**OVERVIEW OF REVISED UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (2015)**

 **I. Introduction**

 The Revised Uniform Residential Landlord and Tenant Act of 2015 (“Act”) was drafted by the National Conference of Commissioners on Uniform State Laws to propose legislation for enactment in all the states on landlord-tenant law. West Virginia has not made any substantive updates to the appropriate code section (Chapter 37, Article 6) in many years.

 At common law, the landlord-tenant relationship overwhelmingly favored the landlord over the tenant. The landlord had very few, if any, obligations to the tenant, and a tenant had few remedies to seek redress against a landlord. The relationship in West Virginia has been similar. Under West Virginia common law, the tenant had little power over the landlord. In the late 1970s, the legislature enacted West Virginia Code §37-6, and the West Virginia Supreme Court of Appeals issued a decision in *Teller v. McCoy.* The enactment of code and court decisions like *Teller* began to level the playing field to some degree, but there are still deficiencies in existing law and whole areas of the law that have not been properly addressed by the legislature or courts.

 The Act mentioned above was drafted to address holes and shortcomings in current state law and propose legislative reform for states to use when drafting updates to current landlord-tenant code. West Virginia would do well to make updates to state law using the Act as a helpful guide. It is in the state’s best interest to adopt a more uniform landlord-tenant relationship. Although home ownership in West Virginia is much higher than in other states, there is still a major rental market, especially in cities that contain a major college or university (e.g. Morgantown and Huntington).

 **II. Executive Summary**

The proposed Act is mostly new to West Virginia and would likely be made into a new article that replaces the current code in §37-6-1, *et seq*. This Act contains provisions that are completely missing in the West Virginia Code and areas that were in need of updates to conform to the growing area of landlord-tenant law. A similar proposal was made to the legislature, but not passed, in 2005. This new proposal contains more significant changes, serves as a model for the state to follow, and updates some of the language in the state’s current code to make it easier to follow and understand.

 Advocates in the state have been particularly concerned with several areas of landlord-tenant law that West Virginia has failed to address, or provisions that are inadequately outlined by the current state code. Of particular interest has been law addressing warranty of habitability, self-help by landlords, requirement to protect property post eviction, and the landlord’s unwarranted entry into the unit. Some of the major updates are addressed below.

 First, in the current West Virginia Code, habitability and duty to deliver are combined into one short section. This act separates those issues into two sections and expands on the duties owed to the tenant by the landlord. For example, the West Virginia Code only requires the landlord to meet the requirements of all the necessary codes, keep landlord controlled utilities running, and provide adequate heating from October to April. This Act requires the landlord to meet the requirements of necessary code, maintain effective waterproofing and weather protection, maintain plumbing facilities, provide hot and cold water, have adequate ventilation and heating, maintain electrical lighting and wiring, take reasonable measure to control pests and vermin, prevent exposure to hazardous materials (e.g. asbestos, radon, mold), keep fixtures and facilities in good repair, maintain locks and security devices on exterior door, maintain essential services if the landlord has agreed to provide those as part of the lease, and keep the premises free from garbage and debris. There are also sections that address disclosures that must be made by landlord and tenant, such as anything in noncompliance with code or in violation of habitability requirements.

 Second, the West Virginia Code inadequately addresses self-help by landlords when problems arise with rent payments or noncompliance with the lease. This Act addresses those concerns in detail. The landlord is not permitted to turn off essential services or take unauthorized possession to force compliance. Also, two sections of this Act place specific requirements on the tenant, such as compliance with the lease and keeping the unit in reasonably good condition. This act also protects the tenant and landlord from unconscionable articles being placed into the lease, which adds elements of proper contract law into landlord-tenant interactions. Some of these areas are not addressed in the West Virginia Code at all.

 Third, the West Virginia Code does not address when the landlord may enter the premises for routine maintenance or other necessities. Article 7 of this act provides that the tenant may not unreasonably withhold consent for the landlord to enter the dwelling to inspect it, make necessary or agreed-to repairs, supply a necessary or agreed-to service, exhibit the unit to a perspective or actual purchaser or tenant, or exhibit the unit to a contractor or public official responsible for enforcing law. The landlord must enter at a reasonable time with the tenant’s consent and shall give 24 hours’ notice. For routine maintenance, the landlord must give at least 72 hours’ notice or give a fixed schedule no less than 72 hours prior to the entry. In the case of an emergency, the landlord may enter without consent and shall give notice that is reasonable under the circumstances. If the tenant is not present during the entry, the landlord shall place a notice of entry in a visible area stating the time, date, and reason for entry. The landlord may not abuse the right under this section to enter the unit to harass the tenant. This article represents a significant update to the code that protects both parties.

 Last, this Act establishes more robust rules for protecting the landlord and tenant in the case of criminal activity and domestic crimes. This is an area completely unaddressed in the current West Virginia Code. The rules listed protect all parties and give guidance on handling issues that could cause concern or stress for the landlord and tenant. For example, if a perpetrator commits any criminal activity or a domestic crime, the landlord and tenant have the right to terminate the lease to protect the parties involved from any imminent harm.

 This summary highlights some of the more significant areas of improvement offered by this Act. The section below gives a short summary of each section for closer review.

 **III. Summary of the Act**

**Article 1**

 **Section 101** is the short title.

 **Section 102** contains the major definitions used throughout the act. There are no substantive differences in definitions from current state law.

 **Section 103** defines the scope of the Act. This section seeks to distinguish between rental property as generally accepted and “transient occupancy,” such as hotels, motels, vacation homes, hospitals, institutions, facilities, nursing homes, etc.

 **Section 104** states the right of enforcement of an action and the duty to mitigate damages by the party seeking relief.

 **Section 105** states the need for every lease or duty under the act to impose a good faith obligation in performance and enforcement.

 **Section 106** provides for the court, as a matter of law, to refuse to enforce the whole lease or parts of the lease that are found to contain unconscionable provisions at the time it was made. Also, the court may refuse to enforce any agreement made where a party waives or agrees to forego a claim or right that is found to be unconscionable at the time it was made. Finally, a party may present evidence to prove unconscionability.

 **Section 107** defines the extent of knowledge and notice. A person has notice under this Act if they have actual knowledge of the fact, received notice by having it brought to their attention, or has reason to know the fact exists from all the facts known. This Act requires notice in a signed record delivered personally or deposited in the mail with proper postage and properly addressed. The notice is properly addressed if sent to the known mailing address, a specified mailing address, or, if there is no known address, to an address reasonable under the circumstances, such as the last known address or previously used address.

 **Section 108** requires certain disclosures by a landlord. First, the criteria the landlord uses to determine the landlord’s willingness to enter into a lease with a tenant. Second, any condition of the premises, which the landlord knows or reasonably should have known, constituting a noncompliance with habitability requirements (further explained in a later section) that materially interfere with health, safety, or use and enjoyment of the property by the tenant. Third, whether a foreclosure action or a nonjudicial foreclosure proceeding has been commenced against the premises. Fourth, if rent is prepaid, the month or other period of the lease to which the rent is applied. Fifth, the rules affecting the tenant’s use and enjoyment of the premises. Sixth, the landlord must include a record with the name of the landlord, any person authorized to manage the premises, the owner of the premises, and any person authorized to act for the owner for service of process and receiving a notice or demand. Seventh, the mailing address and any address to be used for the receipt of electronic communication by the landlord or their designees. Eighth, the address to, or the method by, which the tenant must deliver rent. The landlord must keep the contact information current. Last, if the premises were in foreclosure before a lease was made, and no disclosure was made, the tenant may recover actual damages resulting from the foreclosure.

 **Section 109** requires certain disclosures by the tenant. First, the tenant must give a mailing address and any addressed used for electronic communications. Second, the tenant must designate a contact person to act on behalf of the tenant in the case of death and provide an accurate mailing address, electronic address, and telephone number for the contact person. Third, the tenant must keep the information current and provide a forwarding address after the termination of the lease.

 **Section 110** provides for the law to be administered under the principles of law and equity.

**Article 2**

 **Section 201** provides that the lease may include terms and conditions not prohibited by this act or other law. Also, specifically highlighted, is that the tenant shall pay rent for the term of the lease in an amount comparable to similar dwelling units of similar size and condition in a comparable location. The rent is payable without demand or notice, at the designated address, on the first day of each month (or at the beginning of the term if the term is less than one month). There are also specific provisions for periodic tenancies. The landlord must provide a copy of the lease (signing requirements described below). If the landlord fails to comply, the tenant may recover actual damages or one month’s rent, whichever is greater.

 **Section 202** lists the effects of an unsigned lease and implied lease. First, if the tenant delivers a signed lease to the landlord, and the landlord fails to sign the lease, acceptance of rent without reservation gives the lease full effect. Second, if the tenant fails to sign the lease, and acceptance of possession or payment of rent is made without reservation, the lease has full effect. Third, if a lease is given effect by either of the above with a tenancy for a fixed term longer than a year, the lease is effective for one year. Last, if neither landlord or tenant signs the lease, possession is taken and rent paid without reservation by the tenant and rent accepted without reservation by the landlord, a month to month tenancy is created.

 **Section 203** prohibits certain provisions in the lease. A lease may not require the tenant to do any of the following: 1) Waive or forego a right or remedy under this act, 2) authorize a person to confess judgment on a claim arising out of the lease or this act, 3) perform a duty imposed on the landlord, 4) agree to pay attorney’s fees and costs of the landlord other than those provided in this act or other law, or 5) agree to limit the liability of the landlord arising under this act or other law, or indemnify the landlord for the liability and the costs connected. Any provision in violation of this section is unenforceable, and the court may award the tenant an amount not to exceed three times the periodic rent if the landlord seeks to enforce such a provision.

 **Section 204** prohibits a landlord from accepting rent without assuming the duties imposed by this act.

 **Section 205** provides that the prevailing party in a dispute arising under a lease or this act shall be awarded costs associated with the action. If the court determines that the other party did not act in good faith, willfully performed an act prohibited by the lease or this act, or willfully refrained from performing an act required by the lease or this act, the court can award the prevailing party reasonable attorney’s fees. A landlord cannot be awarded fees and costs in an uncontested action to recover possession of a dwelling unit.

**Article 3**

 **Section 301** provides that a landlord shall deliver physical possession of the dwelling unit to the tenant at the commencement of the lease term.

 **Section 302** provides a landlord’s duty to maintain the premises in habitable condition. The landlord has a nonwaivable duty to maintain the unit and the premises of which the unit is a part, including making necessary repairs. The duty requires the following: 1) compliance with all obligations imposed by applicable building, housing, fire, health code, or other law; 2) effective waterproofing and weather protection of the roof and exterior walls, including windows and doors; 3) plumbing facilities that conform to applicable law and are maintained in good working order; 4) access to a water supply approved under applicable law which provides hot and cold running water; 5) adequate ventilation and heating facilities; 6) electrical lighting with wiring and electrical equipment that conform to applicable law; 7) reasonable measures in place to control rodents, bedbugs, and other vermin, and to prevent exposure to unsafe levels of radon, lead paint, asbestos, toxic mold, and other hazardous substances; 8) common areas that are clean and sanitary, free from garbage, and safe for normal and reasonably foreseeable use; 9) an adequate number of receptacles in reasonably clean condition if the landlord is obligated to provide trash removal by law or an agreement; 10) have in good repair floors, doors, windows, walls, ceilings, stairways, and railings; 11) have in good repair other facilities and appliances supplied or required to be supplied by the landlord; 12) have in good repair locks or other security devices on exterior doors and windows; and 13) have maintained in good working order any safety equipment required by law. If the landlord pays utilities, access to essential services must be maintained. A landlord is not responsible for disruptions in services paid by the tenant. A sublessor is a landlord for purposes of this act. A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if the agreement is in a record, other than the lease, signed by the parties and supported by adequate consideration; the work is not necessary to cure the landlord’s noncompliance; and the agreement does not diminish or affect the obligation of the landlord to other tenants. The landlord may not treat performance of the agreement as a condition to any obligation or performance of the lease.

 **Section 303** provides for limitations on landlord liability when the landlord conveys the premises in a good-faith sale to a bona fide purchaser.

 **Section 304** provides for rules governing the use and enjoyment of premises. The landlord may enforce a rule in existence at the time of the lease only if the rule was disclosed to the tenant. If rules are adopted or modified, the change cannot take effect earlier than 30 days after the landlord gives the tenant notice in a record. For month-to-month tenancies, the rule may not take effect earlier than the expiration period. If the rule or modification substantially modifies the tenant’s bargain and is not required by law, the rule is not enforceable unless the tenant signs a record.

 **Section 305** provides rules of third parties governing use and enjoyment. If a landlord fails to disclose a rule adopted by a person other than the landlord that substantially modifies the tenant’s bargain and is not required by law, the tenant may recover actual damages or terminate the lease by giving 30 days notice. A tenant may not terminate the lease if the lease provides that the dwelling unit is subject to rules of a person other than the landlord.

**Article 4**

 **Section 401** provides that, if a landlord fails to comply with the lease or section 302 of this act, the tenant has certain remedies (explained below) if the tenant gives the landlord 1) notice in a record of the noncompliance and 2) an opportunity to remedy the noncompliance within fourteen days after the notice, or, if the noncompliance involves failure to provide an essential service that materially interferes with health or safety, not later than five days after the notice.

 **Section 402** provides that the tenant may terminate the lease, continue the lease but withhold the rent for the period of noncompliance beginning on the date the tenant gave notice, seek actual damages, injunctive relief, specific performance, equitable relief, or make repairs and deduct the cost from the rent for noncompliance by the landlord. The landlord’s noncompliance must result in the tenant not receiving essential services, material interference with health or safety, or material interference with the use and enjoyment of the premises. If the noncompliance does not materially interfere with any of the above, the tenant may not terminate the lease, but may seek the other remedies. A tenant is not entitled to remedy if the noncompliance was caused by an act or omission by the tenant or guests, or the landlord was prevented from gaining access to make repairs.

 **Section 403** provides rules for termination of the lease by the tenant. If the noncompliance meets the requirements set forth above, the tenant may terminate the lease by giving the landlord notice in a record of the intent to terminate the lease immediately or on a later date specified in the notice, which is not later than 30 days from the date of the notice, or earlier than 14 days. The tenant may also recover actual damages. The landlord shall return any security deposit and unearned rent to which the tenant is entitled (expanded in 1204).

 **Section 404** limits the remedies if the dwelling unit or premises are substantially damaged or destroyed by fire, other casualty, or natural disaster, and is uninhabitable or inaccessible or continued occupancy is unlawful. The tenant may vacate immediately and, not later than 14 days, give notice of intention to terminate the lease. If continued occupancy is lawful, the tenant can seek remedies provided in 402 above. The landlord may terminate the lease if the damage requires the tenant to vacate due to continued occupancy being illegal. If it is impossible for the landlord to remedy the noncompliance, the tenant may terminate the lease or continue the lease and recover actual damages limited to diminution in the value of the dwelling unit. If it is impossible for the landlord to remedy the noncompliance within 30 days, the landlord can terminate the lease not earlier than 30 days from the notice, but the landlord may not rent the unit for 90 days after the termination. Again, the landlord must return any security deposit or unearned rent. This section does not preclude either party from seeking actual damages if the landlord or tenant caused the damage.

 **Section 405** states that the tenant is not required to pay rent until possession is delivered and may terminate the lease by giving notice at any time before the landlord delivers possession, or demand performance of the lease. The tenant may recover actual damages and obtain possession of the unit from the landlord, or obtain possession of the unit from any person wrongfully in possession by any lawful means the landlord could have used. If the tenant terminates, the landlord shall return any amounts received. If the landlord’s failure to deliver possession is willful, the tenant may recover three times the periodic rent or triple the actual damages, whichever is greater. If the tenant seeks possession, the tenant is liable to the landlord for rent and may recover from the person wrongfully in possession.

 **Section 406** provides for repair by the tenant when the landlord fails to comply with the lease or Section 302. If the landlord fails to remedy the noncompliance within the applicable period specified in Section 401, and the remedy does not exceed one month’s rent, the tenant may remedy the noncompliance at the landlord’s expense by recovering the actual and reasonable cost incurred. If the landlord does not reimburse the tenant, the tenant may deduct the cost or value from the rent after submitting an itemized statement with receipts. The repairs must be professional and in compliance with law. The tenant may not repair at the landlord’s expense when the tenant caused the noncompliance, or the landlord was unable to remedy due to denied access.

 **Section 407** provides the tenant an opportunity to secure essential services and deduct the cost from rent or procure comparable substitute housing at the landlord’s expense during the period of noncompliance when the landlord fails to provide essential services (after notification and failure to remedy) that the landlord has a duty to provide. The tenant may also recover actual damages. This section does not apply if the failure was caused by an act or omission by the tenant or guests.

 **Section 408** provides for landlord noncompliance as a defense to action for possession or nonpayment of rent. This section provides for specific directions on holding rent in escrow, the duties and responsibilities of the landlord, the duties and responsibilities of the tenant, and how the rent is to be held and returned to the tenant when the premises are brought back into compliance.

 **Section 409** establishes the unlawful removal, exclusion, or interruption of essential services. If a landlord unlawfully removes or excludes the tenant from the premises or willfully interrupts an essential service that landlord has a duty to provide, the tenant may recover three times the periodic rent or triple damages, recover possession, or terminate the lease with notice.

**Article 5**

 **Section 501** establishes the tenant’s duties. The tenant shall 1) comply with all obligations imposed by the lease or this act; 2) comply with all obligations imposed by applicable code or law; 3) keep the dwelling unit reasonable safe and sanitary; 4) remove all garbage in a clean and safe manner; 5) keep all plumbing fixtures reasonably clean; 6) use all facilities and appliances in a reasonable manner; 7) not destroy, deface, damage, impair, or remove any part of the premises without permission from the landlord; 8) not disturb the use of enjoyment of another tenant; 9) not engage in or permit anyone to engage in criminal activity; 10) notify the landlord within a reasonable time of any required repairs; 11) return the dwelling unit to the landlord at the termination of the lease in the same condition as it was, except normal wear and tear, damage resulting from a cause beyond the tenant’s control, or any addition or improvement done with the landlord’s consent.

**Article 6**

 **Section 601** lists the consequences of a tenant’s failure to pay rent and other noncompliance with the lease. The landlord may terminate a lease for nonpayment of rent after giving a written notice. The lease will terminate after 14 days from the notice. If there is a material noncompliance with the lease, the landlord may give notice specifying the act or omission constituting noncompliance, give 14 days to remedy the noncompliance, and terminate the lease 30 days after notice is given. The landlord may terminate the lease without giving an opportunity for remedy if the tenant 1) failed to pay rent in a timely manner on at least two occasions within the prior four-month period, 2) the tenant committed the same act or omission within six months preceding the latest noncompliance, 3) the noncompliance presents an actual and imminent threat to health and safety, or 4) a criminal act was committed. The landlord may also obtain injunctive relief or specific performance and recover actual damages. The lease may not be terminated if a criminal act was the act of an immediate family member or guest and the tenant neither knew nor should have known of the act, and took reasonable steps to ensure that there will not be any repeated criminal acts.

 **Section 602** allows for waiver of the landlord’s right to terminate when the landlord accepts rent for two or more successive rental periods with knowledge of noncompliance by the tenant or the landlord accepts the tenant’s performance that varies from the terms of the lease.

 **Section 603** abolishes the landlord’s right to seize personal property to secure the tenant’s performance under the lease or this act.

 **Section 604** establishes when the premises have been abandoned and the remedy after termination of the lease. The premises are considered abandoned when 1) the tenant delivers possession of the unit to the landlord before the end of the term by returning the keys or means of access, 2) the tenant notifies the landlord that the unit has been vacated, 3) when rent is not paid for at least five days and a substantial portion of personal property is removed from the unit, or 4) essential services are terminated and the tenant has no intention to return. If the property is abandoned before the end of the term of the lease, the landlord may recover possession without a court order, accept the tenant’s abandonment by notice in a record given to the tenant. In that case, the lease terminates on the date of abandonment, the landlord and tenant are liable to each other under the lease for a noncompliance that occurred before the termination, and the landlord shall return any security deposit and unearned rent. The abandonment can be treated as wrongful. This entitles the landlord to make reasonable efforts to rent the unit.

 **Section 605** limits the landlord from self-help recovery. The landlord may not recover or take possession of a unit by willfully interrupting or causing an interruption of an essential service to the unit. The landlord may recover possession only through an action permitted by law.

**Article 7**

 **Section 701** provides that the tenant may not unreasonably withhold consent for the landlord to enter the dwelling to inspect it, make necessary or agreed-to repairs, supply a necessary or agreed-to service, exhibit the unit to a perspective or actual purchaser or tenant, or exhibit the unit to a contractor or public official responsible for enforcing law. The landlord must enter at a reasonable time with the tenant’s consent and shall give 24 hours’ notice. For routine maintenance, the landlord must give at least 72 hours’ notice or give a fixed schedule no less than 72 hours prior to the entry. In the case of an emergency, the landlord may enter without consent and shall give notice that is reasonable under the circumstances. If the tenant is not present during the entry, the landlord shall place a notice of entry in a visible area stating the time, date, and reason for entry. The landlord may not abuse the right under this section to enter the unit to harass the tenant. Unless otherwise provided in this section, the landlord does not have a right to enter unless the lease or other agreement permits the entry, entry is done under a court order, or tenant has abandoned the unit.

 **Section 702** establishes remedies for abuse of access. If a tenant unreasonably refuses access, the landlord may recover actual damages, have the court compel the tenant to grant access, or terminate the lease after 14 days. If the landlord unlawfully enters, enters in a unreasonable manner, or makes repeated demands to enter to harass the tenant, the tenant may recover actual damages or one month’s rent, seek injunctive relief, or terminate the lease with 30 days notice.

**Article 8**

 **Section 801** provides that a periodic tenancy continues until the landlord or tenant gives notice of termination of at least five days in the case of a week-to-week tenancy or one month’s notice for a month-to-month tenancy.

 **Section 802** provides for a landlord to bring an action for possession if a tenant remains in possession without the landlord’s consent after the expiration of the tenancy. If the holdover is willful, the landlord may recover three times periodic rent or triple the actual damages. Unless there is a recorded agreement, if the tenant remains in possession with the landlord’s consent after expiration of a tenancy, a month-to-month tenancy is created subject to the terms in the original lease.

 **Section 803** provides that, after the death of the tenant prior to the end of the tenancy, the tenant’s surviving spouse or partner who resides in the dwelling may assume the lease by giving the landlord notice in a record not later than 20 days after the death stating the intent to assume the lease. The landlord or representative may terminate the lease after death of the tenant by giving to the spouse or partner a notice that does not terminate the lease earlier than 30 days after the notice. The notice must also contain a statement that the surviving spouse has 20 days to assume the lease. If the landlord is unable to contact the surviving spouse, the landlord can terminate the lease without notice if rent has not been paid for at least 25 days.

**Article 9**

 **Section 901** prohibits retaliation by the landlord for a tenant that 1) complains to a government agency responsible for the enforcement of law, 2) complains to the landlord for a noncompliance with the lease or Section 302, 3) organizes or becomes a member of a tenant’s union or organization, 4) exercises or attempts to exercise a legal right or remedy, 5) pursues an action or seeks an administrative remedy against the landlord, or 6) testifies against the landlord in court or an administrative hearing. Increasing rent or fees, decreasing services, increasing the tenant’s obligations, imposing different rules or selectively enforcing rules against the tenant, materially altering the terms of the lease, terminating a periodic tenancy, or committing criminal acts against the tenant or guests will be considered retaliatory conduct.

 The conduct will not be considered retaliatory 1) if the tenant caused the violation, 2) the tenant’s conduct was unreasonable or harassing, 3) the tenant was in default in the payment of rent, 4) the tenant engaged in conduct that threatened the health or safety of others, 5) the tenant engaged in criminal conduct, 6) the landlord is seeking to recover possession based on a notice to terminate the lease that was given prior, or 7) the landlord is complying with applicable law.

 **Section 902** establishes remedies for tenants that are subjected to retaliatory conduct by the landlord. The tenant may recover possession, terminate the lease, recover triple the actual damages or three times the periodic rent.

 **Section 903** establishes that there is a presumption of retaliatory conduct when the evidence shows the tenant engaged in the any of the activities described above within six months prior to the landlord’s actions. A presumption does not exist if the tenant engaged in conduct after the landlord gave notice of action. The landlord may rebut the presumption by a preponderance of evidence showing that the landlord had sufficient justification for their actions.

 **Section 904** provides for the landlord to recover damages up to three times periodic rent if the tenant engages in any conduct described above knowing there is no legal or factual basis for their conduct.

**Article 10**

 **Section 1001** lists the requirements a landlord must follow when a tenant leaves personal property on the premises. If property is left, it is relinquished to the landlord. The landlord must give notice to the tenant of their right to retrieve the property. The property may be stored in the unit or another place or safekeeping, and must be shown reasonable care when moving and storing. The landlord can charge the tenant for inventorying, moving, and storage costs. This section does not prohibit the landlord from immediately disposing of perishable food, hazardous material, garbage, or turning over an animal to animal-control or a humane society. If reasonable efforts are made to contact the tenant and the tenant fails to retrieve property, the property is deemed abandoned and can be sold if feasible or disposed of in any manner the landlord considers appropriate.

 **Section 1002** establishes the manner in which a deceased tenant’s property must be handled when the tenant had a representative. The landlord must contact a tenant representative, give the representative access and reasonable time to remove personal property, and must pay the security deposit and any unearned rent. The landlord may require a signed inventory of the property. Any willful action by the landlord to violate this section will expose the landlord to liability to the estate of the deceased tenant for actual damages.

 **Section 1003** establishes the manner in which a deceased tenant’s property must be handled when the tenant did not have a representative. The landlord shall mail a notice to the tenant’s last known address or other address of the tenant known to the landlord, and to any person the tenant has told the landlord to contact in case of an emergency stating the name of the tenant and address of the unit, the approximate date of death, and proper contact information for the landlord. The landlord must exercise reasonable care to care for the property in a similar manner listed in the previous section. The landlord must give 60 days notice to claim the personal property or the property can be disposed of.

**Article 11**

 **Section 1101** provides legal definitions for the sections below on handling domestic violence and similar crimes. The definitions mostly rely on state code definitions of the enumerated crimes, associated services, and labels given to various actors.

 **Section 1102** provides for a victim of domestic violence, dating violence, stalking, or sexual assault to be released from the lease without the necessity of the landlord’s consent when the victim has a reasonable fear of suffering harm if they remain in the unit. The victim must provide notice that states the intent to be released from the lease on a date not earlier than 30 days from the date of the notice (unless the perpetrator also lives in the unit), states the facts giving rise to the fear of harm, a copy of a court order that restrains the perpetrator from contact, and evidence of the conviction or adjudication of the perpetrator. The notice must be given not later than 90 days after an act, when a court order exists, or, if the perpetrator was incarcerated, not later than 90 days after the tenant acquired knowledge that the perpetrator was released. The tenant is not responsible for rent accruing after the lease terminates or other actual damages resulting from the lease termination.

 **Section 1103** requires the landlord to return any security deposit or unearned rent to which the tenant is entitled after the tenant vacates the dwelling. The landlord may not assess a fee or other penalty against the tenant for exercising a right granted by Section 1102, and may not disclose information unless required by a court order or other law.

 **Section 1104** requires the tenant to give a verification under oath that includes 1) the tenant’s name and address of the unit, 2) the approximate dates on which an act occurred, 3) the approximate date of the most recent act, 4) a statement that because of an act there is a fear of imminent harm, 5) the date for termination of the lease or release from the lease, 6) a statement that the representations are true and accurate to the best of the tenant’s knowledge and that the tenant knows the verification could be used as evidence in court. The attesting third party must include 1) name, address, phone number; 2) the capacity in which the third party received the information; 3) a statement that the third party has read the tenant’s verification and has been advised that there was fear of imminent harm if the tenant continues to reside in the unit; and 4) a statement that the third party, based on the verification, believes the tenant and understand the verification may be used as the grounds for releasing the tenant from the lease. If the tenant gives knowingly false information, the landlord may recover an amount not to exceed three times periodic rent or triple the actual damages, whichever is greater.

 **Section 1105** allows the landlord to recover actual damages from the perpetrator resulting from the tenant’s exercise of these rights.

 **Section 1106** allows for the tenant to change the locks, in a professional manner, without the consent of the landlord to secure the dwelling from entry by a perpetrator of a domestic crime. If the locks are changed or rekeyed, the landlord may change them to ensure compatibility with a master key, at the tenant’s expense. If the perpetrator is a party to the lease, the locks or security devices may not be changed without a court order.

 **Section 1107** provides that, upon the issuance of a court order to vacate to a perpetrator, neither the landlord nor tenant has a duty to allow the perpetrator access to the unit unless accompanied by law enforcement, or provide the perpetrator with any means of access to the unit. If the perpetrator is a party to the lease, the interest is terminated after the issuance of an order to vacate. Any remaining tenants may recover any actual damages from the perpetrator as a result of the termination. The landlord is not required to return to a perpetrator any security deposit or unearned rent.

 **Section 1108** allows for the landlord to terminate the lease immediately or within 30 days when the landlord has a reasonable belief that a tenant is the perpetrator of a domestic crime. The landlord must notify the tenant who was the victim using any reasonable means. Termination of the perpetrator’s interest does not affect any other tenant’s interest, and other tenants may recover actual damages caused by the perpetrator’s termination.

 **Section 1109** establishes that the landlord may not take any retaliatory measures (also outlined in Section 901) when a tenant enforces any right due them after a domestic crime has been perpetrated. A presumption that the landlord’s actions were retaliatory when a domestic crime was committed six months prior to the landlord’s actions. The landlord may terminate the lease with notice after 30 days when the tenant allows the banned perpetrator on the premises without the landlord’s permission, when the tenant violates a no-contact order, or if the landlord demonstrates that there is an imminent threat to health and safety of anyone on the premises or the perpetrator has damaged the premises. A willful violation by the landlord of this section allows the tenant to 1) recover three times periodic rent or triple actual damages, 2) terminate the lease, 3) defend an action for possession, and 4) obtain injunctive relief.

**Article 12**

 **Section 1201** provides that the landlord may not require a tenant to pay a security deposit, prepaid rent, or any combination thereof, in an amount that exceeds two times periodic rent. If a tenant keeps a pet, the landlord can require an additional security deposit.

 **Section 1202** requires the landlord to keep tenant security deposits in a separate account from normal business accounts. It does not forbid commingling of deposits as long as there is no negative impact on any of the deposits.

 **Section 1203** lists the requirements for keeping the tenant’s security deposit safe, such as keeping accurate records of deposits and keeping the money in a federally insured bank within the state. Violation of this section allows for actual damages or one month’s rent.

 **Section 1204** entitles the tenant to any amount of the security deposit and unearned rent that exceeds the amount owed to the landlord in accordance with the lease not later than 30 days after the lease terminates. The amount must be sent via first-class mail, postage prepaid, to an address provided by the tenant, or tenant’s representative. The landlord must provide an accurate record within 30 days if the costs of the landlord exceed the security deposit and unearned rent, and may charge the tenant for any extra costs. Failure to comply entitles the tenant to twice the amount recoverable.

 **Section 1205** protects the tenant’s interest in a security deposit and rent when a landlord’s interest is terminated. The landlord must notify a tenant of any successor to the premises, and the successor must protect the tenant’s interest.

**Article 13**

 **Section 1301** promotes uniformity of the law in applying and construing this act.

 **Section 1302** modifies, limits, and supersedes acts related to electronic signatures in global and national commerce.

 **Section 1303** applies this act to any lease made on or after the effective date of the act.

 **Section 1304** repeals any necessary state law.

 **Section 1305** establishes the effective date.

 **IV. Conclusion**

 Given the need for uniformity of law in this area and West Virginia’s need to update its current landlord-tenant law, this Act can serve as a model for new legislation. American landlord-tenant law has undergone substantial change over the last few decades. There has been a movement for common law to be codified or abolished and for new rules to be adopted based on the principles of contract law. West Virginia has made some progress here, but it is important to make the laws more equitable and contemporary. New legislation that reflects modern landlord-tenant law is long overdue in the state. This model legislation properly addresses several areas of concern and addresses the need for equity within the law. The balance between the needs of the landlord and tenant are properly weighed in the provisions of this Act. If new legislation is enacted in accordance with the provision listed above, West Virginia can move forward with a robust law that serves the best interest of the rental community throughout the state, provide proper guidance to landlords and tenants, and ensure clear and concise law in the case of conflicts.