

PROPOSED CHANGES TO 535 “Money and Interest” and 562A.1 “Uniform Residential Landlord and Tenant Act”.

#### 535.2 RATE OF INTEREST.

7. This section does not apply to a charge imposed for late payment of rent. ~~However, in the case of a residential lease, a late payment fee shall not exceed ten dollars a day or forty dollars per month.~~

#### 562A.4 ADMINISTRATION OF REMEDIES – ENFORCEMENT.

1. The remedies provided by this chapter shall be administered so that the aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.
2. A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.
3. *The court may, in any action on a rental agreement, award reasonable attorney fees to the prevailing party.*

#### 562A.6 GENERAL DEFINITIONS.

Subject to additional definitions contained in subsequent articles of this chapter which apply to specific articles or its parts, and unless the context otherwise requires, in this chapter:

1. “Building and housing codes” include a law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of a premises or dwelling unit.
2. “Business” includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.
3. “Dwelling unit” means a structure or the part of a structure that is used as a home, residence, or sleeping place.
4. “Good faith” means honesty in fact in the conduct of the transaction concerned.
5. “Landlord” means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by section 562A.13.
6. “Owner” means one or more persons, jointly or severally, in whom is vested:
  - a. All or part of the legal title to property; or
  - b. All or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.

7. "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances of it and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

8. *"Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.*

9. "Reasonable attorney's fees" means fees determined by the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the tenant or landlord.

10. "Rent" means a payment to be made to the landlord under the rental agreement, *including late fees and amounts due to the landlord under section 562A.28.*

11. "Rental agreement" means an agreement written or oral, and a valid rule, adopted under section 562A.18, embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

12. "Rental deposit" means a deposit of money to secure performance of a residential rental agreement, other than a deposit which is exclusively in advance payment of rent.

13. "Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. Major facility in the case of a bathroom means toilet, or either a bath or shower, and in the case of a kitchen means refrigerator, stove or sink.

14. "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 is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

15. "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of another.

16. "Transitional housing" means temporary or nonpermanent housing.

#### 562A.8 NOTICE.

A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. In the case of the landlord, notice is received when it comes to the landlord's attention or when it is delivered in hand or mailed by certified mail ~~or restricted certified mail~~, as defined in section 618.15, *which shall include, but not be limited to, return certified mail, restricted certified mail, delivery confirmation, or any form of mail service provided by the United States post office where the post office provides the mailer with a receipt to prove mailing*, whether or not the landlord signs a receipt for the notice, to the place of business of the landlord through which the rental agreement was made or at a place held out by the landlord as the place for receipt of

the communication or delivered to any individual who is designated as an agent of the landlord. In the case of the tenant, notice is received when it comes to the tenant's attention or when it is delivered in hand to the tenant or mailed by certified mail or restricted certified mail, as defined in section 618.15, whether or not the tenant signs a receipt for the notice, to such person at the place held out by such person as the place for receipt of the communication, or in the absence of such designation, to such person's last known place of residence. Any notice required under this chapter, except a written notice of termination required by section 562A.27, subsection 1 or 2, a notice of termination and notice to quit under section 562A.27A, a notice to quit as required by section 648.3, or a petition for forcible entry and detainer pursuant to chapter 648, shall be deemed legally sufficient notice if made by posting at or delivering to the dwelling unit. The date of posting of the notice shall be written on the notice.

#### 562A.9 TERMS AND CONDITIONS OF RENTAL AGREEMENT.

1. The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.
2. In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.
3. Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent shall be uniformly apportionable from day-to-day.
4. Unless the rental agreement fixes a definite term, the tenancy shall be week-to-week in case of a roomer who pays weekly rent, and in all other cases month-to-month.
5. *In the case of a residential lease, a late payment fee of up to 10% of the monthly rent, with a minimum of \$85.00 per month, may be agreed upon in writing. In the absence of such a written agreement, or in the case of an oral rental agreement, the late fee shall be \$85.00 after the fifth day of the month.*

#### 562A.11 PROHIBITED PROVISIONS IN RENTAL AGREEMENTS.

1. A rental agreement shall not provide that the tenant or landlord:
  - a. Agrees to waive or to forego rights or remedies under this chapter provided that this restriction shall not apply to rental agreements covering single family residences on land assessed as agricultural land and located in an unincorporated area;
  - b. Authorizes a person to confess judgment on a claim arising out of the rental agreement;

c. Agrees to pay the other party's attorney fees, *except that an agreement in writing may provide that attorney fees may be awarded to the prevailing party in the event of court action*; or

d. Agrees to the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the costs connected therewith.

2. A provision prohibited by subsection 1 included in a rental agreement is unenforceable. If a landlord willfully uses a rental agreement containing provisions known by the landlord to be prohibited, a tenant may recover actual damages sustained by the tenant and not more than three months' periodic rent and reasonable attorney's fees.

#### 562A.12 RENTAL DEPOSITS.

1. A landlord shall not demand or receive as a security deposit an amount or value in excess of two months' rent.

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 543B, 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.

3. A landlord shall, within thirty days from the date of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding of the rental deposit or any portion thereof. If the rental deposit or any portion of the rental deposit is withheld for the restoration of the dwelling unit, the statement shall specify the nature of the damages. The landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons:

a. To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement.

b. To restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted.

c. To recover expenses incurred in acquiring possession of the premises from a tenant who does not act in good faith in failing to surrender and vacate the premises upon noncompliance with the rental agreement and notification of such noncompliance pursuant to this chapter. In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

4. A landlord who fails to provide a written statement within thirty days of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions shall forfeit all rights to withhold any portion of the rental deposit. If no

mailing address or instructions are provided to the landlord within one year from the termination of the tenancy the rental deposit shall revert to the landlord and the tenant will be deemed to have forfeited all rights to the rental deposit.

5. Upon termination of a landlord's interest in the dwelling unit, the landlord or an agent of the landlord shall, within a reasonable time, transfer the rental deposit, or any remainder after any lawful deductions to the landlord's successor in interest and notify the tenant of the transfer and of the transferee's name and address or return the deposit, or any remainder after any lawful deductions to the tenant. Upon the termination of the landlord's interest in the dwelling unit and compliance with the provisions of this subsection, the landlord shall be relieved of any further liability with respect to the rental deposit.

6. Upon termination of the landlord's interest in the dwelling unit, the landlord's successor in interest shall have all the rights and obligations of the landlord with respect to the rental deposits, except that if the tenant does not object to the stated amount within twenty days after written notice to the tenant of the amount of rental deposit being transferred or assumed, the obligations of the landlord's successor to return the deposit shall be limited to the amount contained in the notice. The notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service.

7. The bad faith retention of a deposit by a landlord, or any portion of the rental deposit, in violation of this section shall subject the landlord to punitive damages not to exceed two hundred dollars in addition to actual damages.

~~8. The court may, in any action on a rental agreement, award reasonable attorney fees to the prevailing party.~~

#### 562A.27 NONCOMPLIANCE WITH RENTAL AGREEMENT – FAILURE TO PAY RENT – VIOLATION OF FEDERAL REGULATION.

1. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with section 562A.17 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days, and the rental agreement shall terminate as provided in the notice subject to the provisions of this section. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least seven days' written notice specifying the breach and the date of termination of the rental agreement.

2. If rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and the landlord's intention

to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

3. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for noncompliance by the tenant with the rental agreement or section 562A.17 unless the tenant demonstrates affirmatively that the tenant has exercised due diligence and effort to remedy any noncompliance, and that the tenant's failure to remedy any noncompliance was due to circumstances beyond the tenant's control. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

4. In any action by a landlord for possession based upon nonpayment of rent, proof by the tenant of the following shall be a defense to any action or claim for possession by the landlord, and the amounts expended by the claimant in correcting the deficiencies shall be deducted from the amount claimed by the landlord as unpaid rent:

a. That the landlord failed to comply either with the rental agreement or with section 562A.15; and

b. That the tenant notified the landlord at least seven days prior to the due date of the tenant's rent payment of the tenant's intention to correct the condition constituting the breach referred to in paragraph "a" at the landlord's expense; and

c. That the reasonable cost of correcting the condition constituting the breach is equal to or less than one month's periodic rent; and

d. That the tenant in good faith caused the condition constituting the breach to be corrected prior to receipt of written notice of the landlord's intention to terminate the rental agreement for nonpayment of rent.

5. Notwithstanding any other provisions of this chapter, a municipal housing agency established pursuant to chapter 403A may issue a thirty-day notice of lease termination for a violation of a rental agreement by the tenant when the violation is a violation of a federal regulation governing the tenant's eligibility for or continued participation in a public housing program. The municipal housing agency shall not be required to provide the tenant with a right or opportunity to remedy the violation or to give any notice that the tenant has such a right or opportunity when the notice cites the federal regulation as authority.

6. *In the case of the notice required by sections (1), (2), or (5), above, a single notice, addressed to all of the parties to the lease and all parties in possession of the rental unit whose identities are known to or reasonably identifiable by the landlord, shall be sufficient to put all occupants on notice.*

Section History: Early Form

[C79, 81, § 562A.27]

Section History: Recent Form

95 Acts, ch 125, §6, 7; 2003 Acts, ch 154, §2

Referred to in § 562A.8, 562A.27A, 562A.29A, 562A.32, 648.3

## 562A.27A TERMINATION FOR CREATING A CLEAR AND PRESENT DANGER TO OTHERS.

1. Notwithstanding section 562A.27 or 648.3, if a tenant has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord, the landlord's employee or agent, or other persons on or within one thousand feet of the landlord's property, the landlord, after the service of a single three days' written notice of termination and notice to quit stating the specific activity causing the clear and present danger, and setting forth the language of subsection 3 which includes certain exemption provisions available to the tenant, may file suit against the tenant for recovery of possession of the premises pursuant to chapter 648, except as otherwise provided in subsection 3. The petition shall state the incident or incidents giving rise to the notice of termination and notice to quit. The tenant shall be given the opportunity to contest the termination in the court proceedings by notice thereof at least three days prior to the hearing.

2. A clear and present danger to the health or safety of other tenants, the landlord, the landlord's employees or agents, or other persons on or within one thousand feet of the landlord's property includes, but is not limited to, any of the following activities of the tenant or of any person on the premises with the consent of the tenant:

- a. Physical assault or the threat of physical assault.
- b. Illegal use of a firearm or other weapon, the threat to use a firearm or other weapon illegally, or possession of an illegal firearm.
- c. Possession of a controlled substance unless the controlled substance was obtained directly from or pursuant to a valid prescription or order by a licensed medical practitioner while acting in the course of the practitioner's professional practice. This paragraph applies to any other person on the premises with the consent of the tenant, but only if the tenant knew of the possession by the other person of a controlled substance.

3. This section shall not apply to a tenant if the activities causing the clear and present danger, as defined in subsection 2, are conducted by a person on the premises other than the tenant and the tenant takes at least one of the following measures against the person conducting the activities:

- a. The tenant seeks a protective order, restraining order, order to vacate the homestead, or other similar relief pursuant to chapter 236, 598, 664A, or 915, or any other applicable provision which would apply to the person conducting the activities causing the clear and present danger.
- b. The tenant reports the activities causing the clear and present danger to a law enforcement agency or the county attorney in an effort to initiate a criminal action against the person conducting the activities.
- c. The tenant writes a letter to the person conducting the activities causing the clear and present danger, telling the person not to return to the premises and that a return to the premises may result in a trespass or other action against the person, and the tenant sends a copy of the letter to a law enforcement agency whose jurisdiction includes the premises. If the tenant has



previously written a letter to the person as provided in this paragraph, without taking an action specified in paragraph “a” or “b” or filing a trespass or other action, and the person to whom the letter was sent conducts further activities causing a clear and present danger, the tenant must take one of the actions specified in paragraph “a” or “b” to be exempt from proceedings pursuant to subsection 1. However, in order to fall within the exemptions provided within this subsection, the tenant must provide written proof to the landlord, prior to the commencement of a suit against the tenant, that the tenant has taken one of the measures specified in paragraphs “a” through “c”.

*d. The tenant is a victim of domestic abuse, as defined in section 236.2.*

*4. In the case of the notice required by section (1), above, a single notice, addressed to all of the parties to the lease or all parties in possession of the rental unit whose identities are known to or reasonably identifiable by the landlord, shall be sufficient to put all occupants on notice.*

Section History: Recent Form

92 Acts, ch 1211, § 1; 95 Acts, ch 125, §8, 9; 98 Acts, ch 1090, §71, 84; 2004 Acts, ch 1016, §1; 2006 Acts, ch 1101, §2

Referred to in § 562A.8, 562A.29A

#### 562A.29A METHOD OF NOTICE AND SERVICE OF PROCESS.

Notwithstanding sections 631.4 and 648.5, the written notice of termination required by section 562A.27, subsection 1 or 2, a notice of termination and notice to quit under section 562A.27A, a notice to quit as required by section 648.3, or a petition for forcible entry and detainer pursuant to chapter 648, may be served upon the tenant in any of the following ways:

1. By personal service.
2. By sending notice by certified ~~or restricted certified~~ mail, as defined in section 618.15, whether or not the tenant signs a receipt for the notice.

Section History: Recent Form

92 Acts, ch 1211, § 2; 96 Acts, ch 1203, § 3; 99 Acts, ch 155, §7, 14

#### 562A.30 WAIVER OF LANDLORD’S RIGHT TO TERMINATE.

~~Acceptance of performance by the tenant that varies from the terms of the rental agreement or rules subsequently adopted by the landlord constitutes a waiver of the landlord’s right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.~~

Acceptance of performance by the tenant that varies from the terms of the rental agreement or rules subsequently adopted by the landlord shall not be a waiver of the landlord’s right to terminate the rental agreement for that breach. Failure by the landlord to promptly assert rights herein shall not be a waiver of such rights or a waiver



of any existing or subsequent default. Waiver of any default shall not constitute a waiver of any subsequent default.

#### 562A.32 REMEDY AFTER TERMINATION.

If the rental agreement is terminated *by either party*, the landlord may have a claim for possession ~~and for rent~~ and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees ~~as provided in section 562A.27~~.

Section History: Early Form

[C79, 81, § 562A.32]

Referred to in § 648.19

#### 562A.36 RETALIATORY CONDUCT PROHIBITED.

1. Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:
  - a. The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety;
  - b. The tenant has complained to the landlord of a violation under section 562A.15; or
  - c. The tenant has organized or become a member of a tenants' union or similar organization.
2. If the landlord acts in violation of subsection 1 of this section, the tenant may recover from the landlord the actual damages sustained by the tenant and reasonable attorney's fees, and has a defense in action against the landlord for possession. In an action by or against the tenant, evidence of a good faith complaint within one year prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. Evidence by the landlord that legitimate costs and charges of owning, maintaining or operating a dwelling unit have increased shall be a defense against the presumption of retaliation when a rent increase is commensurate with the increase in costs and charges. ~~"Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.~~
3. Notwithstanding subsections 1 and 2 of this section, a landlord may bring an action for possession if:
  - a. The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the tenant's household or upon the premises with the tenant's consent;
  - b. The tenant is in default in rent; or

c. Compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit. The maintenance of the action does not release the landlord from liability under section 562A.21, subsection 2.