

/* Home and Business Legal Guide: Residential Landlord and Tenant Act- Full text with annotations-- This Act has been adopted in the following states, although in many cases with amendments:

Alaska, Arizona, Florida, Hawaii, Iowa, Kansas, Kentucky, Montana, Nebraska, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Virginia

As usual, each state has "improved" on the basic model. We do not document the changes state by state. This law represents the "progressive" latest legal views on what a landlord tenant relationship should be. It is likely to be adopted by many more states in the future. We provide it as an example of what to expect for those not living in the uniform states.*/*

Section 1.101 Short Title

This Act shall be known and may be cited as the "Uniform Residential Landlord and Tenant Act."

Section 1.102 Purposes; Rules of Construction

(a) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this Act 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;

(2) to encourage landlords and tenants to maintain and improve the quality of housing; and

(3) to make uniform the law with respect to the subject of this Act among those states which enact it.

Section 1.103 Supplementary Principles of Law Applicable

Unless displaced by the provisions of this Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress coercion, mistake, bankruptcy, or other validating or invalidating clause supplement its provisions.

Section 1.104 Construction against Implicit Repeal

This Act being a general act intended as unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

Section 1.105 Administration

(a) The remedies provided by this Act shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

/* That is a fascinating section. Mitigation of damages are steps taken to lessen losses. At common law, a landlord is not required to mitigate damages. In fact at common law, if a tenant leaves, the landlord is allowed to simply leave the premises vacant and bill the tenant for rent. Maybe not any more..... */

Section 1.106 Settlement of disputed Claim or Right

A claim or right arising under this Act or on a rental agreement, if disputed in good faith, may be settled by agreement.

Section 1.201 Territorial application

This Act applies to and regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit within this state.

Section 1.202 Exclusions for Application of Act

Unless created to avoid the application of this Act, the following arrangements are not governed by this Act:

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

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

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

(4) transient occupancy in a hotel, or motel or lodgings subject to cite state transient lodgings or room occupancy sales tax act;

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

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

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

1.203 Jurisdiction and Service of Process

(a) The _____ court of this state may exercise jurisdiction

over any landlord with respect to any conduct in this state governed by this Act or with respect to any claim arising from a transaction subject to this Act. In addition to any other method provided by rule or by statute, personal jurisdiction over a landlord may be acquired in a civil action or proceeding instituted in the court by the service of process in the manner provided by this section.

(b) If a landlord is not a resident of this state or is a corporation not authorized to do business in this state and engaged in any conduct in this state governed by this Act, or engages in a transaction subject to this Act, he may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. This designation shall be in writing and filed with _____. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the _____, but service upon him is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process if any, or within any further time as the court allows.

Section 1.301 General Definitions

Subject to additional definitions contained in subsequent Articles of this Act which apply to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act

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

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

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

(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 2.102;

/* Review this section for an interesting idea. Often Joe Jones Ltd. an off-shore partnership actually owns an apartment complex

or hoe, but "Gold star Management" runs the show. The Management Company looks like the landlord (even the rent is made out to it) and acts like it, but isn't. This act places an obligation of disclosure on the management company to disclose that fact. */

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

/* As drafted this means that this code also applies to government funded housing. */

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

/* A "mortgagee in possession" refers to an organization who holds a lien on the property, like a bank, that under the mortgage takes over the property pending foreclosure. */

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

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

(10) "rent means all payments to be made to the landlord under the rental agreement;

(11) "rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under Section 3.102 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(12) "roomer" means a person occupying a dwelling unit that does not include a toilet and either a bath tub or shower and a refrigerator, stove, and kitchen sink, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure;

(13) "single family residence" means a structure maintained and used as a single family dwelling. 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 any other dwelling unit;

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

Section 1.302 Obligation of Good Faith

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

Section 1.303 Unconscionability

(a) If the court, as a matter of law, finds

(1) a rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

(2) a settlement in which a part waives or agrees to forego a claim or right under this Act or under a rental agreement was unconscionable when made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

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

Section 1.304 NOTICE

(a) A person has notice of a fact if

(1) he has actual knowledge of it,

(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 that it exists.

A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.

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

(1) it comes to his attention;

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

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

(c) "Notice," knowledge of a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction, and in any event from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

Section 1.401 Terms and Conditions of Rental Agreement

(a) A landlord and tenant may include in a rental agreement terms and conditions not prohibited by this Act or other rule of law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

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

(c) Rent is 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 month installments at the beginning of each month. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(d) Unless the rental agreement fixes a definite term, the tenancy is week to week in case of a roomer who pays weekly rent, and in all other cases month to month.

Section 1.402 Effect of Unsigned or Undelivered Rental Agreement

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

/* The point here is that if the landlord or tenant "forgets" to sign the lease that they are nevertheless bound. /

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

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

Section 1.403 Prohibited Provisions in Rental Agreements

(a) A rental agreement may not provide that the tenant:

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

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

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

(4) agrees to the exculpation or limitation of any

/* We continue this statute in Section 2, Uniform Landlord Tenant Act. */