In each multi-unit dwelling structure, a printed or typewritten notice containing the information required by subsections (a) and (b) shall be posted within the unit in a conspicuous place. (Act 90)

§521-44 Security deposits.

1974

(a) As used in this section "security deposit" means money deposited by or for the tenant with the landlord to be held by the landlord to:

- (1) Remedy tenant defaults for accidental or intentional damages resulting from failure to comply with section 521-51 [(1) or (6)], for failure to pay rent due, or for failure to return [to the landlord] all keys [or keys of the dwelling unit] furnished by the landlord at the termination of the rental agreement;

* * *

(b) The landlord may require as a condition of a rental agreement a security deposit to be paid by or for the tenant for the items in subsection (a) above and no others, in an amount not in excess of a sum equal to one month's rent. The landlord may not require or receive from or on behalf of a tenant at the beginning of a rental agreement any money other than the money for the first month's rent and a security deposit as provided in this section. The security deposit shall not be construed as payment of the last month's rent by the tenant. Any such security deposit shall be held by the landlord for the tenant and the claim of the tenant to the security deposit shall be prior to the claim of any creditor of the landlord, including a trustee in

bankruptcy, even if the security deposits are commingled. * * *
(Act 180)

1975

(f) If the landlord who required and received a security deposit transfers his interest in the dwelling unit, whether by sale, assignment, death, appointment of a receiver, or otherwise, the landlord's successor in interest is bound by this section. The original landlord shall provide an accounting of the security deposits received for each dwelling unit to the landlord's successor at or before the time of the transfer of the landlord's interest; within twenty days thereafter the landlord's successor shall give written notice to each tenant of the amount of the security deposit credited to the tenant. In the event the landlord's successor fails to satisfy the requirements of this subsection, it shall be presumed that the tenant has paid a security deposit equal to no less than one month's rent at the rate charged when the tenant originally rented the dwelling unit and the landlord's successor shall be bound by this amount in all further matters relating to the security deposit. (Act 101)

1986

(d) For the purposes of this section if a tenant is absent from the dwelling unit for a continuous period of [thirty] twenty days or more without written notice to the landlord the tenant shall be deemed to have wrongfully quit the dwelling unit[.]; provided that the tenant shall not be considered to be absent from the dwelling unit without notice to the landlord during any period for which the landlord has received payment of the rent. In addition to any other right or remedy the landlord has with respect to such a tenant the landlord may retain the entire amount of any security deposit he has received from or on behalf of such tenant. (Act 12)

\$521-45 Limitation of landlord and management liability.

1976

(a) Unless otherwise agreed, a landlord who conveys premises which include a dwelling unit subject to a rental agreement in a good faith sale to a person not connected with the landlord[,] [and] discloses, in writing, in any form of contract for the sale of such premises is relieved of liability under the rental agreement and under this chapter as to events occurring subsequent to the conveyance[.]. [except that he remains liable to the tenant for any security deposit to which the tenant is entitled under section 521-44.]

(b) The new owner who purchases the premises referred to in subsection (a) is liable under the rental agreement and under this chapter. * * * (Act 90)

Revision Note

In subsection (a) bracketed word "and" added.

§521-56 Disposition of tenant's abandoned possessions.

1974 (New)

(a) When the tenant, within the meaning of section 521-70(a), (b), (c), or (d), has wrongfully quit the premises, or when the tenant has quit the premises pursuant to a notice to quit or upon the natural expiration of the term, and has abandoned personalty which the landlord, in good faith, determines to be of value, in or around the premises, the landlord shall store such personalty at the tenant's expense for a period of not less than thirty days, after which time such personalty may be sold at public auction or in other commercially reasonable manner; provided further that during the said thirty days of storage, during which such personalty is in storage, the landlord shall make reasonable efforts to apprise the tenant of the identity and location of such personalty by mailing his notice at his forwarding address, or at an address designated by the tenant for the purpose of notification or if none of these be available, at his previous known address.

(b) The proceeds of the sale of personalty under subsection (a) shall, after deduction of accrued rent and costs of storage and sale, be held in trust for the tenant for thirty days, after which time the proceeds shall be forfeited to the landlord.

(c) When the tenant has quit the premises, pursuant to a notice to quit or upon the natural expiration of the term and has abandoned any property determined by the landlord to be of no value in or around the premises, such property may be disposed of at the landlord's discretion without liability to the landlord.
(Act 180)

1981

(a) When the tenant, within the meaning of [section 521-70(a), (b), (c), or (d),] section 521-70(d) or section 521-44(d), has wrongfully quit the premises, or when the tenant has quit the premises pursuant to a notice to quit or upon the natural expiration of the term, and has abandoned personalty which the landlord, in good faith, determines to be of value, in or around the premises, the landlord [shall] may sell such personalty, in a commercially reasonable manner, store such personalty at the tenant's expense [for a period of not less than thirty days], or donate such personalty to a charitable organization. [after which time such personalty may be sold at public auction or in other commercially reasonable manner; provided further that during the said thirty days of storage, during which such personalty is in storage,] Before selling or donating such personalty, the landlord shall make reasonable efforts to apprise the tenant of the identity and location of, and the landlord's intent to sell or donate such personalty by

mailing [his] notice [at his] to the tenant's forwarding address, or [at] to an address designated by the tenant for the purpose of notification or if [none] neither of these [be] is available, [at his] to the tenant's previous known address. Following such notice, the landlord may sell the personalty after advertising the sale in a daily paper of general circulation within the circuit in which the premises is located for at least three consecutive days, or the landlord may donate the personalty to a charitable organization; provided that such sale or donation shall not take place until fifteen days after notice is mailed, after which the tenant is deemed to have received notice.

(b) The proceeds of the sale of personalty under subsection (a) shall, after deduction of accrued rent and costs of storage and sale, including the cost of advertising, be held in trust for the tenant for thirty days, after which time the proceeds shall be forfeited to the landlord.

(c) When the tenant has quit the premises [pursuant to a notice to quit or upon the natural expiration of the term and has abandoned any property] any personalty in or around the premises left unsold after conformance to subsection (a) or otherwise left abandoned by the tenant and determined by the landlord to be of no value [in or around the premises, such property] may be disposed of at the landlord's discretion without liability to the landlord. (Act 154)

§521-61 Tenant's remedies for failure by landlord to supply possession.

1976

(a) If the landlord fails to put the tenant into possession of the dwelling unit in the agreed condition at the beginning of the agreed term:

- (1) The tenant shall not be liable for the rent during any period he is unable to enter into possession;
- (2) At any time during the period the tenant is so unable to enter into possession he may notify the landlord that he has terminated the rental agreement; and
- (3) The tenant shall have the right to recover damages in the amount of reasonable expenditures necessary to secure adequate substitute housing, the recovery to be made either by action brought in the district court or by deduction from the rent upon submission to the landlord of receipts totaling at least
 - (A) The amount of abated rent; plus
 - (B) The amount claimed against the rent; or
- (4) If the inability to enter results from the wrongful holdover of a prior occupant, the tenant may maintain a summary proceeding in the district court for possession. * * * (Act 90)

§521-63 Tenant's remedy of termination at any time; unlawful removal or exclusion.

1981

(c) If the landlord removes or excludes the tenant from the premises overnight without cause or without court order so authorizing, the tenant may recover possession or terminate the rental agreement and, in either case, recover [damages sustained] an amount equal to two months rent or free occupancy for two months, and the cost of suit, including reasonable attorney's fees. If the rental agreement is terminated, the landlord shall comply with section 521-44(c). The court may also order any injunctive or other equitable relief it deems proper. If the court determines that the removal or exclusion by the landlord was with cause or was authorized by court order, the court may award the landlord the cost of suit, including reasonable attorney's fees if the attorney is not a salaried employee of the landlord or his assignee. (Act 235)

§521-64 Tenant's remedy of repair and deduction for minor defects.

1974

(a) If the landlord fails to repair, maintain, keep in sanitary condition, or perform in any other manner required by sections 321-9 to 321-11 and 322-1 to 322-7, or by regulations thereunder, or as agreed to in a rental agreement, or if the landlord is in material noncompliance with Section 521-42(a), and does not remedy the failure or noncompliance within [thirty] twenty days after being notified in writing by the tenant to do so, or if the cost to the landlord of remedying the failure or noncompliance would exceed \$100, within [thirty] twenty days after being notified in writing by the department of health that there is a health violation, the tenant may further notify the landlord in writing of his intention to correct the objectionable condition at the landlord's expense and:

- (1) Immediately do or have done the necessary work in a workmanlike manner; or
- (2) The tenant may submit to the landlord, at least [thirty] twenty days before having the work done, a written signed estimate from each of two qualified workmen and proceed to have done the necessary work by the workman who provides the lower estimate; provided the landlord may require by a writing a reasonable substitute workman or substitute materials; and provided further that if the lower estimate exceeds \$100, the tenant shall not proceed to have done the necessary work until he obtains from the department of health a written statement that the objectionable condition in fact constitutes a violation of a health law or regulation, a copy of which statement shall be

mailed by certified or registered mail by the department of health to the landlord. * * * (Act 180)

1975

(a) If the landlord fails to repair, maintain, keep in sanitary condition, or perform in any other manner required by sections 321-9 to 321-11 and 322-1 to 322-7, or by regulations thereunder, or as agreed to in a rental agreement, or if the landlord is in material noncompliance with Section 521-42(a), and does not remedy the failure or noncompliance within [twenty] twelve business days after being notified in writing by the tenant to do so, or if the cost to the landlord of remedying the failure or noncompliance would exceed [\$100] \$200, within [twenty] five business days after being notified in writing by the department of health that there is a health violation, the tenant may further notify the landlord in writing of his intention to correct the objectionable condition at the landlord's expense and:

- (1) Immediately do or have done the necessary work in a workmanlike manner; or
- (2) The tenant may submit to the landlord, at least [twenty] five business days before having the work done, written signed estimate from each of two qualified workmen and proceed to have done the necessary work by the workman who provides the lower estimate; provided the landlord may require [by a] in writing a reasonable substitute workman or substitute materials; and provided further that if the lower estimate exceeds [\$100] \$200, the tenant shall not proceed to have done the necessary work until he obtains from the department of health a written statement that the objectionable condition in fact constitutes a violation of a health law or regulation, a copy of which statement shall be mailed by certified or registered mail by the department of health to the landlord.

(b) A tenant may deduct from his rent not more than [\$100] \$200 for his actual expenditures for work done to correct an objectionable condition pursuant to subsection (a)(1) and may deduct not more than one month's rent for his actual expenditures for work done to correct an objectionable condition pursuant to subsection (a)(2), if he submits to the landlord copies of receipts amounting to at least the sum deducted. * * * (Act 104)

1976

(a) [If the landlord fails to repair, maintain, keep in sanitary condition, or perform in any other manner required by sections 321-9 to 321-11 and 322-1 to 322-7, or by regulations thereunder, or as agreed to in a rental agreement, or if the landlord is in material noncompliance with Section 521-42(a), and does not remedy the failure or noncompliance within twelve business days after being notified in writing by the tenant to do

so, or if the cost to the landlord of remedying the failure or noncompliance would exceed \$200, within five business days after being notified in writing by the department of health that there is a health violation, the tenant may further notify the landlord in writing of his intention to correct the objectionable condition at the landlord's expense and:

- (1) Immediately do or have done the necessary work in a workmanlike manner; or
- (2) The tenant may submit to the landlord, at least five business days before having the work done, a written signed estimate from each of two qualified workmen and proceed to have done the necessary work by the workman who provides the lower estimate; provided the landlord may require in writing a reasonable substitute workman or substitute materials; and provided further that if the lower estimate exceeds \$200, the tenant shall not proceed to have done the necessary work until he obtains from the department of health a written statement that the objectionable condition in fact constitutes a violation of health law or regulation, a copy of which statement shall be mailed by certified or registered mail by the department of health to the landlord.

(b) A tenant may deduct from his rent not more than \$200 for his actual expenditures for work done to correct an objectionable condition pursuant to subsection (a)(1) and may deduct not more than one month's rent for his actual expenditures for work done to correct an objectionable condition pursuant to subsection (a)(2), if he submits to the landlord copies of receipts amounting to at least the sum deducted.]

The landlord, upon written notification by the department of health or other state or county agencies that there exists a condition on the premises which constitutes a health or safety violation, shall commence repairs of the condition within five business days of the notification with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence the repairs within five business days for reasons beyond his control he shall inform the tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence. Health or safety violations for the purpose of this section means any condition on the premises which is in noncompliance with section 521-42(a)(1).

(b) If the landlord fails to perform in the manner specified in subsection (a), the tenant may:

- (1) Immediately do or have done the necessary repairs in a workmanlike manner, and upon submission to the landlord or receipts amounting to at least the sum deducted, deduct from his rent not more than \$200 for his actual expenditures for work done to correct the health or safety violation; or
- (2) Submit to the landlord, at least five business days before having the work done, written signed estimates from each of two qualified workmen and proceed to have done the necessary work by the workman who provides the lower estimate; provided that the landlord may require

in writing a reasonable substitute workman or substitute materials, and upon submission to the landlord of receipts amounting to at least the sum deducted, the tenant may deduct \$200 or one month's rent, whichever is greater, for his actual expenditures for work done to correct the health or safety violation.

(c) The landlord, upon written notification by the tenant of any defective condition on the premises which is in material noncompliance with section 521-42(a) or with the rental agreement, shall commence repairs of the condition within twelve business days of the notification with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence repairs within twelve business days for reasons beyond his control he shall inform the tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence.

(d) If the landlord fails to perform in the manner specified in subsection (c), the tenant may immediately do or have done the necessary work in a workmanlike manner and upon submission to the landlord of receipts amounting to at least the sums deducted, deduct from his rent not more than \$200 for his actual expenditures for work done to correct the defective condition. * * * (Act 90)

1981

(b) If the landlord fails to perform in the manner specified in subsection (a), the tenant may:

- (1) Immediately do or have done the necessary repairs in a workmanlike manner, and upon submission to the landlord of receipts amounting to at least the sum deducted, deduct from his rent not more than [\$200] \$300 for his actual expenditures for work done to correct the health or safety violation; or
- (2) Submit to the landlord, at least five business days before having the work done, written signed estimates from each of two qualified workmen and proceed to have done the necessary work by the workman who provides the lower estimate; provided that the landlord may require in writing a reasonable substitute workman or substitute materials, and upon submission to the landlord of receipts amounting to at least the sum deducted, the tenant may deduct [\$200] \$300 or one month's rent, whichever is greater, for his actual expenditures for work done to correct the health or safety violation.

(c) The landlord, upon written notification by the tenant of any defective condition on the premises which is in material noncompliance with section 521-42(a), or with the rental agreement, shall commence repairs of the condition within twelve business days of the notification with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence repairs within twelve business days for reasons beyond his control he shall inform the

tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence[.]; provided further that in any case involving repairs, except those required due to misuse by the tenant, to electrical, plumbing, or other facilities, including major appliances provided by the landlord pursuant to the rental agreement, necessary to provide sanitary and habitable living conditions, the landlord shall commence affirmative good faith efforts to make repairs within three business days of receiving oral or written notification. (Act 235)

1982

(c) The landlord, upon written notification by the tenant of any defective condition on the premises which is in material noncompliance with section 521-42(a), or with the rental agreement, shall commence repairs of the condition within twelve business days of the notification with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence repairs within twelve business days for reasons beyond his control he shall inform the tenant of the reason for the delay and set a reasonable tentative date on which repairs will commence[; provided further that in]. In any case involving repairs, except those required due to misuse by the tenant, to electrical, plumbing, or other facilities, including major appliances provided by the landlord pursuant to the rental agreement, necessary to provide sanitary and habitable living conditions, the landlord shall commence [affirmative good faith efforts to make] repairs within three business days of receiving oral or written notification[.], with a good faith requirement that the repairs be completed as soon as possible; provided that if the landlord is unable to commence repairs within three business days for reasons beyond his control he shall inform the tenant of the reasons for the delay and set a reasonable tentative date on which repairs will commence.

(d) If the landlord fails to perform in the manner specified in subsection (c), the tenant may immediately do or have done the necessary work in a workmanlike manner and upon submission to the landlord of receipts amounting to at least the sums deducted, deduct from his rent not more than [\$200] \$300 for his actual expenditures for work done to correct the defective condition. * * * (Act 211)

§521-68 Landlord's remedies for failure by tenant to pay rent.

1978

(a) A landlord or his agent may, any time after rent is due, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in the notice, not less than five business days after receipt thereof, the rental agreement will be terminated. If the tenant cannot be served with notice as required, notice may be given the tenant by posting the same in a conspicuous place on the dwelling unit. If the tenant remains in default, the landlord may thereafter bring

a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession. * * * (Act 167)

§521-69 Landlord's remedies for tenant's waste, failure to maintain, or unlawful use.

1976

(a) If the tenant is in material noncompliance with section 521-51, the landlord, upon learning of any such noncompliance and after notifying the tenant in writing of the noncompliance and allowing a specified time not less than [thirty] fifteen days after receipt of the notice, for the tenant to remedy the noncompliance:

- (1) May terminate the rental agreement and bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession if the tenant is in material noncompliance with section 521-51(1); or
- (2) May remedy the tenant's failure to comply and bill the tenant for the actual and reasonable cost of such remedy if the noncompliance can be remedied by the landlord by cleaning, repairing, replacing a damaged item, or the like, which bill shall be treated by all parties as rent due and payable on the next regular rent collection date or, if the tenancy has terminated, immediately upon receipt by the tenant.

No allowance of time to remedy noncompliance shall be required when noncompliance by the tenant causes or threatens to cause irreparable damage to any person or property. * * * (Act 90)

1978

(a) * * *

No allowance of time to remedy noncompliance shall be required when noncompliance by the tenant causes or threatens to cause irreparable damage to any person or property. If the tenant cannot be served with notice as required, notice may be given the tenant by posing the same in a conspicuous place on the dwelling unit. (Act 167)

1983

(a) If the tenant is in material noncompliance with section 521-51, the landlord, upon learning of any such noncompliance and after notifying the tenant in writing of the noncompliance and allowing a specified time not less than [fifteen] ten days after receipt of the notice, for the tenant to remedy the noncompliance: * * * (Act 146)

§521-70 Landlord's remedies for absence, misuse, [and] abandonment[.] and failure to honor tenancy before occupancy.

1974

* * *

(e) If the tenant unequivocally indicates by words or deeds his intention not to honor the tenancy before occupancy, he shall be liable to the landlord for the lesser of the following amounts:

- (1) All monies deposited with the landlord;
- (2) One month's rent at the rate agreed upon in the rental agreement;
- (3) All rent accrued from the agreed date for the commencement of the tenancy until the dwelling unit is re-rented at the fair rental, plus the difference between such fair rent and the rent agreed to in the prior rental agreement, plus reasonable costs, and a reasonable commission for the re-renting of this dwelling unit. This paragraph applies if the amount calculated hereunder is less than the amounts calculated under paragraphs (1) or (2), whether or not the landlord re-rents the dwelling unit. (Act 180)

§521-71 Termination of tenancy; landlord's remedies for holdover tenants.

1975

(a) When the tenancy is month to month, the landlord or the tenant may terminate the rental agreement upon his notifying the other at least twenty-eight days in advance of the anticipated termination or in cases of voluntary demolition of the dwelling units, ninety days in advance of the anticipated demolition. If notice is revoked or amended and re-issued, the ninety day period shall begin from the date it was re-issued or amended. * * * (Act 104)

1978

* * *

(d) Any notice of termination initiated for the purposes of evading the obligations of the landlord under subsections 521-21(d) or (e) shall be void. (Act 124)

1979

(a) When the tenancy is month to month, the landlord or the tenant may terminate the rental agreement upon his notifying the other at least twenty-eight days in advance of the anticipated termination [or in cases of]. Before a landlord terminates a month-to-month tenancy where he contemplates voluntary demolition of the dwelling units, or conversion to horizontal property regime under chapter 514A, he shall provide notice to the tenant

at least ninety days in advance of the anticipated demolition[.] or anticipated termination. If notice is revoked or amended and re-issued, the ninety day period shall begin from the date it was re-issued or amended. (Act 95)

1980

(a) When the tenancy is month to month, the landlord or the tenant may terminate the rental agreement upon his notifying the other at least twenty-eight days in advance of the anticipated termination. Before a landlord terminates a month-to-month tenancy where he contemplates voluntary demolition of the dwelling units, or conversion to horizontal property regime under chapter 514A, he shall provide notice to the tenant at least ninety days in advance of the anticipated demolition or anticipated termination[.], and shall comply with the provisions relating to conversions provided in section 514A-105. If notice is revoked or amended and [re-issued,] reissued, the ninety-day period shall begin from the date it was [re-issued] reissued or amended. (Act 189)

1982

(a) When the tenancy is month to month, the landlord or the tenant may terminate the rental agreement upon his notifying the other at least twenty-eight days in advance of the anticipated termination. Before a landlord terminates a month-to-month tenancy where he contemplates voluntary demolition of the dwelling units, or conversion to horizontal property regime under chapter 514A, he shall provide notice to the tenant at least [ninety] one hundred twenty days in advance of the anticipated demolition or anticipated termination, and shall comply with the provisions relating to conversions provided in section 514A-105. If notice is revoked or amended and reissued, the [ninety-day] one hundred twenty-day period shall begin from the date it was reissued or amended. (Act 211)

§521-72 Landlord's remedies for improper use.

1976

(a) If the tenant breaches any rule authorized under section 521-52, the landlord may notify the tenant in writing of his breach. The notice shall specify the time, not less than [thirty] fifteen days, within which the tenant is required to remedy the breach and shall be in substantially the following form:

"(Name and address of tenant) (date)
You are hereby notified that you have failed to perform according to the following rule:
(specify rule allegedly breached)
Be informed that if you (continue violating) (again violate) this rule after (a date not less than [thirty]

fifteen days after this notice), the landlord may terminate the rental agreement and sue for possession of your dwelling unit."

No allowance of time to remedy the breach of any rule authorized under section 521-52 shall be required when the breach by the tenant causes or threatens to cause damage to any person or constitutes a violation of section 521-51(1) or (6). * * * (Act 90)

1983

(a) If the tenant breaches any rule authorized under section 521-52, the landlord may notify the tenant in writing of his breach. The notice shall specify the time, not less than [fifteen] ten days, within which the tenant is required to remedy the breach and shall be in substantially the following form:

"(Name and address of tenant) (date)
You are hereby notified that you have failed to perform according to the following rule:

(specify rule allegedly breached)

Be informed that if you (continue violating) (again violate) this rule after (a date not less than [fifteen] ten days after this notice), the landlord may terminate the rental agreement and sue for possession of your dwelling unit."

No allowance of time to remedy the breach of any rule authorized under section 521-52 shall be required when the breach by the tenant causes or threatens to cause damage to any person or constitutes a violation of section 521-51(1) or (6). (Act 146)

§521-73 Landlord's and tenant's remedies for abuse of access.

1975

* * *

(c) [Repeated] In the event of repeated demands by the landlord for unreasonable entry, or any entry by the landlord or by another with the landlord's permission or license 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 circuit court judge on behalf of one or more tenants may issue an injunction against a landlord to enjoin violation of this subsection.]:

- (1) The tenant may treat such actions as grounds for termination of the rental agreement;
- (2) Any circuit court judge on behalf of one or more of the tenants may issue an injunction against a landlord to enjoin violation of this subsection;
- (3) Any circuit court judge hearing a dispute as set out in subsection (2) may also assess a fine not to exceed \$100. * * * (Act 104)

§521-74 Retaliatory evictions and rent increases prohibited.

1975

(a) Notwithstanding that the tenant has no written rental agreement or that it has expired, so long as the tenant continues to tender the usual rent to the landlord or proceeds to tender receipts for rent lawfully withheld, no action or proceeding to recover possession of the dwelling unit may be maintained against the tenant, nor shall the landlord otherwise cause the tenant to quit the dwelling unit involuntarily, nor demand an increase in rent from the tenant; nor decrease the services to which the tenant has been entitled, after:

- (1) The tenant has complained in good faith to the department of health, landlord, building department, office of consumer protection, or any other governmental agency concerned with landlord-tenant disputes of conditions in or affecting his dwelling unit which constitutes a violation of a health law or regulation or of any provision of this chapter; or
- (2) The department of health or other governmental agency has filed a notice or complaint of a violation of a health law or regulation or any provision of this chapter; or
- (3) The tenant has in good faith requested repairs under section 521-63 or 521-64.

(b) Notwithstanding subsection (a), the landlord may recover possession of the dwelling unit if:

* * *

- (2) The landlord seeks in good faith to recover possession of the dwelling unit for immediate use at his own abode or that of his immediate family; * * * (Act 104)

1981

(b) * * *

- [(4) The landlord seeks in good faith to recover possession of the dwelling unit for the purpose of immediately terminating for at least six months use of the dwelling unit as a dwelling unit;] * * * (Act 235)

1976 (Repealed)

[§521-76 Office of consumer protection to provide counsel for certain tenants. In any proceeding brought by or for a landlord against a tenant under this chapter, other than actions brought in the small claims court, the court shall inform the tenant of his right to counsel, and if the court determines that the tenant is unable to afford his own counsel and is unable to obtain counsel through a nonprofit organization authorized to provide administrative support to lawyers who provide legal services to indigents, the court may notify the office of consumer protection which shall provide counsel for the tenant in

the proceedings.] (Act 77)

§521-77 Investigation and resolution of complaints by the office of consumer protection.

1976 (New)

The office of consumer protection may receive, investigate and attempt to resolve any dispute arising under this chapter. (Act 77)

§521-78 Rent trust fund.

1978 (New)

(a) At the request of either the tenant or the landlord in any court proceeding in which the payment or nonpayment of rent is in dispute, the court shall order the tenant to deposit any disputed rent as it becomes due into the court as provided under subsection (c); provided that the tenant shall not be required to deposit any rent where the tenant can show to the court's satisfaction that the rent has already been paid to the landlord; provided further that if the parties had executed a signed, written instrument agreeing that the rent could be withheld or deducted, the Court shall not require the tenant to deposit rent into the fund. No deposit of rent into the fund ordered under this section shall affect the tenant's rights to assert either that payment of rent was made or that any grounds for nonpayment of rent exist under this chapter.

(b) If the tenant is unable to comply with the court's order under subsection (a) in paying the full amount of rent in dispute into the court, the landlord shall have judgment for possession and execution shall issue accordingly. The writ of possession shall issue to the sheriff or to a police officer of the circuit where the premises are situated, commanding him to remove all persons from the premises, and to put the landlord, or his agent, into the full possession thereof.

(c) The court in which the dispute is being heard shall accept and hold in trust any rent deposited under this section and shall make such payments out of money collected as provided herein. The court shall order payment of such money collected or portion thereof to the landlord if the court finds that the rent is due and has not been paid to the landlord and that the tenant did not have any basis to withhold, deduct, or otherwise set off the rent not paid. The court shall order payment of such money collected or portion thereof to the tenant if the court finds that the rent is not due or has been paid, or that the tenant had a basis to withhold, deduct, or otherwise set off the rent not paid.

(d) The court shall, upon finding that either the landlord or the tenant raised the issue of payment or nonpayment of rent in bad faith, order that person to pay the other party reasonable

interest on the rent deposited into the court. (Act 75)

1981

(a) At the request of either the tenant or the landlord in any court proceeding in which the payment or nonpayment of rent is in dispute, the court shall order the tenant to deposit any disputed rent as it becomes due into the court as provided under subsection (c)[;], and in the case of a proceeding in which a rent increase is in issue, the amount of the rent prior to the increase; provided that the tenant shall not be required to deposit any rent where the tenant can show to the court's satisfaction that the rent has already been paid to the landlord; provided further that if the parties had executed a signed, written instrument agreeing that the rent could be withheld or deducted, the court shall not require the tenant to deposit rent into the fund. No deposit of rent into the fund ordered under this section shall affect the tenant's rights to assert either that payment of rent was made or that any grounds for nonpayment of rent exist under this chapter.

(b) If the tenant is unable to comply with the court's order under subsection (a) in paying the [full] required amount of rent [in dispute] into the court, the landlord shall have judgment for possession and execution shall issue accordingly. The writ of possession shall issue to the sheriff or to a police officer of the circuit where the premises are situated, commanding him to remove all persons from the premises, and to put the landlord, or his agent, into the full possession thereof. (Act 235)

Appendix D

CENTURY 21, BEACHCOMBER REALTY, INC., AND COBBLESTONE PROPERTIES, INC. VS. LUDWIG MICHELY

The case of Century 21, Beachcomber Realty, Inc., and Cobblestone Properties, Inc. vs. Ludwig Michely, Case No. H86-1468, was filed in the District Court of the First Circuit, Honolulu Division, on April 15, 1986.

Plaintiffs Century 21, Beachcomber Realty, Inc., and Cobblestone Properties, Inc., were the managing agent and owner, respectively, of the apartment unit in the case. For simplicity, plaintiffs will be referred to as the "landlord". Defendant was the tenant.

The landlord and tenant entered into a one-year rental agreement in October, 1985, for the tenant to occupy the landlord's condominium apartment which was for sale. Special terms were written into the rental agreement stating that the apartment was for sale, that the tenant would allow the apartment for showings to prospective buyers with 24 hours' notice, and that the tenant would be present. (The last condition was added by the tenant.)

Because of what in the landlord's view was the tenant's unreasonable refusal of access, the landlord served on the tenant a Notice to Vacate and terminated the rental agreement on 30-days' notice. The tenant refused to vacate, and the landlord filed this action for summary possession.

The two statutory sections which were central to the case were sections 521-53(a) and 521-73(a), Hawaii Revised Statutes, relating to access and landlord's remedies for abuse of access.

The tenant argued that under section 521-73(a), Hawaii Revised Statutes, the legislature specifically excluded a right to summary possession by the landlord for a tenant's failure to give access.¹

The court found that there had been a breach of the rental contract but that the breach did not give rise to "the rather harsh remedy of summary possession."² The court read section 521-73(a), Hawaii Revised Statutes, as limiting the landlord's remedies to damages and awarded the landlord \$1.00. The landlord could not prove that the tenant's refusal of access prevented a sale of the apartment and thus no damages based on failure to sell or any other grounds could be alleged or proven, although the real remedy the landlord sought was possession.

1. Defendant's Memorandum, May 23, 1986, pp. 2, 3.

2. Tape of the final hearing of the case, June 2, 1986.

With reference to the limited remedies under section 521-73(a), Hawaii Revised Statutes, the court stated to plaintiffs' attorney: "I can sympathize with your argument. If you can't show the premises, how can you get a purchaser, even an offer? Maybe those questions should be directed to the legislature."³

3. Ibid.

Note: This case summary was sent to the court and to the parties' attorneys for review as to its accuracy with a request that they contact the researcher should they have any objections to the summary. The following responses were received:

From the court, in pertinent part:

"I have had an opportunity to review the case summary and find that it is substantially accurate." Letter from the Honorable George Y. Kimura, District Judge, to Claire Marumoto, September 10, 1986.

From the defendant's attorney, in pertinent part:

"Please be advised that due to ethical considerations, I will be unable to comment in any way on your review.

However, I will state any change in the landlord tenant code concerning landlord remedies would work a serious injustice to the tenants of Hawaii." Letter from Scot S. Brower, Esq., to Claire Marumoto, September 4, 1986.

No response was received from the plaintiffs' attorney, Randolph F. Leong, Esq.

Appendix E

UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

1. §2.104. [Landlord to Maintain Premises]

(a) A landlord shall

- (1) comply with the requirements of applicable building and housing codes materially affecting health and safety;
- (2) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
- (3) keep all common areas of the premises in a clean and safe condition;
- (4) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;
- (5) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and
- (6) supply running water and reasonable amounts of hot water at all times and reasonable heat [between [October 1] and [May 1]] except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

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

(c) The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in paragraphs (5) and (6) of subsection (a) and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

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

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

- (2) the work is not necessary to cure noncompliance with subsection (a)(1) of this section; and
- (3) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

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

2. §4.101. [Noncompliance by the Landlord--In General]

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

- (1) If the breach is remedial by repairs, the payment of damages or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate by reason of the breach.
- (2) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within [6] months, the tenant may terminate the rental agreement upon at least [14 days'] written notice specifying the breach and the date of termination of the rental agreement.
- (3) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.

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

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

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

3. §4.103. [Self-Help for Minor Defects]

(a) If the landlord fails to comply with the rental agreement or Section 2.104, and the reasonable cost of compliance is less than [\$100], or an amount equal to [one-half] the periodic rent, whichever amount is greater, the tenant may recover damages for the breach under Section 4.101(b) or may notify the landlord of his intention to correct the condition at the landlord's

expense. If the landlord fails to comply within [14] days after being notified by the tenant in writing or as promptly as conditions require in case of emergency, the tenant may cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection.

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

4. §2.101. [Security Deposits; Prepaid Rent]

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

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

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

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

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

Appendix F

STATUTES REGULATING SECURITY DEPOSITS IN OTHER STATES

A-1

CONNECTICUT

Sec. 47a-21. Security deposits.

(h) **Escrow deposit.** (1) Each landlord shall immediately deposit the entire amount of all security deposits received by him on or after October 1, 1979, from his tenants into one or more escrow accounts for such tenants in a financial institution. Such landlord shall be escrow agent of such account. Within seven days after a written request by the commissioner for the name of each financial institution in which any such escrow accounts are maintained and the account number of each such escrow account, a landlord shall deliver such requested information to the commissioner.

(2) Each landlord and each successor to the landlord's interest shall maintain each such account as escrow agent and shall not withdraw the amount of any security deposit or accrued interest on such amount, as provided in subsection (i) of this section, that is in any escrow account from such account except as provided in this section.

(4) No person shall withdraw funds from any escrow account except as follows: (A) Within the time specified in subsection (d) of this section, each escrow agent shall withdraw and disburse the amount of any security deposit due to any tenant upon the termination of such tenancy, in accordance with subsection (d) of this section, together with accrued interest thereon as provided in subsection (i) of this section. (B) At the time provided for in subsection (i) of this section, each escrow agent shall withdraw from such account and pay to each tenant any accrued interest due and payable to any tenant in accordance with the provisions of said subsection. (C) The escrow agent may withdraw and personally retain interest credited to and not previously withdrawn from such account to the extent such interest exceeds the amount of interest being earned by tenants as provided in subsection (i) of this section. (D) The escrow agent may withdraw and personally retain the amount of damages withheld, in accordance with the provisions of subsection (d) of this section, from payment of a security deposit to a tenant. (E) The escrow agent may at any time during a tenancy withdraw and pay to a tenant all or any part of a security deposit together with accrued interest on such amount as provided in subsection (i) of this section. (F) The escrow agent shall withdraw and disburse funds in accordance with the provisions of subdivision (3) of this subsection. (G) The escrow agent may transfer any escrow account from one financial institution to another and may transfer funds from one escrow account to another provided that all security deposits in escrow accounts remain continuously in escrow accounts.

(i) **Payment of interest on security deposits.** On and after October 1, 1973, each landlord other than a landlord of a residential unit in any building owned or controlled by any educational institution and used by such institution for the purpose of housing students of such institution and their families, and each landlord or owner of a mobile

home or of a mobile home space or lot or park, as such terms are defined in subdivisions (1), (2) and (3) of section 21-64, shall pay interest at a rate of not less than four per cent per annum and, on and after October 1, 1982, at a rate of not less than five and one-quarter per cent per annum, on such security deposit. On the anniversary date of the tenancy and annually thereafter, such interest shall be paid to the tenant or resident or credited toward the next rental payment due from the tenant or resident, as the landlord or owner shall determine. If the tenancy is terminated before the anniversary date of such tenancy, or if the landlord or owner returns all or part of a security deposit prior to termination of the tenancy, the landlord or owner shall pay the accrued interest to the tenant or resident within thirty days of such termination or return. In any case where a tenant or resident has been delinquent for more than ten days in the payment of any monthly rent, he shall forfeit any interest which would otherwise be payable to him for that month. No landlord or owner shall increase the rent due on any quarters or property subject to the provisions of this section because of the requirement that interest be paid on any security deposit made with respect to such quarters or property.

A-2

ILLINOIS

SECURITY DEPOSITS ON RESIDENTIAL LEASES

AN ACT to require the payment of interest by lessors of residential real property on security deposits made by lessees. P.A. 77-705, approved Aug. 12, 1971, eff. Jan. 1, 1972.

121. Interest to be paid by lessor on security deposits— Rate

§ 1. A lessor of residential real property, containing 25 or more units, who receives a security deposit from a lessee to secure the payment of rent or compensation for damage to property shall pay interest to the lessee computed from the date of the deposit at a rate of 5% per year on any such deposit held by the lessor for more than 6 months.

Amended by P.A. 79-189, § 1, eff. Jan. 1, 1976.

122. Time for payment—Penalty for refusal to pay

§ 2. The lessor shall, within 30 days after the end of each 12 month rental period, pay to the lessee any interest, by cash or credit to be applied to rent due, except when the lessee is in default under the terms of the lease.

A lessor who willfully fails or refuses to pay the interest required by this Act shall, upon a finding by a circuit court that he has willfully failed or refused to pay, be liable for an amount equal to the amount of the security deposit, together with court costs and reasonable attorneys fees.

Amended by P.A. 79-1428, § 1, eff. Oct. 1, 1976.

MARYLAND

§ 8-203. Security deposits. ***

(e) Bank account for maintenance of deposits; liability of successor in interest; exemption from attachment. — (1) The landlord shall maintain all security deposits in a banking or savings institution in the state. The account shall be devoted exclusively to security deposits and bear interest.

(2) A security deposit shall be deposited in the account within 30 days after the landlord receives it.

(3) In the event of sale or transfer of any sort, including receivership or bankruptcy, the security deposit is binding on the successor in interest to the person to whom the deposit is given. Security deposits are free from any attachment by creditors.

(4) Any successor in interest is liable to the tenant for failure to return the security deposit, together with interest, as provided in this section.

(f) Return of deposit to tenant; interest. — (1) Within 45 days after the end of the tenancy, the landlord shall return the security deposit to the tenant together with simple interest which has accrued in the amount of 4 percent per annum, less any damages rightfully withheld.

(2) Interest shall accrue at six-month intervals from the day the tenant gives the landlord the security deposit. Interest is not compounded.

(3) Interest shall be payable only on security deposits of \$50 or more.

(4) If the landlord, without a reasonable basis, fails to return any part of the security deposit, plus accrued interest, within 45 days after the termination of the tenancy, the tenant has an action of up to threefold of the withheld amount, plus reasonable attorney's fees.

MASSACHUSETTS

§ 15B. Void Provisions of Residential Leases; Lessor's Rights of Entry; Security Deposits; Interest or Penalty for Failure to Pay Rent, etc. ***

(3) (a) Any security deposit received by such lessor shall be held in a separate, interest-bearing account in a bank, located within the commonwealth under such terms as will place such deposit beyond the claim of creditors of the lessor, including a foreclosing mortgagee or trustee in bankruptcy, and as will provide for its transfer to a subsequent owner of said property. A receipt shall be given to the tenant within thirty days after such deposit is received by the lessor

which receipt shall indicate the name and location of the bank in which the security deposit has been deposited and the amount and account number of said deposit. Failure to comply with this paragraph shall entitle the tenant to immediate return of the security deposit.

(b) A lessor of residential real property who holds a security deposit pursuant to this section for a period of one year or longer from the commencement of the term of the tenancy shall, beginning with the first day of the tenancy, pay interest at the rate of five per cent per year, payable to the tenant at the end of each year of the tenancy. Such interest shall be paid over to the tenant each year as provided in this clause, provided, however, that in the event that the tenancy is terminated before the anniversary date of the tenancy, the tenant shall receive all accrued interest within thirty days of such termination. Such interest shall be beyond the claims of such lessor, except as provided for in this section. At the end of each year of a tenancy, such lessor shall give or send to the tenant from whom a security deposit has been received a statement which shall indicate the name and address of the bank in which the security deposit has been placed, the amount of the deposit, the account number, and the amount of interest payable by such lessor to the tenant. The lessor shall at the same time give or send to each such tenant the interest which is due or shall include with the statement required by this clause a notification that the tenant may deduct the interest from the tenant's next rental payment. If, after thirty days from the end of each year of the tenancy, the tenant has not received such notice or payment, the tenant may deduct from his next rent payment the interest due.

A-5

MINNESOTA

504.20 INTEREST ON SECURITY DEPOSITS; WITHHOLDING SECURITY DEPOSITS; DAMAGES. ***

Subd. 2. Any deposit of money shall not be considered received in a fiduciary capacity within the meaning of section 82.17, subdivision 7, but shall be held by the landlord for the tenant who is party to the agreement and shall bear simple interest at the rate of 5-1/2 percent per annum noncompounded, computed from the first day of the next month following the full payment of the deposit to the last day of the month in which the landlord, in good faith, complies with the requirements of subdivision 3 or to the date upon which judgment is entered in any civil action involving the landlord's liability for the deposit, whichever date is earlier. Any interest amount less than \$1 shall be excluded from the provisions of this section.

NEW HAMPSHIRE

Security Deposits ***

540-A: 6 Procedure.

I. A landlord shall not demand or receive any security deposit in an amount or value in excess of one month's rent or \$100, whichever is greater. Upon receiving a deposit from a tenant, a landlord shall forthwith deliver to the tenant a signed receipt stating the amount of the deposit and specifying the place where the deposit or bond for the deposit pursuant to RSA 540-A: 6, II(c) will be held, and shall notify the tenant that any conditions in the rental unit in need of repair or correction should be noted on the receipt or given to the landlord in writing within 5 days of occupancy.

II. (a) Security deposits held by a landlord continue to be the money of the tenant and shall be held in trust by the person with whom such deposit is made and shall not be mingled with the personal moneys or become an asset of the landlord until the provisions of RSA 540-A: 7 are complied with, but may be disposed of as provided in RSA 540-A: 6, III.

(b) A landlord may mingle all security deposits held by him in a single account held in trust for the tenant at any bank, savings and loan association or credit union organized under the laws of this state in satisfaction of the requirements of RSA 540-A: 6, II(a).

(c) A bond written by a company located in New Hampshire and posted with the clerk of the city or town in which the residential premises are located in an amount equivalent to the total value of a security deposit held by the landlord on property in that city or town shall exempt the landlord from the provisions of RSA 540-A: 6, II(a) and (b).

IV. (a) A landlord who holds a security deposit for a period of one year or longer shall pay to the tenant interest on the deposit at a rate equal to 5 percent or the interest rate paid on regular savings accounts in the New Hampshire bank, savings and loan association, or credit union in which it is deposited, whichever is larger, commencing from the date the landlord receives the deposit or from September 13, 1977, whichever is later. If a landlord mingles security deposits in a single account under RSA 540-A: 6, II(b), the landlord shall pay the actual interest earned on such account proportionately to each tenant.

(b) Upon request, a landlord shall provide to the tenant the name of any bank, savings and loan association, or credit union where his security deposit is on deposit, the account number, the amount on deposit, and the interest rate on the deposit and shall allow the tenant to examine his security deposit records.

SECURITY DEPOSIT LAW

46:8-19 Deposits to secure performance of leases; interest payable; failure to notify tenant of location of deposit; penalty

Whenever money or other form of security shall be deposited or advanced on a contract, lease or license agreement for the use or rental of real property as security for performance of the contract, lease or agreement or to be applied to payments upon such contract, lease or agreement when due, such money or other form of security, until repaid or so applied including the tenant's portion of the interest or earnings accumulated thereon as hereinafter provided, shall continue to be the property of the person making such deposit or advance and shall be held in trust by the person with whom such deposit or advance shall be made for the use in accordance with the terms of the contract, lease or agreement and shall not be mingled with the personal property or become an asset of the person receiving the same. The person receiving money so deposited or advanced shall:

a. (1) Invest that money in shares of an insured money market fund established by an investment company based in this State and registered under the "Investment Company Act of 1940," 54 Stat. 789 (15 U.S.C. 80a-1 et seq.) whose shares are registered under the "Securities Act of 1933," 48 Stat. 74 (15 U.S.C. 77a. et seq.) and the only investments of which funds are instruments maturing in one year or less, or

(2) deposit that money in a State or federally chartered bank, savings bank or savings and loan association in this State insured by an agency of the federal government in an account bearing a variable rate of interest, which shall be established at least quarterly, which is similar to the average rate of interest on active interest bearing money market transaction accounts paid by the bank or association under 12 C.F.R. Part 1204.108, or equal to similar accounts of an investment company described in paragraph (1) of this subsection, less an amount not to exceed 1% per annum of the amount so invested or deposited for the costs of servicing and processing the accounts.

This subsection shall not apply to persons receiving money for less than 10 rental units except where required by the Commissioner of Banking by rule or regulation. The commissioner shall apply the provisions of this subsection to some or all persons receiving money for less than 10 rental units where the commissioner finds that it is practicable to deposit or invest the money received with an investment company or State or federally chartered bank, savings bank or savings and loan association in accordance with this subsection. Except as expressly provided herein, nothing in this subsection shall affect or modify the rights or obligations of persons receiving money for rental premises or units, tenants, licensees or contractees under any other law.

b. Persons not required to invest or deposit money in accordance with subsection a. of this section shall deposit such money in a State or federally chartered bank, savings bank or savings and loan association in this State insured by an agency of the federal government in an account bearing interest at the rate currently paid by such institutions and associations on time or savings deposits.

The person investing the security deposit pursuant to subsection a. or b. of this section shall thereupon notify in writing each of the persons making such security deposit or advance, giving the name and address of the investment company, State or federally chartered bank, savings bank or savings and loan association in which the deposit or investment of security money is made, and the amount of such deposit.

All of the money so deposited or advanced may be deposited or invested by the person receiving the same in one interest-bearing or dividend yielding account as long as he complies with all the other requirements of this act.

The person receiving money so deposited or so advanced shall be entitled to receive as administration expenses, a sum equivalent to 1% per annum thereon or 12.5% of the aggregate interest yield on the security deposit, whichever is greater, less the amount of any service fee charged by an investment company, a State or federally chartered bank, savings bank or savings and loan association for money deposited pursuant to this section, which shall be in lieu of all other administrative and custodial expenses. The balance of the interest or earnings paid thereon by the investment company, State or federally chartered bank, savings bank or savings and loan association, hereinafter referred to as tenant's portion, shall belong to the person making the deposit or advance and shall be permitted to compound to the benefit of the tenant, or be paid to the tenant cash, or be credited toward the payments of rent due on the renewal or anniversary of said tenant's lease.

In the event the person receiving a security deposit fails to notify the tenant of the name and address of the investment company, State or federally chartered bank, savings bank or savings and loan association in which the deposit or investment of such security is made, and the amount thereof, within 30 days after receipt of same from the tenant, the tenant may give written notice to the person receiving the same that such security money be applied on account of rent payment or payments due or to become due from the tenant, and thereafter the tenant shall be without obligation to make any further security deposit and the person receiving the money so deposited shall not be entitled to make further demand for a security deposit.

NEW MEXICO

47-8-18. Deposits.

A. An owner is permitted to demand from the resident a reasonable deposit to be applied by the owner to recover damages, if any, caused to the premises by the resident during his term of residency.

(1) Under the terms of an annual rental agreement, if the owner demands or receives of the resident such a deposit in an amount greater than one month's rent, the owner shall be required to pay to the resident annually an interest equal to the passbook interest permitted to savings and loan associations in this state by the federal home loan bank board on such deposit.

(2) Under the terms of a rental agreement of a duration less than one year, an owner shall not demand or receive from the resident such a deposit in an amount in excess of one month's rent.

B. It is not the intention of this section to include the last month's prepaid rent, which may be required by the rental agreement as a deposit as defined in Subsection D of Section 47-8-3 NMSA 1978. Any deposit as defined in Paragraph (1) of Subsection A of this section shall not be construed as prepaid rent.

NEW YORK

§ 7-103. Money deposited or advanced for use or rental of real property; waiver void; administration expenses.

1. Whenever money shall be deposited or advanced on a contract or license agreement for the use or rental of real property as security for performance of the contract or agreement or to be applied to payments upon such contract or agreement when due, such money, with interest accruing thereon, if any, until repaid or so applied, shall continue to be the money of the person making such deposit or advance and shall be held in trust by the person with whom such deposit or advance shall be made and shall not be mingled with the personal moneys or become an asset of the person receiving the same, but may be disposed of as provided in section 7-105 of this chapter.

2. Whenever the person receiving money so deposited or advanced shall deposit such money in a banking organization, such person shall thereupon notify in writing each of the persons making such security deposit or advance, giving the name and address of the banking organization in which the deposit of security money is made, and the amount of such deposit. *Deposits in a banking organization pursuant to the provisions of this subdivision shall be made in a banking organization having a place of business within the state.* If the person depositing such security money in a banking organization shall deposit same in an *interest bearing* account, he shall be entitled to receive, as administration expenses, a sum equivalent to one per cent per annum upon the security money so deposited, which shall be in lieu of all other administrative and custodial expenses. The balance of the interest paid by the banking organization shall be the money of the person making the deposit or advance and shall either be held in trust by the person with whom such deposit or advance shall be made, until repaid or applied for the use or rental of the leased premises, or annually paid to the person making the deposit of security money.

2-a. Whenever the money so deposited or advanced is for the rental of property containing six or more family dwelling units, the person receiving such money shall, subject to the provisions of this section, deposit it in an interest bearing account in a banking organization *within the state* which account shall earn interest at a rate which shall be the prevailing rate earned by other such deposits made with banking organizations in such area.

2-b. In the event that a lease terminates other than at the time that a banking organization in such area regularly pays interest, the person depositing such security money shall pay over to his tenant such interest as he is able to collect at the date of such lease termination.

A-10

NORTH DAKOTA

47-16-07.1. Real property and dwelling security deposits — Limitations and requirements.

1. The lessor of real property or a dwelling who requires money as a security deposit, however denominated, shall deposit the money in a federally insured interest-bearing savings or passbook account established solely for security deposits. The security deposit and any interest accruing on the deposit must be paid to the lessee upon termination of a lease, subject to the conditions of subsection 2. A lessor may not demand or receive security, however denominated, in an amount or value in excess of one month's rent.
2. A lessor may apply security deposit money and accrued interest upon termination of a lease towards:
 - a. Any damages the lessor has suffered by reason of deteriorations or injuries to the real property or dwelling through the negligence of the lessee or his guest.
 - b. Any unpaid rent.
 - c. The costs of cleaning or other repairs which were the responsibility of the lessee, and which are necessary to return the dwelling unit to its original state when the lessee took possession, reasonable wear and tear excepted.

Application of a security deposit towards damages shall be itemized by the lessor. Such itemization together with the amount due shall be delivered or mailed to the lessee at the last address furnished lessor, along with a written notice within thirty days after termination of the lease and delivery of possession by the lessee. The notice shall contain a statement of any amount still due the lessor or the refund due the lessee. A lessor is not required to pay interest on security deposits if the period of occupancy was less than nine months in duration.

A-11

OHIO

§ 5321.16 [Security deposit procedures.]

(A) Any security deposit in excess of fifty dollars or one month's periodic rent, whichever is greater, shall bear interest on the excess at the rate of five per cent per annum if the tenant remains in possession of the premises for six months or more, and shall be computed and paid annually by the landlord to the tenant.

RHODE ISLAND

34-18-18. Security deposits. — (a) In any residential rental transaction wherein the landlord requires the payment of a security deposit by the tenant:

(1) Such deposit shall accumulate interest on an annual basis at the rate of five percent (5%); provided, however, that no interest need be paid to the tenant in the case of any seasonal rental for a term not exceeding six (6) months.

(4) Such interest shall be paid to the tenant annually or upon termination of the rental.

(8) Any security deposits received by the landlord shall be deposited in a savings account and earmarked specifically as a security deposit account, and such funds shall not be used by the landlord for any purpose except as provided in subsection (5) herein.

EFFECTIVE 1-8-87:

34-18-19. Security deposits. -- (a) A landlord may not demand or receive a security deposit, however denominated, in an amount or value in excess of one (1) month's periodic rent.

(b) Upon termination of the tenancy, the amount of security deposit due to the tenant shall be the entire amount given by the tenant as a security deposit, minus any amount of unpaid accrued rent and the amount of physical damages to the premises, other than ordinary wear and tear, which the landlord has suffered by reason of the tenant's noncompliance with section 34-18-24, all as itemized by the landlord in a written notice delivered to the tenant. The landlord

shall deliver said notice, together with the amount of the security deposit due to the tenant within twenty (20) days after the later of either termination of the tenancy, delivery of possession, or the tenant's providing the landlord with a forwarding address for the purpose of receiving the security deposit.

(c) If the landlord fails to comply with subsection (b) the tenant may recover the amount due him or her together with damages in an amount equal to twice the amount wrongfully withheld, and reasonable attorney fees.

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

(e) In the event the landlord transfers his or her interest in the premises, the holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section.

(f) No rental agreement shall contain any waiver of the provisions of this section.

A-13

VIRGINIA

§ 55-248.11. Security deposits. ***

(b) The landlord must: (1) accrue interest in six-month increments, at a rate of five percent per annum, on all property or money held as security; provided, that no interest shall be due and payable unless the security has been held by the landlord for a period exceeding thirteen months after the date of the rental agreement or after the date of any prior written or oral rental agreements with the same tenant, for continuous occupancy of the same dwelling unit, and such interest shall be paid only upon termination of the tenancy, delivery of possession and return of the security deposit as provided in subsection (a) of this section; (2) maintain and itemize records for each tenant of all deductions from security deposits provided for under this section which the landlord has made by reason of a tenant's noncompliance with § 55-248.16 during the preceding two years; and (3) permit a tenant or his authorized agent or attorney to inspect such tenant's records of deductions at any time during normal business hours.

FLORIDA

83.49 Deposit money or advance rent; duty of landlord and tenant.—

(1) Whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental period, the landlord or his agent shall either:

(a) Hold the total amount of such money in a separate non-interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord;

(b) Hold the total amount of such money in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, in which case the tenant shall receive and collect interest in an amount of at least 75 percent of the annualized average interest rate payable on such account or interest at the rate of 5 percent per year, simple interest, whichever the landlord elects. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord; or

(c) Post a surety bond, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety, with the clerk of the circuit court in the county in which the dwelling unit is located in the total amount of the security deposits and advance rent he holds on behalf of the tenants or \$50,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of the provisions of this section. In addition to posting the surety bond, the landlord shall pay to the tenant interest at the rate of 5 percent per year, simple interest.

(2) The landlord shall, within 30 days of receipt of advance rent or a security deposit, notify the tenant in writing of the manner in which the landlord is holding the advance rent or security deposit and the rate of interest, if any, which the tenant is to receive and the time of interest payments to the tenant. Such written notice shall:

(a) Be given in person or by mail to the tenant.

(b) State the name and address of the depository where the advance rent or security deposit is being held, whether the advance rent or security deposit is being held in a separate account for the benefit of the tenant or is commingled with other funds of the landlord, and, if commingled, whether such funds are deposited in an interest-bearing account in a Florida banking institution.

(c) Include a copy of the provisions of subsection (3).

Subsequent to providing such notice, if the landlord changes the manner or location in which he is holding the advance rent or security deposit, he shall notify the tenant within 30 days of the change according to the provisions herein set forth. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to provide this notice shall not be a defense to the payment of rent when due.

(9) In those cases in which interest is required to be paid to the tenant, the landlord shall pay directly to the tenant, or credit against the current month's rent, the interest due to the tenant at least once annually. However, no interest shall be due a tenant who wrongfully terminates his tenancy prior to the end of the rental term.

IOWA

562A.12 Rental deposits. ***

2. All rental deposits shall be held by the landlord for the tenant, who is a party to the agreement, in a bank or savings and loan association or credit union which is insured by an agency of the federal government. Rental deposits shall not be commingled with the personal funds of the landlord. Notwithstanding the provisions of chapter 117, all rental deposits may be held in a trust account, which may be a common trust account and which may be an interest bearing account. Any interest earned on a rental deposit during the first five years of a tenancy shall be the property of the landlord.

PENNSYLVANIA

Section 511.1. Escrow Funds Limited.--(a) No landlord may require a sum in excess of two months' rent to be deposited in escrow for the payment of damages to the leasehold premises and/or default in rent thereof during the first year of any lease.

(b) During the second and subsequent years of the lease or during any renewal of the original lease the amount required to be deposited may not exceed one month's rent.

(c) If, during the third or subsequent year of a lease, or during any renewal after the expiration of two years of tenancy, the landlord requires the one month's rent escrow provided herein, upon termination of the lease, or on surrender and acceptance of the leasehold premises, the escrow funds together with interest shall be returned to the tenant in accordance with sections 511.2 and 512.

(d) Whenever a tenant has been in possession of premises for a period of five years or greater, any increase or increases in rent shall not require a concomitant increase in any security deposit.

(e) This section applies only to the rental of residential property.

(f) Any attempted waiver of this section by a tenant by contract or otherwise shall be void and unenforceable.

(511.1 added Dec. 29, 1972, P.L.1698, No.363)

Section 511.2. Interest on Escrow Funds Held More Than Two Years.--(a) Except as otherwise provided in this section, all funds over one hundred dollars (\$100) deposited with a lessor to secure the execution of a rental agreement on residential property in accordance with section 511.1 and pursuant to any lease newly executed or reexecuted after the effective date of this act shall be deposited in an escrow account of an institution regulated by the Federal Reserve Board, the Federal Home Loan Bank Board, Comptroller of the Currency, or the Pennsylvania Department of Banking. When any funds are deposited in any escrow account, interest-bearing or noninterest-bearing, the lessor shall thereupon notify in writing each of the tenants making any such deposit, giving the name and address of the banking institution in which such deposits are held, and the amount of such deposits.

(b) Whenever any money is required to be deposited in an interest-bearing escrow savings account, in accordance with section 511.1, then the lessor shall be entitled to receive as administrative expenses, a sum equivalent to one per cent per annum upon the security money so deposited, which shall be in lieu of all other administrative and custodial expenses. The balance of the interest paid shall be the money of the tenant making the deposit and will be paid to said tenant annually upon the anniversary date of the commencement of his lease.

(c) The provisions of this section shall apply only after the second anniversary of the deposit of escrow funds.

(511.2 added Dec. 29, 1972, P.L.1698, No.363)

Section 511.3. Bond in Lieu of Escrowing.--Every landlord subject to the provisions of this act may, in lieu of depositing escrow funds, guarantee that any escrow funds, less cost of necessary repairs, including interest thereon, shall be returned to the tenant upon termination of the lease, or on surrender and acceptance of the leasehold premises. The guarantee of repayment of said escrow funds shall be secured by a good and sufficient guarantee bond issued by a bonding company authorized to do business in Pennsylvania.

(511.3 added Dec. 29, 1972, P.L.1698, No.363)

C-1

ALASKA

Sec. 34.03.070. Security deposits and prepaid rent. ***

(c) All money paid to the landlord by the tenant as prepaid rent or as a security deposit in a lease or rental agreement shall be promptly deposited by the landlord, wherever practicable, in a trust account in a bank, savings and loan association, or licensed escrow agent, and the landlord shall provide to the tenant the terms and conditions under which the prepaid rent or security deposit or portions of them may be withheld by the landlord; nothing in this chapter prohibits the landlord from commingling prepaid rents and security deposits in a single financial account.

C-2

DELAWARE

§5511. Security deposit. ***

(b) A security deposit shall be placed in an escrow bank account by the landlord and shall not be used in the operation of any business by the landlord. The security deposit 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.

GEORGIA

44-7-31. Placement of security deposit in escrow account; deposits held in trust; notice to tenant of account location, etc.

Except as provided in Code Section 44-7-32, whenever a security deposit is held by a landlord or his agent on behalf of a tenant, such security deposit shall be deposited in an escrow account established only for that purpose in any bank or lending institution subject to regulation by this state or any agency of the United States government. The security deposit shall be held in trust for the tenant by the landlord or his agent except as provided in Code Section 44-7-34. Tenants shall be informed in writing of the location and account number of the escrow account required by this Code section. (Code 1933, § 61-602, enacted by Ga. L. 1976, p. 1372, § 6.)

44-7-32. Surety bond in lieu of escrow account; withdrawal of surety; fees and liability of clerk of superior court.

(a) As an alternative to the requirement that security deposits be placed in escrow as provided in Code Section 44-7-31, the landlord may post and maintain an effective surety bond with the clerk of the superior court in the county in which the dwelling unit is located. The amount of the bond shall be the total amount of the security deposits which the landlord holds on behalf of the tenants or \$50,000.00, whichever is less. The bond shall be executed by the landlord as principal and a surety company authorized and licensed to do business in this state as surety. The bond shall be conditioned upon the faithful compliance of the landlord with Code Section 44-7-34 and the return of the security deposits in the event of the bankruptcy of the landlord or foreclosure of the premises and shall run to the benefit of any tenant injured by the landlord's violation of Code Section 44-7-34.

KENTUCKY

383.580 Security deposits.

(1) All landlords of residential property requiring security deposits prior to occupancy shall be required to deposit all tenants' security deposits in an account used only for that purpose, in any bank or other lending institution subject to regulation by the Commonwealth of Kentucky or any agency of the U.S. Government. Prospective tenants shall be informed of the location of the separate account and the account number.

**SECURITY DEPOSITS ON RESIDENTIAL
RENTAL UNITS**

§ 6037. Exemptions ***

2. Owner-occupied buildings of 5 or fewer units. This chapter shall not apply to any tenancy for a dwelling unit which is part of a structure containing no more than 5 dwelling units, one of which is occupied by the landlord.

§ 6038. Treatment of security deposit

During the term of a tenancy, a security deposit given to a landlord as part of a residential rental agreement shall not be treated as an asset to be commingled with the assets of the landlord. All security deposits received after October 1, 1979, shall be held in an account of a bank or other financial institution under such terms as will place the security deposit beyond the claim of creditors of the landlord, including a foreclosing mortgagee or trustee in bankruptcy, and as will provide for transfer of the security deposit to a subsequent owner of the dwelling unit. Upon request by his tenant, a landlord shall disclose the name of the institution and the account number where the security deposit is being held. A landlord may use a single escrow account to hold security deposits from all of his tenants.

554.604. Security deposit, place, use by landlord

Sec. 4. (1) The security deposit shall be deposited in a regulated financial institution. A landlord may use the moneys so deposited for any purposes he desires if he deposits with the secretary of state a cash bond or surety bond written by a surety company licensed to do business in this state and acceptable to the attorney general to secure the entire deposits up to \$50,000.00 and 25% of any amount exceeding \$50,000.00. The attorney general may find a bond unacceptable based only upon reasonable criteria relating to the sufficiency of the bond, and shall notify the landlord in writing of his reasons for the unacceptability of the bond.

(2) The bond shall be for the benefit of persons making security deposits with the landlord. A person for whose benefit the bond is written or his legal representative may bring an action in the district, common pleas or municipal court where the landlord resides or does business for collection on the bond.

C-7

NORTH CAROLINA

§ 42-50. Deposits from the tenant.

Security deposits from the tenant in residential dwelling units shall be deposited in a trust account with a licensed and insured bank or savings institution located in the State of North Carolina or the landlord may, at his option, furnish a bond from an insurance company licensed to do business in North Carolina. The security deposits from the tenant may be held in a trust account outside of the State of North Carolina only if the landlord provides the tenant with an adequate bond in the amount of said deposits. The landlord or his agent shall notify the tenant within 30 days after the beginning of the lease term of the name and address of the bank or institution where his deposit is currently located or the name of the insurance company providing the bond.

C-8

OKLAHOMA

§ 115. Damage or security deposits

A. Any damage or security deposit required by a landlord of a tenant must be kept in an escrow account for the tenant, which account shall be maintained in the State of Oklahoma with a federally insured financial institution. Misappropriation of the security deposit shall be unlawful and punishable by a term in a county jail not to exceed six (6) months and by a fine in an amount not to exceed twice the amount misappropriated from the escrow account.

C-9

TENNESSEE

66-28-301. Security deposits. — (a) All landlords of residential property requiring security deposits prior to occupancy shall be required to deposit all tenants' security deposits in an account used only for that purpose, in any bank or other lending institution subject to regulation by the state of Tennessee or any agency of the United States government. Prospective tenants shall be informed of the location of the separate account and the account number.

WASHINGTON

59.18.270 Moneys paid as deposit or security for performance by tenant—Deposit by landlord in trust account—Receipt—Claims. All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a lease or rental agreement shall promptly be deposited by the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the landlord, in a bank, savings and loan association, mutual savings bank, or licensed escrow agent located in Washington. Unless otherwise agreed in writing, the landlord shall be entitled to receipt of interest paid on such trust account deposits. The landlord shall provide the tenant with a written receipt for the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. If during a tenancy the status of landlord is transferred to another, any sums in the deposit trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor landlord, and the successor landlord shall promptly notify the tenant of the transfer and of the name, address and location of the new depository. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled.

Appendix G

COMMENTS TO THE PRELIMINARY DRAFT OF THIS STUDY

A preliminary draft of this study was sent to the following persons for comments and corrections:

Honorable Herman T.F. Lum
Chief Justice, Supreme Court of Hawaii

Kate Stanley
The Hawaii Association of Realtors

Thomas Matsuda
Legal Aid Society of Hawaii

Mark Nomura
Office of Consumer Protection

John Reilly
Hawaii Bar Association

Kai Ohama
Chaney, Brooks & Company

Corrections brought to our attention by Mssrs. Matsuda and Nomura have been incorporated into this final draft.

The response of The Hawaii Association of Realtors is reproduced in this Appendix.

December 10, 1986

Mr. Samuel B.K. Chang
Director
Legislative Reference Bureau
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Dear Mr. Chang:

Thank you for giving the Hawaii Association of REALTORS Governmental Affairs Landlord/Tenant Subcommittee an opportunity to comment on the draft of your study of the Residential Landlord - Tenant Code. We also appreciate the time Researcher Claire M. Marumoto spent with us in discussing the Landlord - Tenant Code.

Our general feeling about the draft report is best summerized by the first paragraph of chapter 7 of the report which states: "The general opinion voiced by persons interviewed for this study was that the landlord - tenant Code is basically an effective, workable law, and that no significant changes are called for. An equally universal opinion was that problems in the landlord - tenant area arise with the court system. Complaints focused on the inconsistency among judges in applying the code and perceptions of apparent capriciousness in judicial rulings. For landlords, the time lag involved in evicting a tenant is frustrating and costly."

Our specific comments by chapter are as follows:

(1) Chapter 1 Introduction

With regards to Chapter 666 there are problems with judicial interpretations particulary relating to summary possessions. Delays in court hearings and service of writs have been problems experienced by landlords. Further investigation of landlord experiences using Chapter 666 should be conducted.

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(2) Chapter 2 The Relationship Between the Code and the Rental Market

We do not agree with the conclusion; "the rental market is "tight" and therefore the landlord is likely to have the upper hand in landlord-tenant relationships."

The rental market is a dynamic market with availability of rentals changing constantly according to the time of year and geographic area. To make the general statement that it is tight, does not recognize the reality of the real market. An example of this is the fact that availability of rental units during 1986 was probably greater than the prior two years. Any landlords operating during 1986 did not have the "upper hand" because of this situation.

Our main objection to this conclusion of the report is the perceived attempt to create equality between landlords and tenants where the "upper hand" if there even is such a thing constantly changes.

With regards to the statistical information presented we found the information helpful but not complete. We feel that the following statistics should be included:

1. Statistics showing the number and percentage of complaints against Management Companies or small landlords. Without this information the study cannot identify where the problems of enforcing or using the landlord - tenant Code lie, are they with the small "mom & pop" landlord or are they with management companies.
2. Statistics showing how many disagreements or complaints relate to security deposits, how many security deposits disputes go to small claims court and what percentage both of these would be of the total number of security deposits collected. Without this information it is our opinion that the study has no facts on which to base its Chapter 7 recommendation that a landlord - tenant mediation program be established and funded by the interest on security deposits.

(3) Chapter 3 Court Cases

No comment.

(4) Chapter 4 The Office of Consumer Protection and the Landlord-tenant Code

No comment.

(5) Chapter 5 Suggested Amendments to the Landlord - Tenant Code

A. Suggested Amendments to Present Sections of the Code

1. Amendment: "Add a provision permitting the security deposit to be used as the last month's rent by mutual consent, in writing, of the landlord and tenant if the tenant gives sufficient notice, perhaps 45 days, of vacating the premises."

This amendment is unnecessary as current law does not prohibit this practice.

2. Amendment: "A return of the security deposit or the furnishing of the written notice and other required information complies with the requirements of this subsection if mailed to the tenant, at an address supplied to the landlord by the tenant, by certified mail, return receipt requested, and post marked before midnight of the fourteenth day after the date of the termination of the rental agreement."

We agree with this proposed amendment.

3. Amendment: "Impose a statute of limitations on the period in which the tenant may bring an action against the landlord on the landlord's complete or partial retention of the security deposit, perhaps 90 or 120 days."

We favor this amendment with a 90 day limitation.

4. Amendment: S 521-444 relating to Security deposits. Change "shall" in "the court shall award" to "in its discretion may".

We believe that this amendment is unnecessary and the current law is fair.

5. Amendment: "Allow the landlord to enter the premises on less than two days notice, for example on 24 hours notice, if agreed upon by the tenant in the rental agreement."

We suggest that the law be amended to change the 48 hour notification now required to 24 hours notice. We believe that 24 hours notice is sufficient.

6. Amendment: "Allow the tenant to continue tenancy at an agreed upon reduced rent."

We do not believe that this amendment is necessary.

7. 8. 9. Amendments relating to S 521-63 Tenant's remedy of termination at any time; unlawful removal of exclusion.

The three amendments proposed for this section; (1) delete "overnight" (2) define cause (3) and change "may" in "the tenant may recover possession....." in the first sentence to "shall" are not necessary or justified by the statistics provided in the study. Lockouts do not appear to be a problem and the present law is working in those situations where it is a problem.

10. Amendment: "Include utility shut-off or diminishment as equivalent to termination."

The proposed amendment is too general and places restrictions on landlords that do not apply to utility companies. Landlords must pay utility bills whether or not the tenant pays the rent.

11. 12. Amendments relating to S521-64 Tenant's remedy of repair and deduction for minor defects. and S 521-42 Landlord to supply and maintain fit premises.

We have no objection to reviewing for consistency, the time limits for correction of the various violations. We believe that there is no reason to delete the \$300 ceiling as paragraph (b)(2) allows the tenant to deduct either \$300 or one month's rent whichever is greater. This provision protects the tenant and need not be changed.

13. Amendment: "Require that notifications of termination of tenancy be in writing."

We agree with this proposed amendment. Both landlord and tenant should be required to give written notice.

14. Amendment: S 521-73 Landlord's and tenant's remedies for abuse of access.

We favor the proposed language, "If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney's fees." Landlords who are attempting to sell a property are often denied lawful access by tenants even when the tenant knows at the time of signing the lease that the property is for sale.

15. Amendment: "Require a hearing for the tenant to show cause why the writ of possession should not be issued."

We oppose this amendment because a hearing is required to set up a rent trust fund and there should be no further hearings required of the tenant is not complying with the court order. The writ of possession should be served.

B. Suggested additions to the Code

1. Utility Shut-off

We do not believe it is necessary to add additional sections to the present Code regarding utility shut-off. The present Code provides that the landlord must supply and maintain fit premises, section 521-42.

2. Mandatory Mediation

We strongly disagree with the proposal to establish as mandatory mediation program funded by interest on security deposits. The question of equity occurs when 90 plus percent of owners and tenants must contribute their interest income to support a program utilized by 10 or less percent of owners/tenants having disputes.

(6) Chapter 6 The Regulation of Security Deposits by Other States.

The Governmental Affairs Committee of the Association has always objected to legislation requiring landlords to pay interest on tenant's security deposits. The report discusses our objections. Effective September 29 the Real Estate Commission rules require that if a security deposit is placed in an interest bearing account the tenant and landlord must agree in writing as to who receives the interest prior to the tenants occupancy. In light of this new rule we do not favor any further consideration of interest on security deposits.

While this Chapter gives an overview of the statistics of States which require interest on security deposits it is not noted that 37 states do not require interest to be paid. The chapter could be misinterpreted as to be recommending that interest be required on security deposits.

(7) Chapter 7 Funding A Landlord - Tenant Mediation Program with Security Deposit Interest: A Proposal

As stated above we do not favor this proposal. As far as we can determine this proposal will address problems that arise in less than 1% of the rental agreements. The creation of another program with the attendant administrative costs is not justified. We urge the Legislative Reference Bureau to reconsider this proposal and delete it from the final report.

(8) Chapter 8 Summary of Findings and Recommendations

No additional comments.

In conclusion we would like to thank the Legislative Reference Bureau for soliciting our participation and look forward to a continued working relation.

Sincerely,



Clarice Johnson, Chairman
Landlord/Tenant Subcommittee



Bill Ramsey, Chairman
Governmental Affairs Committee
Hawaii Association of REALTORS

cc: Marcus Nishikawa, 1986 President
Hawaii Association of REALTORS

Liz Benton, 1987 President
Hawaii Association of REALTORS

Peggy Comeau, Executive Vice President
Hawaii Association of REALTORS