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Report of the

**Working Group to Study
Landlord and Tenant Issues**

Representative John L. Tuttle, Chair

to the

**Joint Standing Committee on
Legal and Veterans Affairs**

**124th Maine Legislature
Second Regular Session**

**Senator Nancy B. Sullivan, Chair
Representative Pamela Jabar Trinward, Chair**

January 15, 2010

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I Introduction

The Working Group to Study Landlord and Tenant Issues has concluded the work it was charged to perform by the Legislature. The group was directed to consider issues of concern to landlords and tenants and make recommendations to the Joint Standing Committee on Legal and Veterans Affairs.

The group, chaired by Representative John Tuttle, met throughout the fall. This report transmits changes that the group recommends be enacted and proposals that the group did not or has not yet come to agreement on.

II Creation and Charge of the Working Group

In June the Legislature passed LD 1080, Resolve To Create a Working Group To Study Landlord and Tenant Issues. The bill was sponsored by Representative John L. Tuttle of Sanford. Rep. Tuttle had been contacted by a number of constituents, both landlords and tenants, about problems they were having with various landlord/tenant issues, including foreclosures. Rep. Tuttle concluded that the best approach would be to have representatives from both groups discuss their concerns away from the pressure of the legislative session and report their recommendations.

The group was directed to:

- 1) Study the feasibility of providing heating fuel assistance and weatherization assistance for landlords who serve low-income tenants in certain economically distressed areas;
- 2) Study the issue of keeping housing units in proper repair, including examining the laws regarding warranty of habitability to see if there is a way to have the law work more simply to resolve both minor and major problems;
- 3) Study the issue of keeping tenants in their apartments in the event of foreclosure;
- 4) Examine the current laws regarding evictions both in lease and tenancies at will to determine if consolidating those laws into one statutory scheme is feasible and to determine if some minimal standards should apply to these tenancies; *(Although the group believes there is one statutory scheme, we reviewed the statute for consistency.)*

- 5) Recommend changes to clarify and simplify the current law; and
- 6) Consider any other issues pertaining to landlord and tenant issues that it determines to be relevant.

The Resolve is attached in Appendix A.

III Members and Meetings

The members of the group were:

- Rep. John Tuttle, Chair, representing landlords and housing managers
- Peter Merrill, Vice Chair, representing the Director of the Maine State Housing Authority
- Mark Joyce, representing the State's designated protection and advocacy agency pursuant to 5 MRSA 19502
- Leo Delicata, representing a statewide non-profit legal services organization that provides free legal services to the elderly
- Frank D'Alessandro, representing a statewide non-profit legal services organization that provides free legal services to low-income persons
- Jack Comart, representing a statewide non-profit that provides free legal services, including administrative and legislative advocacy, to low-income persons
- Gary Crowell, representing the Maine Real Estate Managers Association,
- Carlton Winslow, representing the Maine Apartment Owners and Managers Association
- Sherrin Vail, representing the Maine Apartment Association
- Judge Robert Murray, representing the District Court

Judge Murray's participation and insights were very helpful to the group. The Judge did not, however, offer any opinions on the policy matters the group discussed and did not vote on any issue before the group to avoid any perception of conflict of interest.

The groups met nine times between September 8th and January 5th. The meeting agendas and minutes are attached in Appendix B.

IV Concerns Raised by Members

At the first meeting the group discussed the specific charges and each member identified issues and concerns they would like the group to consider. Those concerns and issues were:

Courts

- District Court schedule
- Creation of a housing court
- Landlord frustrations with the lack of resources in the court system
- Efficient access to the courts
- Education of tenants about right to contest eviction in court

Review and Revision of Existing Law

- Greater protections for security deposits
- Applying the common metering statute to all utilities
- Review and revision of statutory remedies
- Simplification of the statute and language
- Simplification of the abandoned property law

Economic and Other Concerns

- Foreclosed properties
- Challenges facing small landlords
- Fuel assistance and weatherization
- Bed Bugs

V Presentations and Participation

The group invited a number of organizations to make presentations and discuss various issues. The group also scheduled time at each meeting for members of the public to provide additional input. The presentations included:

- The Court Process - Judge Robert Murray explained the forcible entry and detainer law, the case load before the courts, and the court process. He also outlined the system of priorities that the Court has had to establish for handling cases. The highest priority

cases are those involving children or families or where there is the danger of an imminent threat of violence.

- Comparison of Maine law with selected other states - Colleen McCarthy Reid of the Legislature's Office of Policy and Legal Analysis provided a comparison of Maine law with Massachusetts, Minnesota, and New York. Only Massachusetts has a statewide housing court; some states have housing courts in major cities.
- Comparison of Maine with the Uniform Residential Landlord and Tenant Act – Colleen McCarthy Reid provided a section by section comparison of the two laws.
- Overview of municipal involvement – Kate Dufour of the Maine Municipal Association joined the group for a discussion about the role of municipalities in landlord/tenant issues. She discussed warrant of habitability and the recently enacted law that allows a municipality to step in to buy fuel or fix a furnace in a rental unit being foreclosed on if the landlord is not responsive.
- Mediation – Diane Kenty, Director of the Court Alternative Dispute Resolution Service, reviewed their recent report on the effectiveness of their program in forcible entry and detainer cases. About 75% of the cases they handled in the first year were successfully resolved. They have adequate resources for their work.
- Foreclosure proposals – The group invited the Maine Association of Community Banks to share their position on the foreclosure proposals the group was considering. Kathy Keneborus noted that 97% of the bad mortgages in Maine were from non-Federal Deposit Insurance Corporation lenders. She explained their opposition to the proposals, especially the one that would create a right of action for a tenant against the lender if the owner being foreclosed upon refused to maintain the habitability of premises. They believe that the owner is responsible until the property transfers to the lender. They are also concerned that laws that are unique to Maine could result in higher costs that will be passed along to the borrowers.
- Bed Bugs – Jeff Haines of Atlantic Pest Control made a presentation on the influx of bed bugs, the generally used methods of eradication, and the challenges faced in multi-family situations. Portland is now one of the top five most infected cities in the US. The bugs do not transmit disease but cause secondary infections, can trigger asthmatic reactions, and can cause emotional distress. Their spread is not caused by poor hygiene

or sloppy housekeeping. It is very difficult to determine who is responsible for an infestation.

- Heating and weatherization assistance – Jo-Ann Choate of MaineHousing gave an overview of the programs available and the eligibility requirements. Most programs are aimed at individuals; about 20% of the funds are used for apartments. The programs were created to address poverty by reducing the energy costs of the individuals assisted. She expressed hope that there would be more programs available for apartments in the future through the Efficiency Maine Trust.

Copies of the presentation materials the group received are attached in Appendix C.

VI Proposals Agreed To

Throughout the fall the group discussed and negotiated proposed legislation. The original drafts were generated by various members of the group based on the charge and the issues of concern identified at the first meeting. Between meetings sub-committees worked on language to address each other's concerns. At each meeting new drafts were reviewed, and additional concerns raised and discussed.

The group used a guiding principle of presenting the Committee with proposals that could be enacted. The group discussed, for example, additional funding for the courts, creating a housing court, setting up a fund to help tenants with maintenance during foreclosures, and more funds for weatherizing apartments. Each of these things would cost money and so were not included.

The group worked hard to develop consensus; there were concessions from both sides. We were able to reach consensus on the agreed to proposals which we view as a package. The Committee will ultimately decide what, if anything, to introduce. For that reason we decided to provide you with all of the proposals that were considered. However, we encourage you to consider it as a package, recognizing the spirit of compromise under which the group labored.

The proposals fell into six areas:

- 1) Unclaimed property
- 2) Reasonable Accommodation
- 3) Clarifying the application of the law to renters with leases and tenants at will
- 4) Updating and improving existing law
- 5) Foreclosures
- 6) Bed bugs

Unclaimed Property – this proposal simplifies the process for both parties, makes it easier for the tenant to reclaim property and easier for the landlord to resolve it in a timely way.

Reasonable Accommodation – this proposal includes the holdings of two recent court decisions and proposes adding them as statutory provisions.

Tenants at Will – current law is not always clear when it applies only to tenants with a written lease or to tenants at will or to both. This proposal clarifies that.

Updating and Improving Existing Law – there were a number of section by section changes that the group worked on as a set. These include improved recourse for tenants when security deposits are not handled properly, updating the section covering payment of utilities in common areas, providing written notice to tenants of their right to contest an eviction in court, and providing a remedy for a tenant if the landlord fails to pay the utilities.

Foreclosure 1 – the group agreed to expand the law passed last year that allows a municipality to provide heat to a building under foreclosure if the landlord refuses. The expansion would allow the municipality to provide basic necessities.

Foreclosure 2 - The group also agreed that Maine law should take note of the federal law that requires a tenant in a foreclosed building to receive a ninety day eviction notice and the current lease to be honored under certain circumstances. The Attorney General expressed concerns about adopting the federal law as Maine law because it is not well written and does not account for Maine's tenancy at will law. The group deferred to the Attorney General but

wanted some mechanism to let a court know that the federal protections exist. Therefore, the group proposes that Maine law refer to the appropriate federal provision dealing with foreclosures.

Foreclosure 3 – Under current law the amount of money a tenant can spend to make repairs and deduct from the rent is capped at the higher of \$500 or one-half month's rent. The group proposes that the cap be eliminated if the apartment is being foreclosed.

Bed Bugs – The group reviewed a law recently passed in New Jersey (see Appendix C). Bed bug infestations are very difficult and expensive to remediate. It is also difficult to allocate responsibility for an infestation. Both the tenants and landlords have important responsibilities to help mitigate and remediate the problem. The group developed a proposal that lays out those responsibilities so that the problem can be addressed as quickly and as thoroughly as possible.

All of the provisions that the group agreed to have been drafted in a bill attached in Appendix D.

VII Proposal Not Agreed To

Foreclosure – the group spent a lot of time wrestling with the problem faced by tenants between the time a lender initiates a foreclosure action and the time the lender take possession of the property. The landlord has no incentive to provide any needed maintenance or upkeep to the property. The lender often reserves the right to step in to protect the asset, but usually prefers not to until the case is resolved. There may also be times when the lender does not expect to be made whole when the property is sold and so has an incentive to keep expenses to a minimum. The tenants, meanwhile, through no fault of their own, face paying rent without getting what they are paying for.

One proposal that most of the group (but not all) supported would hold both the mortgagor and the mortgagee responsible for maintaining the habitability of the building. The proposal would provide a remedy by allowing the tenant to ask a court to enforce the joint liability.

This proposal is attached in Appendix E.

VIII Conclusion and Appreciations

The Working Group to Study Landlord and Tenant Issues appreciates the confidence that the Committee had in the process in passing the resolve. The group had the luxury of more time than the legislative process usually allows and the good fortune of dedicated members of good will who were interested in solving problems. This allowed for discussions to get to the underlying reasons for proposals. That, in turn, allowed for solutions to be found that work.

We would like to acknowledge the support and assistance provided by Rep. Tuttle, Colleen McCarthy Reid of OPLA, and Justin Brown and Kathy Poulin of MaineHousing. We would like to thank Judge Robert Murray, Kate Dufour, Diane Kenty, Colleen McCarthy Reid, Kathy Keneborus, Jeff Haines, and Jo-Ann Choate for their time and effort to make presentations to help us understand the issues. The Chair and Vice Chair would particularly like to thank the members of the group for their time, their effort, their commitment, and their good will. As result of their hard work, we have agreed on far more than we have not.

Appendix A:

LD 1080: Resolve To Create a Working Group To Study Landlord and Tenant Issues

Appendix A: Resolve Chapter 137 LD 1080

RESOLVE Chapter 137 LD 1080, item 2, 124th Maine State Legislature
Resolve, To Create a Working Group To Study Landlord and Tenant Issues

PLEASE NOTE: Legislative Information *cannot* perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Resolve, To Create a Working Group To Study Landlord and Tenant Issues

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, a working group to study issues related to landlords and tenants is created in this resolve and must issue its findings and report by December 2, 2009; and

Whereas, the study must be initiated before the 90-day period expires in order that the study may be completed and a report submitted in time for submission to the next legislative session; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1 Working group established. Resolved: That the Director of the Maine State Housing Authority or the director's designee shall convene a working group to study issues related to landlords and tenants. The Director of the Maine State Housing Authority or the director's designee shall convene the first meeting of the working group no later than August 1, 2009, and the working group shall elect a chair from among its members; and be it further

Sec. 2 Working group members. Resolved: That the working group under section 1 consists of the following 9 members:

1. The Director of the Maine State Housing Authority or the director's designee;
2. Four members representing the following organizations:
 - A. The State's designated protection and advocacy agency pursuant to the Maine Revised Statutes, Title 5, section 19502;
 - B. A statewide nonprofit legal services organization that provides free legal services to the elderly;
 - C. A statewide nonprofit legal services organization that provides free legal services to low-income persons; and
 - D. A statewide nonprofit legal services organization that provides free legal services, including administrative and legislative advocacy, to low-income persons; and
3. Four members representing organizations of landlords and housing managers in the State.

The chair of the working group shall invite the participation of one member representing the District Court selected by the Chief Justice of the Maine Supreme Judicial Court; and be it further

Sec. 3 Selection of members. Resolved: That, no later than 30 days following the effective date of this resolve, the organizations described in section 2 shall notify the Director of the Maine State Housing Authority or the director's designee of the members selected for participation in the working group under section 1; and be it further

Appendix A: Resolve Chapter 137 LD 1080

RESOLVE Chapter 137 LD 1080, item 2, 124th Maine State Legislature
Resolve, To Create a Working Group To Study Landlord and Tenant Issues

Sec. 4 Duties. Resolved: That the working group under section 1 shall:

1. Study the feasibility of providing heating fuel assistance and weatherization assistance for landlords who serve low-income tenants in certain economically distressed areas;
2. Study the issue of keeping housing units in proper repair, including examining the laws regarding warranty of habitability to see if there is a way to have the law work more simply to resolve both minor and major problems;
3. Study the issue of keeping tenants in their apartments in the event of a foreclosure;
4. Examine the current laws regarding evictions both in lease and tenancies at will to determine if consolidating those laws into one statutory scheme is feasible and to determine if some minimal standards should apply to lease tenancies;
5. Recommend changes to clarify and simplify the current law; and
6. Consider any other issues pertaining to landlord and tenant issues that it determines to be relevant; and be it further

Sec. 5 Notice to Legislature. Resolved: That the chair of the working group shall provide written notice of working group under section 1 meetings and copies of any minutes of meetings to members of the Joint Standing Committee on Legal and Veterans Affairs and the Office of Policy and Legal Analysis; and be it further

Sec. 6 Report. Resolved: That, no later than January 15, 2010, the working group under section 1 shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Joint Standing Committee on Legal and Veterans Affairs. The Joint Standing Committee on Legal and Veterans Affairs is authorized to introduce a bill related to the subject matter of the report to the Second Regular Session of the 124th Legislature upon receipt of the report.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Appendix B:
Agendas and Meeting Minutes

Appendix B: Meeting Agendas and Minutes

Landlord Tenant Working Group

Agenda

September 8, 2009 1:00 pm

Labor Committee Room State Office Building

- | | |
|--|---------|
| I. Welcome and simple introductions | 1:00 pm |
| II. Approve agenda | 1:15 |
| III. Background on bill – Rep. John Tuttle | 1:20 |
| IV. Detailed introductions | 1:30 |
| V. Process, substitutes and public comment | 2:00 |
| VI. Duties and addressing the 6 charges | 2:15 |
| Break | |
| VII. Election of chair and vice chair | 3:30 |
| VIII. Schedule | 3:35 |
| IX. Public comment | 3:40 |
| X. Adjourn | 4:00 |

Appendix B: Meeting Agendas and Minutes

LD 1080 Landlord/Tenant Workgroup Meeting Tuesday, September 8, 2009, 1:00 p.m. Labor Committee Room – Cross Building Minutes

Attendance: Judge Robert Murray, Maine District Court (Bangor/Ellsworth); Frank D'Alessandro, Pine Tree Legal; Jack Comart, Maine Equal Justice Partners; Leo Delicata, Legal Services for the Elderly; Carleton Winslow, Maine Apartment Owners and Managers Assn.; Peter Merrill, MaineHousing; John Tuttle, State Representative; Gary Crowell, Maine Real Estate Managers Assn.; Sean Ociepka (representing Mark Joyce), Disabilities Rights Center; Sherrin Vail, Maine Apartment Assn.

I. Welcome and simple introductions

The first meeting of the LD 1080 Landlord/Tenant Issues Working Group opened with simple introductions from members and the public in attendance.

II. Agenda

The agenda was reviewed and approved as presented.

III. Background

LD 1080 background was provided by Rep. John Tuttle, the bill's sponsor.

IV. Detailed Introductions

The 10 members of the workgroup each provided details about the organizations they were representing, their perspectives and what specific tenant/landlord issues they were interested in. See list of issues and concerns attached.

V. Process

The workgroup discussed process items as noted:

- Substitutes for workgroup members are allowed
- Public comment is allowed and encouraged at the discretion of the Chair and at the end of the meeting. It was noted that comment should be regulated for time and content.
- Recommendation: Bring concepts and proposed resolutions
- From the courts: Bring overview of issues that regularly occur to shed light on what the workgroup might do to provide better education and opportunities for both tenants and landlords. Request to have overview of court procedures and any efficiency issues.
- The workgroup agreed to meet at 1 p.m., every other Tuesday at the Cross Building Labor Committee Room through year end.

Appendix B: Meeting Agendas and Minutes

VI. Duties

The issues to be addressed by the working group outlined in LD 1080 were briefly discussed. Members made recommendations on approaches, information, and background needed. Rep. Tuttle recommended that rather than break into subcommittees to discuss issues that they be address through the work of the committee as a whole. Members agreed. Judge Murray clarified to the group that he sees his role on the committee as resource rather than voting member, in effort to avoid any perception of conflict of interest.

Duties as outlined in the law, *Resolve Chapter 137 LD 1080, Resolve to Create a Working Group To Study Landlord and Tenant Issues* are:

- Fuel assistance and weatherization for landlords who serve low income in distressed areas.
- Proper upkeep, warranty of habitability, simple resolution
- Keeping tenants in apartments in event of foreclosure
- Feasibility of consolidating eviction laws and determine if minimum standards should apply to lease tenancies
- Clarify and simplify current law
- Other issues deemed relevant

VII. Election of Chair and Vice Chair

A motion was made by Carleton Winslow and seconded by Gary Crowell to elect Rep. John Tuttle as Chair and Peter Merrill as Vice Chair of the Workgroup. Members voted unanimously to accept.

VIII. Schedule

Chairman Tuttle confirmed that the next meeting of the Workgroup will be held at **1 p.m. on Tuesday, September 22, 2009 at the Labor Committee Room.**

The meeting adjourned at approximately 3:00 p.m.

Appendix B: Meeting Agendas and Minutes

Landlord Tenant Working Group

Agenda

September 22, 2009 1:00 pm

Labor Committee Room State Office Building

I. Welcome	1:00pm
II. Approve agenda	1:05
III. Presentation on Court Issues - Judge Robert Murray	1:15
IV. Discussion of Court Issues and Other Issues	1:45
V. Agenda for October 6 Meeting	3:20
VI. Public Comment	3:40
VII. Adjourn	4:00

Appendix B: Meeting Agendas and Minutes

LD 1080 Landlord/Tenant Workgroup Meeting Tuesday, September 22, 2009, 1:00 p.m. Labor Committee Room – Cross Building Minutes

Attendance: Judge Robert Murray, Maine District Court (Bangor/Ellsworth); Frank D'Alessandro, Pine Tree Legal; Jack Comart, Maine Equal Justice Partners; Leo Delicata, Legal Services for the Elderly; Carleton Winslow, Maine Apartment Owners and Managers Assn.; Peter Merrill, MaineHousing; John Tuttle, State Representative; Gary Crowell, Maine Real Estate Managers Assn.; Mark Joyce, Disabilities Rights Center; Sherrin Vail, Maine Apartment Assn.

I. Welcome

The Chair called the meeting to order just after 1:00 pm.

II. Agenda

The agenda was reviewed and approved.

The minutes were approved.

III. Presentation of Court Process

Judge Murray gave a presentation explaining the Forcible Entry and Detainer law and the court process. First, he provided a background on the law. It is designed to provide a quick way to determine who is legally entitled to have possession of the property. It is not designed to settle any other issues. The second part of the presentation was a review of the number of cases by district court. This included a discussion of the resources and priorities set by the Court system. The highest priority cases are those that impact children or families or where there is the danger of an imminent threat of violence. The third part was a description of the actual process in court.

IV. Discussion.

The group asked a number of questions about the court process and discussed the issues. No one disagrees with the priorities set by the Court but the result is that what is designed to be a speedy process can be delayed. Sometimes that results from an inability to get timely notice, sometimes because the court schedule needs to accommodate other priorities, and sometimes because the cases are contested.

Other issues raised included a suggestion for a one page guide to the process for landlords so they do not waste their time or the courts, the need for higher funding for the court system, and the desire to avoid Christmastime evictions. There was also some discussion about legislation in the first session that did not pass.

V. Next Agenda

Rep. Tuttle asked Colleen McCarthy Reid to make a presentation on how Maine laws and process compare to those of other states.

Appendix B: Meeting Agendas and Minutes

Landlord Tenant Working Group

Agenda

October 6, 2009 1:00pm

Labor Committee Room State Office Building

I	Welcome	1:00pm
II	Approve Agenda	1:05
III	Approve Minutes	1:10
IV	Comparison with Other States - Colleen McCarthy Reid	1:20
V	Discussion of Possible Legislation	1:45
VI	Discussion of Next Steps	2:30
VII	Agenda for October 20 th Meeting	3:30
VIII	Public Comment	3:45
IX	Adjourn	4:00

Appendix B: Meeting Agendas and Minutes

LD 1080 Landlord/Tenant Workgroup Meeting Tuesday, October 6, 2009, 1:00 p.m. Labor Committee Room – Cross Building Minutes

Attendance: Frank D'Alessandro, Pine Tree Legal; Robin Merrill, Maine Equal Justice Partners; Carleton Winslow, Maine Apartment Owners and Managers Assn.; Kathy Poulin, MaineHousing; John Tuttle, State Representative; Gary Crowell, Maine Real Estate Managers Assn.; Mark Joyce, Disabilities Rights Center; Sherrin Vail, Maine Apartment Assn.

I. Welcome

The Chair called the meeting to order just after 1:00 pm.

II. Agenda and Minutes

The agenda was reviewed and approved.

The minutes were approved.

III. Comparison with Other States- Colleen McCarthy-Reid

Colleen McCarthy-Reid, Legislative Analyst, Office of Policy and Legal Analysis provided an overview of research conducted on other state's laws related to housing issues. The common theme of the research was the eviction process and regulation. The research pointed out that legislation by state was very state-specific. Massachusetts was only state researched with a statewide housing court. In other states, the focus is in big cities. Resources for courts run the gamut based on size of the state or city of jurisdiction. See attached research matrix.

Colleen also shared information on the Uniform Residential Landlord and Tenant Act adopted by 21 states since 1972. Maine is not one of them. The Act sets forth contractual relationships between tenant and landlord. In states where the Act has been adopted, it forms the basis for state-related statute. Maine law is similar to these standards. Committee members requested copies of the Act. See copy attached.

A request was made for Colleen to provide the committee with copy of related state laws from Florida, New Jersey, and Texas. Copies are attached.

Colleen further noted that revenue to support Maine courts comes from the General Fund and court filing fees. A request was made for Colleen to prepare a filing fee comparison with other states for the committee's review.

IV. Discussion of Possible Legislation

The committee discussed suggestions for possible legislation including abandoned property simplification, foreclosure issues including a proposed change making the bank and landlord jointly responsible for property during proceedings. It was noted that several state statutes currently deal with this issue. Questions regarding municipality involvement in foreclosure and habitability issues were voiced resulting in a request to have Maine Municipal Association speak at next meeting.

Appendix B: Meeting Agendas and Minutes

Mark Joyce distributed and reviewed copies of case law related to reasonable accommodation requests in housing. The committee agreed that there is a need for better education of landlord and tenant regarding reasonable accommodation and landlord/tenant rights and responsibilities in general. Carleton Winslow suggested that the housing related associations in the state would be a good conduit for this training. It was further recommended that HUD's handbook for tenant's rights and responsibility be more widely available and distributed to renters.

V. Discussion of Next Steps

Frank D'Alessandro distributed and reviewed copies of proposed changes in current law, M.R.S.A. Chapter 14, subsections:

- 6030- Unfair rental practices
- 6038- Treatment of security deposit
- 6024- Furnishing utilities to common areas
- 6002- Tenancy at will; buildings on land of another

After a brief discussion, the members agreed to form a subcommittee to review proposed statute changes and bring recommendations on final language back to the workgroup at next meeting. The subcommittee will include Frank D'Alessandro, Carleton Winslow, Sherrin Vail, and Gary Crowell.

VI. Agenda for October 20th Meeting

Following a brief discussion, agenda topics for the next meeting were noted as:

- Colleen McCarthy-Reid to report back on additional state law comparisons
- Maine Municipal Association representative to present on municipalities' involvement in and relevant current law pertaining to foreclosures, liens and habitability issues
- Mediation- How to make it better
- Review revised proposed legislation language

VII. Public Comment

The Chair opened the meeting to public comment. There was none.

VIII. Adjourn

The meeting adjourned at 3:05 p.m.

Appendix B: Meeting Agendas and Minutes

Landlord Tenant Working Group

Agenda

October 20, 2009 1:00 pm

Labor Committee Room State Office Building

I. Welcome	1:00pm
II. Approve Agenda	1:05
III. Approve Minutes	1:10
IV. Additional State Comparisons - Colleen McCarthy Reid	1:20
V. Maine Municipal Association presentation	1:40
VI. Mediation- How to make it better	2:00
VII. Review of proposed changes to M.R.S.A. Chapter 14 language	2:30
VIII. Agenda for November 3 rd Meeting	3:30
IX. Public Comment	3:45
X. Adjourn	4:00

Appendix B: Meeting Agendas and Minutes

LD 1080 Landlord/Tenant Workgroup Meeting Tuesday, October 20, 2009, 1:00 p.m. Labor Committee Room – Cross Building Minutes

Attendance: Judge Murray, Maine District Court, Frank D'Alessandro, Pine Tree Legal; Jack Comart, Maine Equal Justice Partners; Carleton Winslow, Maine Apartment Owners and Managers Assn.; Peter Merrill, MaineHousing; John Tuttle, State Representative; Sue Crawford, Maine Real Estate Managers Assn.; Mark Joyce, Disabilities Rights Center; David Chamberlain, Maine Apartment Assn.

I. Welcome

The Chair called the meeting to order at 1:05 p.m.

II. Agenda and Minutes

The agenda was reviewed, revised to reflect deletion of presentation by Colleen McCarthy-Reid, then approved as revised.

The minutes were approved.

III. Maine Municipal Association- Kate Dufour

Kate Dufour, representative of Maine Municipal Association provided a brief overview of municipalities' involvement with tenant/landlord related issues, specifically focusing on warrants of habitability including a brief and more specific discussion of the new law passed as emergency legislation in the First Session of the 124th Legislature related to municipalities' role in heat related emergencies in rental properties, Public Law, Chapter 135, An Act to Authorize Municipalities to Protect the Habitability of Rental Housing during Heating Fuel Emergencies. Kate also briefly discussed the role of municipality appointed constables in the Writ of Possession process. David Chamberlain suggested that the committee might seek to clarify the statute regarding the constables' role. Frank D'Alessandro noted that State statute currently gives municipalities the authority to appoint constables.

IV. Mediation

The committee briefly revisited the mediation discussion from prior meeting. Jack Comart suggested requesting Diane Kenty – Director, Court Alternative Dispute Resolution Service (CADRES) send recent report on study of mediation court processes to Peter Merrill for distribution to Workgroup members (See attached report). Jack Comart agreed to contact Diane to request the report. Judge Murray suggested possibility of mediation being available prior to court date for eviction proceedings, with sitting judge to approve mediation agreement reached by parties during that early mediation.

A suggestion was made to invite Diane Kenty to next meeting to provide overview of current mediation process and recommend improvements to the process. David Chamberlain and Frank D'Alessandro will draft language regarding the incorporation of mediation agreements into the court ordered judgment of the writ.

Appendix B: Meeting Agendas and Minutes

V. Review of proposed legislative language changes

Frank D'Alessandro distributed and the committee reviewed copies of proposed changes in current law, M.R.S.A. Chapter 14, subsections:

- 6030- Unfair rental practices
- 6038- Treatment of security deposit
- 6024- Furnishing utilities to common areas
- 6002- Tenancy at will; buildings on land of another

After some discussion, the members agreed that the subcommittee that had proposed statute changes continue to work on further revisions and bring recommendations back to the workgroup at next meeting. Frank D'Alessandro will redraft language for workgroup consideration.

Mark Joyce summarized proposed statute changes related to reasonable accommodations.

VI. Agenda for November 2nd Meeting

Following a brief discussion, agenda topics for the next meeting were noted as:

- Overview of current court mediation process by Diane Kenti
- Review of current tenant/landlord laws to assess equal applicability to both lease and tenancy at will- Jack Comart
- Review of redrafted statute language- Frank D'Alessandro
- Review of Uniform Tenant Landlord Act- Next Steps- Rep. Tuttle

VII. Public Comment

The Chair opened the meeting to public comment. There was none.

VIII. Adjourn

The meeting adjourned at 3:55 p.m.

Appendix B: Meeting Agendas and Minutes

Landlord Tenant Working Group

Agenda

November 3, 2009 1:00 pm

Labor Committee Room State Office Building

I. Welcome	1:00p.m.
II. Approve Agenda	1:05
III. Approve Minutes	1:10
IV. Court Alternative Dispute Resolution Service Overview- Diane Kenty	1:15
V. Current Landlord/Tenant Law Assessment re: Equal Lease and Tenancy at Will Applicability- Jack Comart	2:00
VI. Review of Redrafted Statute Language - Frank D'Alessandro	2:30
VII. Review of Statute Changes re: Reasonable Accommodations- Mark Joyce	3:00
VIII. Agenda for November 17 th Meeting	3:30
IX. Public Comment	3:45
X. Adjourn	4:00

Appendix B: Meeting Agendas and Minutes

LD 1080 Landlord/Tenant Workgroup Meeting Tuesday, November 3, 2009, 1:00 p.m. Labor Committee Room – Cross Building

Attendance: Katie McGovern, Pine Tree Legal; Robyn Merrill, Maine Equal Justice Partners; Carleton Winslow, Maine Apartment Owners and Managers Assn.; Peter Merrill, MaineHousing; John Tuttle, State Representative; Gary Crowell, Maine Real Estate Managers Assn.; Sean Ociepka, Disabilities Rights Center; Sherrin Vail, Maine Apartment Assn., Leo Delicata, Legal Services for the Elderly

I. Welcome

The Chair called the meeting to order at approx. 1:00 p.m.

II. Agenda and Minutes

The agenda was reviewed and approved. The minutes were approved.

III. Court Alternative Dispute Resolution Service Overview

Diane Kenty, Director of CADRES, presented an overview of the Service and the report it provided to the 123rd Legislature. The Service provides mediation services for the District and Superior Courts including evictions. There are approximately 150 mediators, of whom 45 are trained to do eviction cases. In the first year 330 eviction cases were handled. About 75% of the cases that are mediated are resolved. The service is funded with a \$10 fee on court filings. If there were more days scheduled to hear eviction cases, the Service could cover that with existing mediators.

IV. Landlord/Tenant Law Assessment re: Equal Lease and Tenancy at Will

The group discussed changes that would clarify the language about which parts apply to tenants at will and to tenants with leases. Additional discussion will follow.

V. Review of Redrafted Statute Language

The group continued its discussions about proposed changes to various sections of the law. Additional discussion will follow.

VI. Review of Statute Changes re: Reasonable Accommodations

The group continued its discussions about adding new language to the Presumption of Retaliation section of the law. Changes were proposed in discussion that will be reviewed at the next meeting.

VII. Uniform Landlord/Tenant Act Review Process- Next Steps

This item was deferred to the next meeting.

VIII. Agenda for November 17th Meeting

Items proposed include reviews of the next set of proposed language changes, a comparison of Maine law with the Uniform Act, a presentation on bed bugs, and a presentation on the concerns about the foreclosure proposals by the Maine Association of Community Banks.

IX. Adjourn

The meeting adjourned at 3:45 p.m.

Appendix B: Meeting Agendas and Minutes

Landlord Tenant Working Group

Agenda

November 17, 2009 1:00 pm

Labor Committee Room State Office Building

I. Welcome	1:00pm
II. Approve Agenda	1:05
III. Approve Minutes	1:10
IV. Side-by-Side Comparison on Uniform LL/Tenant Law and State Law - Peter Merrill	1:15
V. Review Reasonable Accommodation Language Redraft - Mark Joyce	2:00
VI. Follow up on Redrafted Statute Language - Frank D'Alessandro	2:15
VII. Discussion of Potential Legislation	2:30
VIII. Other Business	3:15
IX. Agenda for December 1 st Meeting	3:30
X. Public Comment	3:45
XI. Adjourn	4:00

Appendix B: Meeting Agendas and Minutes

LD 1080 Landlord/Tenant Workgroup Meeting Tuesday, November 17, 2009, 1:00 p.m. Labor Committee Room – Cross Building Minutes

Attendance: Frank D'Alessandro, Pine Tree Legal; Jack Comart, Maine Equal Justice Partners; Carleton Winslow, Maine Apartment Owners and Managers Assn.; Peter Merrill, MaineHousing; John Tuttle, State Representative; Rosemary Moeykens, Maine Real Estate Managers Assn.; Mark Joyce, Disabilities Rights Center; Sherrin Vail, Maine Apartment Assn., Leo Delicata, Legal Services for the Elderly, Judge Robert Murray

I. Welcome

The Chair called the meeting to order at approx. 1:00 p.m.

II. Agenda and Minutes

The agenda was reviewed and approved with addition of a Review of redraft of legislative language by Jack Comart. The minutes were approved with revision to include Leo Delicata as attending the 11/03/09 meeting.

III. Side by side Comparison of Uniform Tenant/Landlord Act v. ME Law

Peter Merrill distributed and led a review of a side by side comparison of the Uniform Tenant/Landlord Act and ME tenant landlord law prepared by Colleen McCarthy-Reid, Legislative Legal Analyst. Rep. Tuttle suggested further review, specifically related to the grey areas in Maine law that might benefit from revision and more uniformity with the Uniform Tenant/Landlord Act.

IV. Review Statute Changes re: Reasonable Accommodation

Mark Joyce reviewed changes to the reasonable accommodation language adding “in good faith” in the recommended changes. Others suggest language be incorporated that encourages tenants to seek reasonable accommodations related to disability sooner than later to avoid reasonable accommodation request being brought at day of the hearing. Also it was suggested that the word “rebuttable” be added in section 3 of the law. All agreed that language changes would help both tenants and landlords better understand their rights under the law and that the language proposed would not constitute substantive changes to the law.

V. Landlord/Tenant Law re: Equal Lease and Tenancy at Will

The group further discussed changes that would clarify the language related to which parts apply to tenants at will and to tenants with leases. All agreed to changes to the applicable statute language throughout to reflect “lease or tenancy at will.” These suggested changes will be reviewed at next meeting.

VI. Agenda for November 17th Meeting

Items proposed include reviews of the next set of proposed language changes, a representative from Maine Association of Community Banks to discuss the foreclosure proposals, a presentation on bed bugs, a review of the workgroup charge and plan for report submission, and a proposed simplification of the abandoned property language.

Appendix B: Meeting Agendas and Minutes

VII. Other

Due to upcoming holidays, the committee agreed to change the previously scheduled meeting date of December 29th to January 5th.

VIII. Adjourn

The meeting adjourned at 3:45 p.m.

Appendix B: Meeting Agendas and Minutes

**LD 1080 Landlord/Tenant Working Group
December 1, 2009
1:00 pm
Labor Committee Room
Cross Office Building
Agenda**

I. Welcome	1:00pm
II. Approve Agenda	1:05
III. Approve Minutes	1:05
IV. Foreclosures- Kathy Keneborus, Maine Association of Community Banks	1:10
V. Bed Bugs in Housing- Sherrin Vail, Maine Apartment Owners Assn. & Jeff Haines, Atlantic Pest Control	1:30
VI. Final review of statute language revisions- Jack Comart, MEJP, Frank D'Alessandro, Pine Tree Legal, & Mark Joyce, ME Disability Rights Ctr.	2:30
VII. Abandoned Property - Gary Crowell	3:00
VIII. Review 1080 Workgroup's charge	3:20
IX. Agenda for January 5 th Meeting	3:30
X. Public Comment	3:45
XI. Adjourn	4:00

Appendix B: Meeting Agendas and Minutes

LD 1080 Landlord/Tenant Workgroup Meeting Tuesday, December 1, 2009, 1:00 p.m. Labor Committee Room – Cross Building Minutes

Attending: Frank D'Alessandro, Pine Tree Legal; Jack Comart, Maine Equal Justice Partners; Carleton Winslow, Maine Apartment Owners and Managers Assn.; Peter Merrill, MaineHousing; John Tuttle, State Representative; Gary Crowell, Maine Real Estate Managers Assn.; Sherrin Vail, Maine Apartment Assn.; and Leo Delicata, Legal Services for the Elderly.

Absent: Judge Robert Murray, Maine District Court and Mark Joyce, Disabilities Rights Center.

I. Welcome

The Chair called the meeting to order at 1:00 p.m.

II. Agenda

The agenda was approved.

III. Minutes

The minutes from the previous meeting were approved.

IV. Foreclosures – Kathy Keneborus, Maine Association of Community Banks

Kathy Keneborus informed the group that 94% of the bad mortgages made were done by non-FDIC lenders. The MACB has advocated for stronger regulation of these non-bank lenders. The group worked with the Insurance and Financial Services Committee to implement the Connecticut mediation approach in Maine. They are opposed to the proposals being discussed by the group. There are already many guidelines to follow that are set by the national secondary market and by the existing regulators. The banks feel that the market is righting itself and support national legislation to regulate it.

Maine has been aggressive in dealing with the foreclosure crisis. Maine has passed tough anti-predatory lending laws and consumer protections. Furthermore, members of the Maine Association of Community Banks are not at fault, and are not included in that 94%. Landlords have the responsibility over a property before a foreclosure, and the lender has responsibility after the foreclosure.

Frank D'Alessandro, Carleton Winslow and Representative Tuttle emphasized the need for a remedy for the tenant if both owner and lender refuse to maintain the property throughout the foreclosure. They stated various instances when foreclosure properties that were not cared for.

Kathy Keneborus responded that it's in the lenders' best interest to maintain the property, because it's the lenders' asset. Also, her members have reservations on the proposed legislation, because giving tenants the right to bring a private cause of action against a lender is a 'red flag' in the financial world, which translates to higher costs when the lender sells loans to the secondary market, and ultimately, higher costs passed on to the consumer.

Appendix B: Meeting Agendas and Minutes

Peter Merrill asked how they would feel about an exemption. Kathy Keneborus said she'd have to see the proposal in writing and run it by her lawyers and members. Frank D'Alessandro and Carleton Winslow stated they would draft the language.

Regarding the proposed state law to explain and define clearly the federal tenant's rights law: Kathy Keneborus asked why the need for a state law. Frank D'Alessandro explained that it's hard for tenants to find and understand the federal law, and some definitions don't apply or make sense. Also, he is not sure the Attorney General has the resources to handle tenant evictions.

Representative Tuttle asked if a representative from the Attorney General's office could attend the next meeting to discuss enforcement of the federal law and if a state law would help.

V. Bed Bugs in Housing – Sherrin Vail, Maine Apartment Owners Assn. and Jeff Haines, Atlantic Pest Control

Mr. Haines testified that Portland is one of the top five most infected cities in the US with bed bugs. Bed bugs cause secondary infections, trigger asthmatic reactions in the young and old, and cause emotional distress. They are very hard to eradicate and costly to remove. There are no completely effective prevention methods at this point.

There's no way to determine who is at fault when it comes to bedbugs. Tenants can prolong or exacerbate the problem by not reporting the bugs or by cluttering their apartments or not doing their laundry during abatement (allowing the bugs to survive and return). Many landlords choose not to address the issue due to the enormous cost of abatement, or are not willing to treat the surrounding units thus spreading the bugs to other units during the abatement of the problem unit.

Bed bugs are becoming an epidemic in Maine, and within the next few years every landlord is going to have to deal with this issue. Lack of education about the issue is a huge problem. Almost no tenants or landlords know proper facts about bed bugs, including the fact that there is no way to determine who is at fault. Education should be a priority.

New Jersey has passed legislation specifying what steps are required from landlords and tenants during an infestation. Sherrin Vail will get a copy of New Jersey's law for the committee's review.

VI. Final review of statute language revisions – Jack Comart, M.E.J.P., and Frank D'Alessandro, P.T.L.

The committee discussed statute language revisions. Further changes still need to be made. Additional review will take place at the next meeting.

VII. Abandoned Property – Gary Crowell, Maine Real Estate Managers Assn.

The committee discussed changes that would clarify language in this law. There was some discussion as to which party should be responsible for notifying the other when it comes to property left behind by a vacated tenant. The committee decided to leave the onus on the landlord.

The committee also discussed the issue of sales of abandoned property. The committee would like to use language that states sales of abandoned property should go toward paying back rent, damages, or others costs incurred by the landlord first; then attempt to send any remaining funds to the tenant, and then send any remaining funds to the State Treasurer.

Frank D'Alessandro and Gary Crowell will draft the language. Peter Merrill will pass the idea by the Treasury office.

Appendix B: Meeting Agendas and Minutes

VIII. Review 1080 Workgroup's charge

Peter Merrill read the six areas the committee is charged with addressing. The committee agreed they had made progress in each area except the first one: "Study the feasibility of providing heating fuel assistance and weatherization assistance for landlords who serve low-income tenants in certain economically distressed areas." The committee briefly discussed what could be done to address the area, including what other states have done. Peter Merrill will ask a MaineHousing employee to attend the next meeting to explain what programs are available through the state's housing authority.

IX. Agenda for December 15th Meeting

Review of proposed statute revisions, further discussion on the abandoned property proposal, review of New Jersey's bed bug law, a presentation from MaineHousing on energy programs available, and a possible visit with someone from the Attorney General's office.

X. Public Comment

The Chair opened the meeting to public comment. There was none.

XI. Adjourn

The meeting adjourned at 4:00 p.m.

Appendix B: Meeting Agendas and Minutes

**LD 1080 Landlord/Tenant Working Group
December 15, 2009
1:00 pm
Labor Committee Room
Cross Office Building
Agenda**

I. Welcome	1:00pm
II. Approve Agenda	1:00
III. Approve Minutes	1:00
IV. Request to Attorney General - Peter Merrill	1:05
V. Presentation on Energy Programs for Landlords - Jo-Ann Choate, MaineHousing	1:10
VI. Discussion of Foreclosures Proposals - Frank D'Alessandro, Carleton Winslow and Peter Merrill	1:40
VII. Discussion of Abandoned Property Proposals - Frank D'Alessandro, Gary Crowell and Peter Merrill	2:00
VIII. Review of New Jersey Bed Bug Legislation - Sherrin Vail	2:20
IX. Review of statute language revisions- Jack Comart, Frank D'Alessandro and Mark Joyce	2:40
X. Agenda for January 5 th Meeting	3:30
XI. Public Comment	3:45
XII. Adjourn	4:00

Appendix B: Meeting Agendas and Minutes

LD 1080 Landlord/Tenant Workgroup Meeting Tuesday, December 15, 2009, 1:00 p.m. Labor Committee Room – Cross Building Minutes

Attending: Frank D'Alessandro, Pine Tree Legal; Jack Comart, Maine Equal Justice Partners; Carleton Winslow, Maine Apartment Owners and Managers Assn.; Peter Merrill, MaineHousing; John Tuttle, State Representative; Gary Crowell, Maine Real Estate Managers Assn.; Sherrin Vail, Maine Apartment Assn.; Leo Delicata, Legal Services for the Elderly; Judge Robert Murray, Maine District Court and Mark Joyce, Disabilities Rights Center.

I. Welcome

The Chair called the meeting to order at 1:00 p.m.

II. Agenda

The agenda was approved.

III. Minutes

The minutes from the previous meeting were approved.

IV. Request to Attorney General

Peter Merrill will contact the Attorney General's Office and ask them to review the proposed changes to 6001: Effect of foreclosure on preexisting tenancy.

V. Presentation on Energy Programs

Jo-Ann Choate, MaineHousing National Policy Advisor, testified about MaineHousing's energy programs and answered the committee's questions about these programs. Programs included heating fuel assistance, appliance replacement, furnace repair and weatherization.

Representative Tuttle requested that Ms. Choate provide a breakdown of MaineHousing's weatherization activities showing the number of multi-family and single-family properties that were weatherized by county.

VI. Discussion of Foreclosures Proposals

Peter Merrill will arrange a meeting of all interested parties to discuss this issue and report back to the committee at the next meeting.

VII. Discussion of Abandoned Property Proposals

Kristi Carlow spoke on behalf of the State Treasurer about the committee's proposed changes to abandoned property law. The Treasurer agreed to all the changes except discontinuing the reporting requirement to the Treasury.

The committee discussed how many days a landlord should be required to hold a tenant's property from the time of notice, but did not agree on the language in the proposal. Representative Tuttle requested that Frank D'Alessandro draft new language to seek common ground for the next meeting.

Appendix B: Meeting Agendas and Minutes

VIII. Review of New Jersey Bed Bug Legislation

Exterminating bed bugs requires tenant cooperation and preparation, not just access to the property. Under the current law, landlords can only get access. Adopting language similar to the New Jersey law would make both tenants and landlords responsible for dealing with an infestation and make the responsibilities for both parties clear.

Tenant advocates on the committee expressed concerns about costs and willingness of tenants to report infestations if they are liable to pay for failure to act. Landlord advocates on the committee stressed not being able to resolve the issue under current law. Representative Tuttle asked Jack Comart and Sherrin Vail to reach a compromise on the issue and draft language for the committee to act on.

IX. Review of statute language revisions

6002 Tenancy at will; buildings on land of another:	Committee agreement.
6024 Utilities in common areas:	Committee agreement.
6024-A Landlord failure to pay for utility service:	Committee agreement.
6038 Treatment of security deposit:	Committee agreement.
6013 Property unclaimed by tenant:	Needs further review.
6030 Unfair rental contracts and practices:	Needs further review.
6001 Effect of foreclosure on preexisting tenancy:	Want Attorney General to review.
6021 Responsibility of mortgagee to maintain premises in the event of an action for foreclosure:	Want Maine Association of Community Banks to review.

X. Agenda for January 5th Meeting

Review of statute language revisions, including: property unclaimed by tenant, unfair rental contracts and practices, effect of foreclosure on preexisting tenancy, and responsibility of mortgagee to maintain premises in the event of an action for foreclosure. Review proposed bed bug legislation.

XI. Public Comment

Linda Gifford of the Maine Association of Realtors presented her association's concerns with the proposed foreclosure language.

XII. Adjourn

The meeting adjourned at 4:05 p.m.

Appendix B: Meeting Agendas and Minutes

LD 1080 Landlord/Tenant Working Group
January 5, 2010
1:00 pm
Labor Committee Room
Cross Office Building
Agenda

I. Welcome	1:00p.m.
II. Approve Agenda	1:00
III. Approve Minutes	1:00
IV. Discussion of Abandoned Property Proposals	1:05
V. Discussion of Bed Bug Proposals	1:40
VI. Discussion of Foreclosure Proposals	2:20
VII. Discussion of Tenant at Will Proposals	3:00
VIII. Other Discussion	3:15
IX. Next Steps	3:30
X. Public Comment	3:40
XI. Committee Closing	3:50
XII. Adjourn	4:00

Appendix B: Meeting Agendas and Minutes

LD 1080 Landlord/Tenant Workgroup Meeting Tuesday, January 5, 2010, 1:00 p.m. Labor Committee Room – Cross Building Minutes

Attending: Frank D'Alessandro, Pine Tree Legal; Jack Comart, Maine Equal Justice Partners; Carleton Winslow, Maine Apartment Owners and Managers Assn.; Peter Merrill, MaineHousing; John Tuttle, State Representative; Gary Crowell, Maine Real Estate Managers Assn.; Sherrin Vail, Maine Apartment Assn.; Leo Delicata, Legal Services for the Elderly and Mark Joyce, Disabilities Rights Center.

Absent: Judge Robert Murray, Maine District Court.

I. Welcome

The Chair called the meeting to order at 1:15 p.m.

II. Agenda

The agenda was approved.

III. Minutes

The minutes from the previous meeting were approved.

IV. Discussion of Abandoned Property Proposals

Tenant has 14 days to notify landlord he/she is picking up their property, and then has 10 days to pick it up for a total of 24 days, changed from 30 days.

V. Discussion of Bed Bug Proposals

The final report will include points where the committee was in agreement and points that the committee was in disagreement on this issue. The committee will have a continuing dialogue and try to reach a proposal with unanimous agreement for this legislative session.

VI. Discussion of Foreclosure Proposals

The committee agreed to cite the federal law regarding tenant evictions, rather than restating the federal law. Frank D'Alessandro will make the changes.

The committee did not have a chance to meet with the Maine Association of Community Banks to discuss the warrant of habitability issue.

It was agreed to give municipalities the authority, but not the obligation, to intervene on behalf of a tenant's welfare during an emergency situation.

Removed the cap on what a tenant could spend to address an emergency if the building is in foreclosure and allow the money spent in this way to constitute an emergency when applying for General Assistance. Jack Comart will write this language.

VII. Discussion of Tenant at Will Proposals

There was unanimous committee agreement on these proposals.

VIII. Other Discussion

Various grammatical and technical changes were proposed and accepted by the committee on previously agreed upon proposals.

Appendix B: Meeting Agendas and Minutes

IX. Next Steps

The committee will most likely not need to meet again, but agreed to continue to work on the bed bugs issue and try and reach a proposal with unanimous consent.

Peter Merrill will draft the report and committee members will provide their final proposals. The report will include areas where the committee was in agreement and disagreement on specific issues, and include proposals from both the tenant advocates and the property managers.

X. Public Comment

The Chair opened the meeting to public comment. There was none.

XI. Committee Closing

Representative Tuttle thanked the committee members for their hard work and asked that they be willing to attend the public hearing.

XII. Adjourn

The meeting adjourned at 3:15 p.m.

Appendix C:
Presentation Materials

Appendix C: Presentation Materials

Forcible Entry and Detainer Caseload

STATE OF MAINE SPECIAL ACTIONS CASELOAD FED: #Filed, #Disposed, #Pending For Period 07/01/2008 - 06/30/2009																
Court	Begin Pending 07/01/2007	Begin Pending 07/01/2008	Total		Total		Total		Clearance		Clearance		*End Pending 06/30/2008	*End Pending 06/30/2009	%	%
			Filings 07/01/2007	Filings 06/30/2008	Filings 07/01/2008	Filings 06/30/2009	Disposed 07/01/2007	Disposed 06/30/2008	Disposed 07/01/2008	Disposed 06/30/2009	Rate 07/01/2007	Rate 06/30/2008				
Statewide	372	539	4,947	4,786	4,784	4,651	96.7%	97.2%	539	666	44.9%	23.6%				
Region # 1	58	111	715	671	662	644	92.6%	96.0%	111	137	91.4%	23.4%				
Total	58	111	715	671	662	644	92.6%	96.0%	111	137	91.4%	23.4%				
BIDDC	31	76	420	378	375	366	89.3%	96.8%	76	87	145.2%	14.5%				
SPRDC	16	23	227	215	220	208	96.9%	96.7%	23	30	43.8%	30.4%				
YORDC	11	12	68	78	67	70	98.5%	89.7%	12	20	9.1%	66.7%				
Region # 2	89	133	1,049	1,004	1,006	965	95.9%	96.1%	133	168	49.4%	26.3%				
Total	89	133	1,049	1,004	1,006	965	95.9%	96.1%	133	168	49.4%	26.3%				
BRIDC	1	5	81	77	77	75	95.1%	97.4%	5	7	400.0%	40.0%				
PORDC	88	128	968	927	929	890	96.0%	96.0%	128	161	45.5%	25.8%				
Region # 3	36	71	840	814	806	806	96.0%	99.0%	71	79	97.2%	11.3%				
Total	36	71	840	814	806	806	96.0%	99.0%	71	79	97.2%	11.3%				
FARDC	3	5	51	65	49	63	96.1%	96.9%	5	7	66.7%	40.0%				
LEWDC	27	51	684	662	661	650	96.6%	98.2%	51	63	88.9%	23.5%				
RUMDC	1	2	46	42	45	41	97.8%	97.6%	2	3	100.0%	50.0%				
SOPDC	5	13	59	45	51	52	86.4%	115.6%	13	6	160.0%	-53.8%				
LIVDC	0	0	0	0	0	0	#DIV/0!	#DIV/0!	0	0	0.0%	0.0%				
Region # 4	54	58	810	720	807	691	99.6%	96.0%	58	86	7.4%	48.3%				
Total	54	58	810	720	807	691	99.6%	96.0%	58	86	7.4%	48.3%				
AUGDC	31	37	363	337	357	326	98.3%	96.7%	37	48	19.4%	29.7%				
SKODC	14	8	197	157	203	149	103.0%	94.9%	8	16	-42.9%	100.0%				
WATDC	9	13	250	226	247	216	98.8%	95.6%	13	22	44.4%	69.2%				
Region # 5	57	77	798	824	778	809	97.5%	98.2%	77	91	35.1%	18.2%				
Total	57	77	798	824	778	809	97.5%	98.2%	77	91	35.1%	18.2%				
BANDC	48	65	650	676	633	659	97.4%	97.5%	65	81	35.4%	24.6%				
LINDC	4	2	31	24	33	24	106.5%	100.0%	2	2	-50.0%	0.0%				
DOVDC	1	2	22	22	21	24	95.5%	109.1%	2	0	100.0%	-100.0%				
NEWDC	3	3	73	84	73	82	100.0%	97.6%	3	5	0.0%	66.7%				
MILDC	1	5	22	18	18	20	81.8%	111.1%	5	3	400.0%	-40.0%				

Refresh Date: 07/18/2009

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Run Date: 07/22/2009

Appendix C: Presentation Materials

**STATE OF MAINE
SPECIAL ACTIONS CASELOAD
FED: #Filed, #Disposed, #Pending
For Period 07/01/2008 - 06/30/2009**

Court	Begin		Total		Total		Total		Clearance		Clearance		*End		*End		%		%			
	Pending	07/01/2007	Pending	07/01/2008	Filings	07/01/2007	Filings	07/01/2008	Disposed	07/01/2007	Disposed	07/01/2008	Rate	07/01/2007	Pending	06/30/2008	Pending	07/01/2007	Chng Pend	07/01/2008	Chng Pend	06/30/2009
Region # 6																						
Total	47	41	432	447	439	427	101.6%	95.5%	41	60	-12.8%	46.3%										
BELDC	9	4	86	83	91	79	105.8%	95.2%	4	8	-55.6%	100.0%										
WISDC	6	10	53	85	50	81	94.3%	95.3%	10	13	66.7%	30.0%										
WESDC	21	19	175	171	177	165	101.1%	96.5%	19	25	-9.5%	31.6%										
RODC	11	8	118	108	121	102	102.5%	94.4%	8	14	-27.3%	75.0%										
Region # 7																						
Total	20	33	134	143	121	138	90.3%	96.5%	33	38	65.0%	15.2%										
BARDC	0	0	0	0	0	0	0.0%	0.0%	0	0	0.0%	0.0%										
CALDC	5	5	19	20	19	21	100.0%	105.0%	5	4	0.0%	-20.0%										
ELLDC	13	25	86	88	74	90	86.0%	102.3%	25	23	92.3%	-8.0%										
MACDC	2	3	29	35	28	27	96.6%	77.1%	3	11	50.0%	266.7%										
Region # 8																						
Total	11	15	169	163	165	171	97.6%	104.9%	15	7	36.4%	-53.3%										
CARDC	5	3	42	49	44	50	104.8%	102.0%	3	2	-40.0%	-33.3%										
FORDC	0	0	15	14	15	13	100.0%	92.9%	0	1	0.0%	0.0%										
PREDC	2	4	64	71	62	71	96.9%	100.0%	4	4	100.0%	0.0%										
MADDC	0	0	0	0	0	0	0.0%	0.0%	0	0	0.0%	0.0%										
HOUDC	4	8	48	29	44	37	91.7%	127.6%	8	0	100.0%	-100.0%										

All permanent transfers are reported twice -- in the sending court and in the receiving court.
Dockets appearing on the SA-1X Exception Report are not counted in any column(s) of this version of the SA-1M.

*End Pending is calculated from the data in MEJIS and is not calculated from the results of other columns.

**Bar Harbor District Court was closed as of 07/01/2005; caseload was transferred to Ellsworth District Court.

Appendix C: Presentation Materials

FEDs – Usual Number of Sessions per Month

Region I

Biddeford	2
Springvale	1
York	1

Region II

Portland	2
Bridgton	2

Region III

Lewiston	2
Farmington	1
South Paris	2
Rumford	2

Region IV

Augusta	3
Waterville	3
Skowhegan	2

Region V

Bangor	2
Lincoln	1
Other courts in region	– can't tell from schedule

Region VI

Rockland	1
Wiscasset	1
West Bath	2
Belfast	Can't tell from schedule

Region VII

Ellsworth	2
Machias	2
Calais	2

Region VIII

Caribou	1
Fort Kent	1?
Madawaska	1?
Houlton	2
Presque Isle	2

Appendix C: Presentation Materials

For Landlord Tenant Working Group Review
Landlord Tenant Laws-Laws Regulating Eviction Process
Comparison of Maine law with selected other states

Issue	Maine	Massachusetts	Minnesota	New York
Housing Court	No	Yes-statewide in 5 districts	Yes; focused on Hennepin County (Minneapolis-St. Paul) Cases heard by referees (also for Small Claims cases); decisions reviewed by judges	Yes; focused on New York City
Mediation Services	Available	Available; Housing Specialists are Court employees	Available	Available
Termination of Tenancy at will	30 days by either party 7 days for cause, including nonpayment of rent	3 months or if rent is paid at shorter intervals, 30 days by either party 14 days for nonpayment of rent	3 months or interval between when rent is due (whichever is less) by either party 14 days for nonpayment of rent	30 days
Eviction Action	Applies to all tenancies	Applies to all tenancies	Applies to all tenancies	Applies to all tenancies
Eviction Action-Timing	Action may be brought at least 7 days after expiration of term under lease Action against tenant at will must be after 30-day or 7-day termination	Action may be brought at least 30 days after notice of termination	Action may be brought upon expiration of term under lease Action against tenant at will must be after expiration of notice of termination	Action may be brought upon expiration of term under lease, except that if action for nonpayment of rent tenant must have at least 3 days' notice to satisfy Action against tenant at will must be after expiration of 30-day termination of tenancy

For Landlord Tenant Working Group Review
Landlord Tenant Laws-Laws Regulating Eviction Process
Comparison of Maine law with selected other states

Issue	Maine	Massachusetts	Minnesota	New York
Tenants' Notice of Eviction Hearing /Scheduling of Eviction Hearing	As soon as practicable, but not later than 10 days after return day Court may continue hearing for good cause	Not specified in statute; governed by court rules At least 7 days but not more than 30 days before entry of summary process action; hearing scheduled for 2 nd Thursday following entry	Hearing between 7 and 14 days after issuance of summons/complaint; For expedited actions, between 5 and 7 days	Notice at least 5 and not more than 12 days before hearing 2 hours before hearing if court grants cause upon expiration of lease
Issuance of Writ of Possession	At least 7 days after judgment	At least 10 days after judgment	Immediately upon judgment	Immediately upon judgment
Time to Vacate	Within 48 hours of writ of possession	Within 48 hours of writ of possession	Within 24 hours of writ of possession	Within 72 hours of issuance of final judgment
Appeal	Upon expiration of writ of possession or 30 days from time of judgment whichever occurs first Court may stay writ of possession	10 days Court may stay writ of possession	10 days Writ of possession stayed upon notice of intent to appeal at time of judgment	30 days Execution of judgment may be stayed if tenant provides undertaking as determined by court (amount of judgment or payment for use of property pending appeal)

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
<p>§ 1.101. [Short Title]</p> <p>This Act shall be known and may be cited as the "Uniform Residential Landlord and Tenant Act."</p>		<ul style="list-style-type: none"> Uniform Act intended to apply to landlord-tenant relationships for residential purposes; not intended to apply commercial relationships
<p>§ 1.102. [Purposes; Rules of Construction]</p> <p>(a) This Act shall be liberally construed and applied to promote its underlying purposes and policies.</p> <p>(b) Underlying purposes and policies of this Act are</p> <p>(1) to simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants;</p> <p>(2) to encourage landlords and tenants to maintain and improve the quality of housing; and</p> <p>(3) to make uniform the law with respect to the subject of this Act among those states which enact it.</p>		
<p>§ 1.103. [Supplementary Principles of Law Applicable]</p> <p>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 cause supplement its provisions.</p>		<ul style="list-style-type: none"> Other principles of law and equity continue to apply to landlord-tenant relations unless specifically prohibited
<p>§ 1.104. [Construction Against Implicit Repeal]</p> <p>This Act being a general act intended as a unified coverage</p>		

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
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.		
<p>§ 1.105. [Administration of Remedies; Enforcement]</p> <p>(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.</p> <p>(b) Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.</p>		<ul style="list-style-type: none"> • Extends right to enforce Act by court action • Specifies duty to mitigate damages
<p>§ 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.</p>	<p>§6004-A. Mediation</p> <p>The court may, in any residential tenancy under this subchapter, at any time refer the parties to mediation on any issue.</p> <p>1. Mediated agreement. An agreement reached by the parties through mediation must be reduced to writing, signed by the parties and presented to the court for approval as a court order.</p> <p>2. No agreement; good faith effort required. When agreement through mediation is not reached on an issue, the court shall determine that the parties made a good faith effort to mediate the issue before proceeding with a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, may dismiss the action or a part of the action, may render a decision or judgment by default, may assess attorney's fees and costs or may impose any other sanction that is appropriate in the circumstances.</p>	<ul style="list-style-type: none"> • Allows claims asserted by either landlord or tenant to be settled by agreement • Maine law recognizes mediation for forcible entry and detainer actions

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
	<p>3. Mediation not ordered; consent. The court may not order mediation in cases in which no mediator is available or mediation would delay any hearing in the matter, unless the parties consent to a delay in the proceedings to allow mediation to take place.</p> <p>4. Mediators provided. The Court Alternative Dispute Resolution Service, established in Title 4, section 18-B, shall provide mediators for mediations under this section.</p> <p>5. Rules; fees. The Supreme Judicial Court may adopt rules of procedure for actions under this chapter.</p>	
<p>§ 1.201. [Territorial Application]</p> <p>This Act applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.</p>		
<p>§ 1.202. [Exclusions from Application of Act]</p> <p>Unless created to avoid the application of this Act, the following arrangements are not governed by this Act:</p> <p>(1) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;</p> <p>(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;</p> <p>(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;</p> <p>(4) transient occupancy in a hotel, or motel [or lodgings]</p>		<ul style="list-style-type: none"> Uniform Act not intended to apply when residence is incidental to another primary purpose as outlined

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
<p>[subject to cite state transient lodgings or room occupancy excise tax act]];</p> <p>(5) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;</p> <p>(6) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;</p> <p>(7) occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.</p>		
<p>[§ 1.203. Jurisdiction and Service of Process]</p> <p>(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.</p> <p>(b) If a landlord is not a resident of this state or is a corporation not authorized to do business in this state and engages 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. The designation shall be in writing and filed with the [Secretary of State]. 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 [Secretary of State], but service upon him is not effective unless the plaintiff or</p>		<ul style="list-style-type: none"> • Provides for jurisdiction and method for service of process • General rules for civil proceedings would govern landlord-tenant actions in Maine

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
<p>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 the court allows.]</p>		
<p>§ 1.301. [General Definitions]</p> <p>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</p> <p>(1) "action" includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined, including an action for possession;</p> <p>(2) "building and housing codes" include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling unit;</p> <p>(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;</p> <p>(4) "good faith" means honesty in fact in the conduct of the transaction concerned;</p> <p>(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;</p> <p>(6) "organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or</p>		<ul style="list-style-type: none"> • Are similar definitions needed under Maine law? Or are terms generally understood and interpreted consistently?

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
<p>association, 2 or more persons having a joint or common interest, and any other legal or commercial entity;</p> <p>(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 includes a mortgagee in possession;</p> <p>(8) "person" includes an individual or organization;</p> <p>(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 tenants generally or whose use is promised to the tenant;</p> <p>(10) "rent" means all payments to be made to or for the benefit of the landlord under the rental agreement;</p> <p>(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;</p> <p>(12) "roomer" means a person occupying a dwelling unit that does not include a toilet and either a bath tub or a 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;</p> <p>(13) "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 any other dwelling unit;</p>		

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
(14) "tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.		
<p>§ 1.302. [Obligation of Good Faith]</p> <p>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.</p>		<ul style="list-style-type: none"> • Similar provision for duty of good faith in Uniform Commercial Code for commercial transactions
<p>§ 1.303. [Unconscionability]</p> <p>(a) If the court, as a matter of law, finds</p> <p>(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</p> <p>(2) a settlement in which a party 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.</p> <p>(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.</p>		<ul style="list-style-type: none"> • Authorizes court to find provisions in rental agreements or settlements unenforceable

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
<p>§ 1.304. [Notice]</p> <p>(a) A person has notice of a fact if</p> <p>(1) he has actual knowledge of it,</p> <p>(2) he has received a notice or notification of it, or</p> <p>(3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.</p> <p>A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.</p> <p>(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 of it. A person "receives" a notice or notification when</p> <p>(1) it comes to his attention; or</p> <p>(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 the communication; or</p> <p>(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.</p> <p>(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.</p>		<ul style="list-style-type: none"> Similar to notice provisions in Uniform Commercial Code

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
<p>§ 1.401. [Terms and Conditions of Rental Agreement]</p> <p>(a) A landlord and a 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.</p> <p>(b) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.</p> <p>(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 monthly installments at the beginning of each month. Unless otherwise agreed, rent is uniformly apportionable from day-to-day.</p> <p>(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.</p>		<ul style="list-style-type: none"> In absence of an agreement for a definite term of lease, the tenant has a term of month-to-month
<p>§ 1.402. [Effect of Unsigned or Undelivered Rental Agreement]</p> <p>(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.</p> <p>(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.</p>		<ul style="list-style-type: none"> Gives effect to transactions in which a written rental agreement has been signed and delivered by either landlord or tenant, the parties have agreed on terms, and the defect is solely the absence of a signature

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
(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.		
<p>§ 1.403. [Prohibited Provisions in Rental Agreements]</p> <p>(a) A rental agreement may not provide that the tenant:</p> <p>(1) agrees to waive or forego rights or remedies under this Act;</p> <p>(2) authorizes any person to confess judgment on a claim arising out of the rental agreement;</p> <p>(3) agrees to pay the landlord's attorney's fees; or</p> <p>(4) agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith.</p> <p>(b) A provision prohibited by subsection (a) included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him to be prohibited, the tenant may recover in addition to his actual damages an amount up to [3] months' periodic rent and reasonable attorney's fees.</p>	<p>§6030. Unfair rental contracts</p> <p>1. Illegal waiver of rights. It is an unfair and deceptive trade practice in violation of Title 5, section 207 for a landlord to require a tenant to enter into a rental agreement for a dwelling unit, as defined in section 6021, in which the tenant agrees to a lease or rule provision that has the effect of waiving a tenant right established in chapter 709, this chapter and chapter 710-A. This subsection does not apply when the law specifically allows the tenant to waive a statutory right during negotiations with the landlord.</p> <p>2. Unenforceable provisions. The following rental agreement or rule provisions for a dwelling unit, as defined in section 6021, are specifically declared to be unenforceable and in violation of Title 5, section 207:</p> <p>A. Any provision that absolves the landlord from liability for the negligence of the landlord or the landlord's agent;</p> <p>B. Any provision that requires the tenant to pay the landlord's legal fees in enforcing the rental agreement;</p> <p>C. Any provision that requires the tenant to give a lien upon the tenant's property for the amount of any rent or other sums due the landlord; and</p> <p>D. Any provision that requires the tenant to acknowledge that the provisions of the rental agreement, including tenant rules, are fair and reasonable.</p> <p>3. Exception. Notwithstanding subsection 2, paragraph</p>	<ul style="list-style-type: none"> • Maine law includes prohibition on provision requiring tenant to give landlord a lien and on provision acknowledging that tenant rules are fair and reasonable • Uniform law allows tenant to recover actual damages (up to 3 months rent) and attorneys' fees if landlord deliberately uses agreement with unenforceable provisions

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
	<p>B, a rental agreement or rule provision that provides for the award of attorney's fees to the prevailing party after a contested hearing to enforce the rental agreement in cases of wanton disregard of the terms of the rental agreement is not in violation of Title 5, section 207 and is enforceable.</p>	
<p>§ 1.404. [Separation of Rents and Obligations to Maintain Property Forbidden]</p> <p>A rental agreement, assignment, conveyance, trust deed, or security instrument may not permit the receipt of rent free of the obligation to comply with Section 2.104(a).</p>	<p>§ 6021, subsection 5:</p> <p>5. Waiver. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord.</p> <p>Any agreement, other than as provided in this subsection, by a tenant to waive any of the rights or benefits provided by this section shall be void.</p>	<ul style="list-style-type: none"> Maine law would allow tenant to agree to accept conditions which may violate warranty of habitability in exchange for reduction in rent by written agreement
<p>§ 2.101. [Security Deposits; Prepaid Rent]</p> <p>(a) A landlord may not demand or receive security, however denominated, in an amount or value in excess of [1] month[s] periodic rent.</p> <p>(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.</p> <p>(c) If the landlord fails to comply with subsection (b) or if he</p>	<p>§6032. Maximum security deposit</p> <p>No lessor of a dwelling intended for human habitation shall require a security deposit equivalent to more than the rent for 2 months.</p> <p>§6033. Return of the security deposit</p> <p>1. Normal wear and tear. A security deposit or any portion of a security deposit shall not be retained for the purpose of paying for normal wear and tear.</p> <p>2. Return; time; retention. A landlord shall return to a tenant the full security deposit deposited with the landlord by the tenant or, if there is actual cause for retaining the security deposit or any portion of it, the landlord shall provide the tenant with a written statement itemizing the reasons for the retention of the security deposit or any</p>	<ul style="list-style-type: none"> Maine law permits maximum security deposit of up to 2 months rent; uniform law is maximum of 1 month Maine law permits return of security deposit up to 30 days pursuant to written agreement or within 21 days for tenancy at will ; uniform law requires return within 14 days Same penalty provision for double amount of security deposit if wrongfully withheld by landlord

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
<p>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.</p> <p>(d) This section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this Act.</p> <p>(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.</p>	<p>portion of it:</p> <p>A. In the case of a written rental agreement, within the time, not to exceed 30 days, stated in the agreement; and</p> <p>B. In the case of a tenancy at will, within 21 days after the termination of the tenancy or the surrender and acceptance of the premises, whichever occurs later.</p> <p>The written statement itemizing the reasons for the retention of any portion of the security deposit must be accompanied by a full payment of the difference between the security deposit and the amount retained.</p> <p>Reasons for which a landlord may retain the security deposit or a portion of the security deposit include, but are not limited to, covering the costs of storing and disposing of unclaimed property, nonpayment of rent and nonpayment of utility charges that the tenant was required to pay directly to the landlord.</p> <p>The landlord is deemed to have complied with this section by mailing the statement and any payment required to the last known address of the tenant.</p> <p>3. Penalty. If a landlord fails to provide a written statement or to return the security deposit within the time specified in subsection 2, the landlord shall forfeit his right to withhold any portion of the security deposit.</p> <p>§6034. Wrongful retention; damages</p> <p>1. Notice to landlord of intention to bring suit; presumption on failure to return deposit. If the landlord fails to return the security deposit and provide the itemized statement within the time periods in section 6033, the tenant shall give notice to the landlord of the tenant's intention to bring a legal action no less than 7</p>	<ul style="list-style-type: none"> Maine law also recognizes right to transfer of interest in security deposit in section 6035

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
	<p>days prior to commencing the action. If the landlord fails to return the entire security deposit within the 7-day period, it is presumed that the landlord is wrongfully retaining the security deposit.</p> <p>2. Double damages for wrongful retention. The wrongful retention of a security deposit in violation of this chapter renders a landlord liable for double the amount of that portion of the security deposit wrongfully withheld from the tenant, together with reasonable attorney's fees and court costs.</p> <p>3. Burden of proof. In any court action brought by a tenant under this section, the landlord has the burden of proving that the landlord's withholding of the security deposit, or any portion of it, was not wrongful.</p> <p>§6035. Transfer of security deposit</p> <p>1. Landlord's termination of interests in dwelling unit. Upon termination of a landlord's interest in the dwelling unit, whether by sale, assignment, death, appointment of a receiver or otherwise, the person in possession of a security deposit, including, but not limited to, the landlord, the landlord's agent or the landlord's executor, shall, upon the transfer of the interest in the dwelling unit:</p> <p>A. Provide to the landlord's successor in interest an accounting of the amount of each security deposit paid by each tenant and held by the person in possession of the security deposits, transfer the funds or any remainder after lawful deduction under this chapter to the landlord's successor in interest and provide to the tenant by mail:</p> <p>(1) Notice of that transfer;</p> <p>(2) Notice of the transferee's name and address; and</p>	

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
	<p>(3) A copy of the accounting of the amount of the security deposit transferred; or</p> <p>B. Return the funds or any remainder after lawful deductions under this section to the tenant.</p> <p>If the landlord's interest is terminated by sale, then the accounting and transfer of funds must occur no later than at the real estate closing. A person in possession of a security deposit, including, but not limited to, the landlord, the landlord's agent or the landlord's executor, shall provide written proof of the accounting and transfer of funds to the landlord's successor in interest at the real estate closing.</p> <p>2. Release from liability following compliance. Upon compliance with this section, the person in possession of the security deposit shall be relieved of further liability, and the transferee, in relation to those funds, shall be deemed to have all of the rights and obligations of a landlord holding the funds as a security deposit.</p>	
<p>§ 2.102. [Disclosure] (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:</p> <p>(1) the person authorized to manage the premises; and</p> <p>(2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and receiving and receipting for notices and demands.</p> <p>(b) The information required to be furnished by this section</p>	<p>§6023. Agency</p> <p>Any person authorized to enter into a residential rental agreement on behalf of the owner or owners of the premises shall be deemed to be the owner's agent for purposes of service of process and receiving and receipting for notices and demands.</p>	<ul style="list-style-type: none"> Similar provisions that deem person authorized to enter or manage the premises is owner's agent for purposes of service of process and notices by tenant

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<p>shall be kept current and this section extends to and is enforceable against any successor landlord, owner, or manager.</p> <p>(c) A person who fails to comply with subsection (a) becomes an agent of each person who is a landlord for:</p> <p>(1) service of process and receiving and receipting for notices and demands; and</p> <p>(2) performing the obligations of the landlord under this Act and under the rental agreement and expending or making available for the purpose all rent collected from the premises.</p>		
<p>§ 2.103. [Landlord to Deliver Possession of Dwelling Unit]</p> <p>At the commencement of the term a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and Section 2.104. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in Section 4.301(c).</p>		<ul style="list-style-type: none"> • Allows landlord to proceed directly against persons in wrongful possession
<p>§ 2.104. [Landlord to Maintain Premises]</p> <p>(a) A landlord shall</p> <p>(1) comply with the requirements of applicable building and housing codes materially affecting health and safety;</p> <p>(2) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;</p> <p>(3) keep all common areas of the premises in a clean and safe condition;</p>	<p>§6021. Implied warranty and covenant of habitability</p> <p>1. Definition. As used in this section, the term "dwelling unit" shall include mobile homes, apartments, buildings or other structures, including the common areas thereof, which are rented for human habitation.</p> <p>2. Implied warranty of fitness for human habitation. In any written or oral agreement for rental of a dwelling unit, the landlord shall be deemed to covenant and warrant that the dwelling unit is fit for human habitation.</p>	<ul style="list-style-type: none"> • Sets forth similar duties of landlord to maintain minimum standards for habitability • Generally duties cannot be waived by agreement-- uniform act allows duties for trash removal; supply of running water, hot water and heat; and minor repairs to be assumed by tenant under written agreement

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<p>(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;</p> <p>(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</p> <p>(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.</p> <p>(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).</p> <p>(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.</p> <p>(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</p>	<p>3. Complaints. If a condition exists in a dwelling unit which renders the dwelling unit unfit for human habitation, then a tenant may file a complaint against the landlord in the District Court or Superior Court. The complaint shall state that:</p> <p>A. A condition, which shall be described, endangers or materially impairs the health or safety of the tenants;</p> <p>B. The condition was not caused by the tenant or another person acting under his control;</p> <p>C. Written notice of the condition without unreasonable delay, was given to the landlord or to the person who customarily collects rent on behalf of the landlord;</p> <p>D. The landlord unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition; and</p> <p>E. The tenant was current in rental payments owing to the landlord at the time written notice was given.</p> <p>The notice requirement of paragraph C may be satisfied by actual notice to the person who customarily collects rents on behalf of the landlord.</p> <p>4. Remedies. If the court finds that the allegations in the complaint are true, the landlord shall be deemed to have breached the warranty of fitness for human habitation established by this section, as of the date when actual notice of the condition was given to the landlord. In addition to any other relief or remedies which may otherwise exist, the court may take one or more of the following actions.</p>	<ul style="list-style-type: none"> Note Maine law has specific provisions relating to heat in subsections 6 and 6-A

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<p>(1) the agreement of the parties is entered into in good faith and is set forth in a separate writing signed by the parties and supported by adequate consideration;</p> <p>(2) the work is not necessary to cure noncompliance with subsection (a)(1) of this section; and</p> <p>(3) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.</p> <p>(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.</p>	<p>A. The court may issue appropriate injunctions ordering the landlord to repair all conditions which endanger or materially impair the health or safety of the tenant;</p> <p>B. The court may determine the fair value of the use and occupancy of the dwelling unit by the tenant from the date when the landlord received actual notice of the condition until such time as the condition is repaired, and further declare what, if any, moneys the tenant owes the landlord or what, if any, rebate the landlord owes the tenant for rent paid in excess of the value of use and occupancy. In making this determination, there shall be a rebuttable presumption that the rental amount equals the fair value of the dwelling unit free from any condition rendering it unfit for human habitation. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord.</p> <p>C. The court may authorize the tenant to temporarily vacate the dwelling unit if the unit must be vacant during necessary repairs. No use and occupation charge shall be incurred by a tenant until such time as the tenant resumes occupation of the dwelling unit. If the landlord offers reasonable, alternative housing accommodations, the court may not surcharge the landlord for alternate tenant housing during the period of necessary repairs.</p> <p>D. The court may enter such other orders as the court may deem necessary to accomplish the purposes of this section. The court may not award consequential damages for breach of the warranty of fitness for human habitation.</p> <p>Upon the filing of a complaint under this section, the court</p>	

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	<p>shall enter such temporary restraining orders as may be necessary to protect the health or well-being of tenants or of the public.</p> <p>5. Waiver. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord.</p> <p>Any agreement, other than as provided in this subsection, by a tenant to waive any of the rights or benefits provided by this section shall be void.</p> <p>6. Heating requirements. It is a breach of the implied warranty of fitness for human habitation when the landlord is obligated by agreement or lease to provide heat for a dwelling unit and:</p> <p>A. The landlord maintains an indoor temperature which is so low as to be injurious to the health of occupants not suffering from abnormal medical conditions;</p> <p>B. The dwelling unit's heating facilities are not capable of maintaining a minimum temperature of at least 68 degrees Fahrenheit at a distance of 3 feet from the exterior walls, 5 feet above floor level at an outside temperature of minus 20 degrees Fahrenheit; or</p> <p>C. The heating facilities are not operated so as to protect the building equipment and systems from freezing.</p> <p>Municipalities of this State are empowered to adopt or retain more stringent standards by ordinances, laws or regulations provided in this section. Any less restrictive</p>	

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	<p>municipal ordinance, law or regulation establishing standards are invalid and of no force and suspended by this section.</p> <p>6-A. Agreement regarding provision of heat. A landlord and tenant under a lease or a tenancy at will may enter into an agreement for the landlord to provide heat at less than 68 degrees Fahrenheit. The agreement must:</p> <p>A. Be in a separate written document, apart from the lease, be set forth in a clear and conspicuous format, readable in plain English and in at least 12-point type, and be signed by both parties to the agreement;</p> <p>B. State that the agreement is revocable by either party upon reasonable notice under the circumstances;</p> <p>C. Specifically set a minimum temperature for heat, which may not be less than 62 degrees Fahrenheit; and</p> <p>D. Set forth a stated reduction in rent that must be fair and reasonable under the circumstances.</p> <p>An agreement under this subsection may not be entered into or maintained if a person over 65 years of age or under 5 years of age resides on the premises. A landlord is not responsible if a tenant who controls the temperature on the premises reduces the heat to an amount less than 68 degrees Fahrenheit as long as the landlord complies with subsection 6, paragraph B or if the tenant fails to inform the landlord that a person over 65 years of age or under 5 years of age resides on the premises.</p> <p>7. Rights are supplemental.</p>	
<p>§ 2.105. [Limitation of Liability]</p>	<p>§6035. Transfer of security deposit</p>	<ul style="list-style-type: none"> Uniform law relieves landlord of liability after sale or transfer

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<p>(a) Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this Act as to events occurring after written notice to the tenant of the conveyance. However, he remains liable to the tenant for all security recoverable by the tenant under Section 2.101 and all prepaid rent.</p> <p>(b) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this Act as to events occurring after written notice to the tenant of the termination of his management.</p>	<p>1. Landlord's termination of interests in dwelling unit. Upon termination of a landlord's interest in the dwelling unit, whether by sale, assignment, death, appointment of a receiver or otherwise, the person in possession of a security deposit, including, but not limited to, the landlord, the landlord's agent or the landlord's executor, shall, upon the transfer of the interest in the dwelling unit:</p> <p>A. Provide to the landlord's successor in interest an accounting of the amount of each security deposit paid by each tenant and held by the person in possession of the security deposits, transfer the funds or any remainder after lawful deduction under this chapter to the landlord's successor in interest and provide to the tenant by mail:</p> <p>(1) Notice of that transfer;</p> <p>(2) Notice of the transferee's name and address; and</p> <p>(3) A copy of the accounting of the amount of the security deposit transferred; or</p> <p>B. Return the funds or any remainder after lawful deductions under this section to the tenant. If the landlord's interest is terminated by sale, then the accounting and transfer of funds must occur no later than at the real estate closing. A person in possession of a security deposit, including, but not limited to, the landlord, the landlord's agent or the landlord's executor, shall provide written proof of the accounting and transfer of funds to the landlord's successor in interest at the real estate closing.</p> <p>2. Release from liability following compliance. Upon compliance with this section, the person in possession of the security deposit shall be relieved of further liability,</p>	<p>except that landlord still liable for security deposit and any prepaid rent</p> <ul style="list-style-type: none"> • Maine law permits transfer of security deposit after sale or other termination of landlord's interest to landlord's successor in interest

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	and the transferee, in relation to those funds, shall be deemed to have all of the rights and obligations of a landlord holding the funds as a security deposit.	
<p>§ 3.101. [Tenant to Maintain Dwelling Unit]</p> <p>A tenant shall</p> <p>(1) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;</p> <p>(2) keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;</p> <p>(3) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;</p> <p>(4) keep all plumbing fixtures in the dwelling unit or used by the tenant as clear as their condition permits;</p> <p>(5) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators in the premises;</p> <p>(6) not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so; and</p> <p>(7) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises.</p>		<ul style="list-style-type: none"> Establishes minimum duties of tenants to maintain residence No specific corresponding provision in Maine statute--are duties of tenant addressed in case law?
<p>§ 3.102. [Rules and Regulations]</p>	<p>§6030. Unfair rental contracts</p>	<ul style="list-style-type: none"> Uniform law explicitly permits rules as part of rental

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<p>(a) A landlord, from time to time, may adopt a rule or regulation, however described, concerning the tenant's use and occupancy of the premises. It is enforceable against the tenant only if</p> <p>(1) its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;</p> <p>(2) it is reasonably related to the purpose of which it is adopted;</p> <p>(3) it applies to all tenants in the premises in a fair manner;</p> <p>(4) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;</p> <p>(5) it is not for the purpose of evading the obligations of the landlord; and</p> <p>(6) the tenant has notice of it at the time he enters into the rental agreement, or when it is adopted.</p> <p>(b) If a rule or regulation is adopted after the tenant enters into the rental agreement that works a substantial modification of his bargain it is not valid unless the tenant consents to it in writing.</p>	<p>1. Illegal waiver of rights. It is an unfair and deceptive trade practice in violation of Title 5, section 207 for a landlord to require a tenant to enter into a rental agreement for a dwelling unit, as defined in section 6021, in which the tenant agrees to a lease or rule provision that has the effect of waiving a tenant right established in chapter 709, this chapter and chapter 710-A. This subsection does not apply when the law specifically allows the tenant to waive a statutory right during negotiations with the landlord.</p>	<p>agreements</p> <ul style="list-style-type: none"> • Under Maine law, tenant rules may not have effect of waiving statutory tenant right unless law specifically allows tenant to waive a statutory right during negotiations
<p>§ 3.103. [Access]</p> <p>(a) A tenant shall not unreasonably withhold 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 necessary or agreed</p>	<p>§6025. Access to premises</p> <p>1. Tenant obligations. A tenant may not unreasonably withhold 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 necessary or agreed services or exhibit the</p>	<ul style="list-style-type: none"> • Uniform law requires landlord to provide at least 2 days notice before entering premises except in an emergency or when impracticable—Maine law presumes at least 24 hours

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<p>services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.</p> <p>(b) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.</p> <p>(c) A landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least [2] days' notice of his intent to enter and may enter only at reasonable times.</p> <p>(d) A landlord has no other right of access except</p> <p>(1) pursuant to court order;</p> <p>(2) as permitted by Sections 4.202 and 4.203(b); or</p> <p>(3) unless the tenant has abandoned or surrendered the premises.</p>	<p>dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors.</p> <p>A tenant may not change the lock to the dwelling unit without giving notice to the landlord and giving the landlord a duplicate key within 48 hours of the change.</p> <p>2. Landlord obligations. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant reasonable notice of his intent to enter and shall enter only at reasonable times. Twenty-four hours is presumed to be a reasonable notice in the absence of evidence to the contrary.</p> <p>3. Remedy. If a landlord makes an entry in violation of this section, makes a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful that have the effect of harassing the tenant, the tenant may recover actual damages or \$100, whichever is greater, and obtain injunctive relief to prevent recurrence of the conduct, and if the tenant obtains a judgment after a contested hearing, reasonable attorney's fees.</p> <p>If a tenant changes the lock and does not provide the landlord with a duplicate key, in the case of emergency the landlord may gain admission through whatever reasonable means necessary and charge the tenant reasonable costs for any resulting damage. If a tenant changes the lock and refuses to provide the landlord with a duplicate key, the landlord may terminate the tenancy with a 7-day notice.</p> <p>4. Waiver. Any agreement by a tenant to waive any of the rights or benefits provided by this section is against public policy and is void.</p>	<p>notice is reasonable</p>
<p>§ 3.104. [Tenant to Use and Occupy]</p>		

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<p>Unless otherwise agreed, a tenant shall occupy his dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of any anticipated extended absence from the premises [in excess of [7] days] no later than the first day of the extended absence.</p>		
<p>§ 4.101. [Noncompliance by the Landlord - In General]</p> <p>(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</p> <p>(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.</p> <p>(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.</p> <p>(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</p>	<p>§ 6021, subsection 4:</p> <p>4. Remedies. If the court finds that the allegations in the complaint are true, the landlord shall be deemed to have breached the warranty of fitness for human habitation established by this section, as of the date when actual notice of the condition was given to the landlord. In addition to any other relief or remedies which may otherwise exist, the court may take one or more of the following actions.</p> <p>A. The court may issue appropriate injunctions ordering the landlord to repair all conditions which endanger or materially impair the health or safety of the tenant;</p> <p>B. The court may determine the fair value of the use and occupancy of the dwelling unit by the tenant from the date when the landlord received actual notice of the condition until such time as the condition is repaired, and further declare what, if any, moneys the tenant owes the landlord or what, if any, rebate the landlord owes the tenant for rent paid in excess of the value of use and occupancy. In making this determination, there shall be a rebuttable presumption that the rental amount equals the fair value of the dwelling unit free from any condition rendering it unfit for human habitation. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord.</p>	<ul style="list-style-type: none"> • Uniform law sets forth remedies available to tenant for material noncompliance by landlord with terms of rental agreement or standards of habitability • Maine law provides remedies for breach of warranty of fitness for human habitation by landlord

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<p>(b) Except as provided in this Act, the tenant may recover actual damages and obtain injunctive relief for noncompliance by the landlord with the rental agreement or Section 2.104. If the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees.</p> <p>(c) The remedy provided in subsection (b) is in addition to any right of the tenant arising under Section 4.101(a).</p> <p>(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.</p>	<p>C. The court may authorize the tenant to temporarily vacate the dwelling unit if the unit must be vacant during necessary repairs. No use and occupation charge shall be incurred by a tenant until such time as the tenant resumes occupation of the dwelling unit. If the landlord offers reasonable, alternative housing accommodations, the court may not surcharge the landlord for alternate tenant housing during the period of necessary repairs.</p> <p>D. The court may enter such other orders as the court may deem necessary to accomplish the purposes of this section. The court may not award consequential damages for breach of the warranty of fitness for human habitation.</p> <p>Upon the filing of a complaint under this section, the court shall enter such temporary restraining orders as may be necessary to protect the health or well-being of tenants or of the public.</p>	
<p>§ 4.102. [Failure to Deliver Possession]</p> <p>(a) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in Section 2.103, rent abates until possession is delivered and the tenant may</p> <p>(1) terminate the rental agreement upon at least [5] days' written notice to the landlord and upon termination the landlord shall return all prepaid rent and security; or</p> <p>(2) demand performance of the rental agreement by the landlord and, if the tenant elects, obtain possession of the dwelling unit from the landlord or any person wrongfully in possession and recover the actual damages sustained by him.</p> <p>(b) If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person an amount not more than [3] months' periodic rent or</p>		

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[threefold] the actual damages sustained, whichever is greater, and reasonable attorney's fees.		
<p>§ 4.103. [Self-Help for Minor Defects]</p> <p>(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.</p> <p>(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.</p>	<p>§6026. Dangerous conditions requiring minor repairs</p> <p>1. Prohibition of dangerous conditions. No landlord leasing premises for human habitation may maintain or permit to exist on those premises any condition which endangers or materially impairs the health or safety of the tenants.</p> <p>2. Tenant action if landlord fails to act. If a landlord fails to maintain a rental unit in compliance with the standards of subsection 1 and the reasonable cost of compliance is less than \$500 or an amount equal to 1/2 the monthly rent, whichever is greater, the tenant shall notify the landlord in writing of the tenant's 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 by certified mail, return receipt requested, or as promptly as conditions require in case of emergency, the tenant may cause the work to be done with due professional care with the same quality of materials as are being repaired. Installation and servicing of electrical, oil burner or plumbing equipment must be by a professional licensed pursuant to Title 32. After submitting to the landlord an itemized statement, the tenant may deduct from the tenant's rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection. This subsection does not apply to repairs of damage caused by the tenant or the tenant's invitee.</p> <p>3. Limitation on rights. No tenant may exercise his rights pursuant to this section if the condition was caused by the tenant, his guest or an invitee of the tenant, nor where the landlord is unreasonably denied access, nor</p>	<p>Similar provisions although threshold amount for cost of compliance under Maine law is less than \$500 or an amount equal to ½ the monthly rent, whichever is greater –uniform law suggests threshold of less than \$100</p>

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	<p>where extreme weather conditions prevent the landlord from making the repair.</p> <p>4. Limitation on reimbursement. No tenant may seek or receive reimbursement for labor provided by the tenant or any member of his immediate family pursuant to this section. Parts and materials purchased by the tenant are reimbursable.</p> <p>5. Waiver. A provision in a lease, whether oral or written, in which the tenant waives either his rights under this section or the duty of the landlord to maintain the premises in compliance with the standards of fitness specified in this section or any other duly promulgated ordinance or regulation is void, except that a written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration is binding on the tenant and the landlord.</p> <p>6. Rights are supplemental. The rights created by this section are supplemental to and in no way limit the rights of a tenant under section 6021.</p> <p>7. Limitation on liability. Whenever repairs are undertaken by or on behalf of the tenant, the landlord shall be held free from liability for injury to that tenant or other persons injured thereby.</p> <p>8. Application. This section does 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.</p> <p>9. Lack of Heat. If the landlord fails to comply with the</p>	

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	<p>provisions of Title 14, section 6021, subsection 6, then the purchase of heating fuel by the tenant shall be deemed to be a "cost of compliance" within the meaning of subsection 2. For tenants on general assistance, municipalities shall have the rights of tenants under this subsection.</p>	
<p>§ 4.104. [Wrongful Failure to Supply Heat, Water, Hot Water, or Essential Services]</p> <p>(a) If contrary to the rental agreement or Section 2.104 the landlord willfully 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</p> <p>(1) take reasonable and appropriate measures to secure 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</p> <p>(2) recover damages based upon the diminution in the fair rental value of the dwelling unit; or</p> <p>(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.</p> <p>(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.</p>	<p>§6014. Remedies for illegal evictions</p> <p>1. Illegal evictions. Except as permitted by Title 15, chapter 517 or Title 17, chapter 91, evictions that are effected without resort to the provisions of this chapter are illegal and against public policy. Illegal evictions include, but are not limited to, the following.</p> <p>A. No landlord may willfully cause, directly or indirectly, the interruption or termination of any utility service being supplied to the tenant including, but not limited to, water, heat, light, electricity, gas, telephone, sewerage, elevator or refrigeration, whether or not the utility service is under the control of the landlord, except for such temporary interruption as may be necessary while actual repairs are in process or during temporary emergencies.</p> <p>B. No landlord may willfully seize, hold or otherwise directly or indirectly deny a tenant access to and possession of the tenant's rented or leased premises, other than through proper judicial process.</p> <p>C. No landlord may willfully seize, hold or otherwise directly or indirectly deny a tenant access to and possession of the tenant's property, other than by proper judicial process.</p> <p>2. Remedies. Upon a finding that an illegal eviction has occurred, the court shall find one or both of the following.</p> <p>A. The tenant is entitled to recover actual damages or</p>	<ul style="list-style-type: none"> • Remedies available to tenant for willful failure to supply utilities or other essential services • Uniform law allows tenant to procure substitute housing during period of noncompliance by landlord; tenant excused from paying rent during that period

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<p>(c) If the tenant proceeds under this section, he may not proceed under Section 4.101 or Section 4.103 as to that breach.</p> <p>(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 deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent.</p>	<p>\$250, whichever is greater.</p> <p>B. The tenant is entitled to recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on the tenant's behalf in connection with the prosecution or defense of such action, together with a reasonable amount for attorneys' fees.</p> <p>3. Good faith. A court may award attorneys' fees to the defendant if, upon motion and hearing, it is determined that an action filed pursuant to this section was not brought in good faith and was frivolous or intended for harassment only.</p> <p>4. Nonexclusivity. The remedies provided in this section are in addition to any other rights and remedies conferred by law.</p> <p>§ 6026, subsection 9:</p> <p>9. Lack of Heat. If the landlord fails to comply with the provisions of Title 14, section 6021, subsection 6, then the purchase of heating fuel by the tenant shall be deemed to be a "cost of compliance" within the meaning of subsection 2. For tenants on general assistance, municipalities shall have the rights of tenants under this subsection.</p> <p>§6024-A. Landlord failure to pay for utility service</p> <p>If a landlord fails to pay for utility service in the name of the landlord, the tenant, in accordance with Title 35-A, section 706, may pay for the utility service and deduct the amount paid from the rent due to the landlord.</p>	
<p>§ 4.105. [Landlord's Noncompliance as Defense to Action for Possession or Rent]</p>	<p>§6002, sub-§3:</p> <p>§3. Breach of warranty of habitability as an affirmative defense. In an action brought by a landlord</p>	<ul style="list-style-type: none"> • Similar provisions to recognize counterclaims by tenant as defense to forcible entry and

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
<p>(a) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may [counterclaim] for any amount he may recover under the rental agreement or this Act. In that event the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court and the balance by the other party. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession. If the defense or counterclaim by the tenant is without merit and is not raised in good faith, the landlord may recover reasonable attorney's fees.</p> <p>(b) In an action for rent when the tenant is not in possession, he may [counterclaim] as provided in subsection (a) but is not required to pay any rent into court.</p>	<p>to terminate a rental agreement on the ground that the tenant is in arrears in the payment of rent, the tenant may raise as a defense any alleged violation of the implied warranty and covenant of habitability, provided that the landlord or the landlord's agent has received actual or constructive notice of the alleged violation, and has unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition and the condition was not caused by the tenant or another person acting under the tenant's control. Upon finding that the dwelling unit is not fit for human habitation, the court shall permit the tenant either to terminate the rental agreement without prejudice or to reaffirm the rental agreement, with the court assessing against the tenant an amount equal to the reduced fair rental value of the property for the period during which rent is owed. The reduced amount of rent thus owed must be paid on a pro rata basis, unless the parties agree otherwise, and payments become due at the same intervals as rent for the current rental period. The landlord may not charge the tenant for the full rental value of the property until such time as it is fit for human habitation.</p> <p>From §6010. Sums due for rent and damages second paragraph:</p> <p>In any action for sums due for rent, if the court finds that:</p> <p>1. Notice of condition. The tenant, without unreasonable delay, gave to the landlord or to the person who customarily collects rent on behalf of the landlord written notice of a condition which rendered the rented premises unfit for human habitation;</p> <p>2. Cause of condition. The condition was not caused by the tenant or another person acting under his control;</p>	<p>detainer action and actions for sums due for rent</p>

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
	<p>3. Failure to take steps. The landlord unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition; and</p> <p>4. Rental payments current. The tenant is current in rental payments owing to the landlord at the time written notice was given.</p> <p>Then the court shall deduct from the amount of rent due and owing the difference between the rental price and the fair value of the use and occupancy of the premises from the time of written notice, as provided in subsection 1, to the time when the condition is repaired or remedied. In determining the fair value of the use and occupancy of the premises, there shall be a rebuttable presumption that the rental price is the fair value of the rented premises free from any condition rendering it unfit for human habitation. Any agreement by a tenant to waive the rights or benefits provided by this section shall be void. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord.</p>	
<p>§ 4.106. [Fire or Casualty Damage]</p> <p>(a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may</p> <p>(1) immediately vacate the premises and notify the landlord in writing within [14] days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or</p>	<p>§6010. Sums due for rent and damages</p> <p>Sums due for rent on leases under seal or otherwise and claims for damages to premises rented may be recovered in an action, specifying the items and amount claimed, but no action shall be maintained for any sum or sums claimed to be due for rental or for any claim for damages for the breach of any of the conditions claimed to be broken on the part of the lessee, his legal representatives, assigns or tenant, contained in a lease or written agreement to hire or occupy any building, buildings or part of a building.</p>	<ul style="list-style-type: none"> • If premises are destroyed or damaged by fire or other casualty and are unfit for habitation, tenant has no obligation to pay rent unless otherwise agreed

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
<p>(2) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.</p> <p>(b) If the rental agreement is terminated the landlord shall return all security recoverable under Section 2.101 and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.</p>	<p>during a period when such building, buildings or part of a building, which the lessee, his assigns, legal representatives or tenant may occupy or have a right to occupy, shall have been destroyed or damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use or habitation; provided that nothing herein shall render invalid or unenforceable an agreement contained in a lease of any building, buildings, or part of a building used primarily for other than residential purposes or in the case of any lease securing obligations guaranteed by the Maine Guaranty Authority or in any written instrument to pay the rental stipulated in said lease or agreement or any portion of such rental during a period when the building, buildings or part of a building described therein shall have been destroyed or damaged by fire or other unavoidable casualty so that the same shall be rendered unfit for use or habitation, in whole or in part.</p>	
<p>§ 4.107. [Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion, or Diminution of Service]</p> <p>If a landlord unlawfully removes or excludes the tenant from the premises or willfully 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 2.101 and all prepaid rent.</p>	<p>§ 6014, subsection 2:</p> <p>2. Remedies. Upon a finding that an illegal eviction has occurred, the court shall find one or both of the following.</p> <p>A. The tenant is entitled to recover actual damages or \$250, whichever is greater.</p> <p>B. The tenant is entitled to recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on the tenant's behalf in connection with the prosecution or defense of such action, together with a reasonable amount for attorneys' fees.</p>	<ul style="list-style-type: none"> Uniform law provides potential for recovery of higher amount of damages (3 times actual damages or 3 months rent, whichever is greater)
<p>§ 4.201. [Noncompliance with Rental Agreement; Failure to Pay Rent]</p>	<p>§6010. Sums due for rent and damages</p> <p>Sums due for rent on leases under seal or otherwise and</p>	<ul style="list-style-type: none"> Uniform law provides remedies to landlord for material noncompliance with rental

Appendix C: Presentation Materials

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

For Rep. Tuttle

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<p>(a) Except as provided in this Act, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with Section 3.101 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 [30] days after receipt of the notice. If the breach is not remedied in [14] days, the rental agreement shall terminate as provided in the notice subject to the following: If the breach is remedial by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach before 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 [6] months, the landlord may terminate the rental agreement upon at least [14 days] written notice specifying the breach and the date of termination of the rental agreement.</p> <p>(b) If rent is unpaid when due and the tenant fails to pay rent within [1<] days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement, if rent is not paid within that period, the landlord may terminate the rental agreement.</p> <p>(c) Except as provided in this Act, the landlord may recover actual damages and obtain injunctive relief for noncompliance by the tenant with the rental agreement or Section 3.101. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.</p>	<p>claims for damages to premises rented may be recovered in an action, specifying the items and amount claimed, but no action shall be maintained for any sum or sums claimed to be due for rental or for any claim for damages for the breach of any of the conditions claimed to be broken on the part of the lessee, his legal representatives, assigns or tenant, contained in a lease or written agreement to hire or occupy any building, buildings or part of a building, during a period when such building, buildings or part of a building, which the lessee, his assigns, legal representatives or tenant may occupy or have a right to occupy, shall have been destroyed or damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use or habitation; provided that nothing herein shall render invalid or unenforceable an agreement contained in a lease of any building, buildings, or part of a building used primarily for other than residential purposes or in the case of any lease securing obligations guaranteed by the Maine Guaranty Authority or in any written instrument to pay the rental stipulated in said lease or agreement or any portion of such rental during a period when the building, buildings or part of a building described therein shall have been destroyed or damaged by fire or other unavoidable casualty so that the same shall be rendered unfit for use or habitation, in whole or in part.</p> <p>In any action for sums due for rent, if the court finds that:</p> <ol style="list-style-type: none"> 1. Notice of condition. The tenant, without unreasonable delay, gave to the landlord or to the person who customarily collects rent on behalf of the landlord written notice of a condition which rendered the rented premises unfit for human habitation. <ol style="list-style-type: none"> 2. Cause of condition. The condition was not caused by the tenant or another person acting under his control. 	<p>agreement or tenant duties of care and for failure to pay rent</p> <ul style="list-style-type: none"> • Maine law allows action for unpaid rent • Maine law imposes duty to mitigate damages on landlord

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
	<p>3. Failure to take steps. The landlord unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition; and</p> <p>4. Rental payments current. The tenant is current in rental payments owing to the landlord at the time written notice was given.</p> <p>Then the court shall deduct from the amount of rent due and owing the difference between the rental price and the fair value of the use and occupancy of the premises from the time of written notice, as provided in subsection 1, to the time when the condition is repaired or remedied. In determining the fair value of the use and occupancy of the premises, there shall be a rebuttable presumption that the rental price is the fair value of the rented premises free from any condition rendering it unfit for human habitation. Any agreement by a tenant to waive the rights or benefits provided by this section shall be void. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the landlord and tenant.</p> <p>§6010-A. Landlord's duty to mitigate</p> <p>1. Scope of section. If a tenant unjustifiably moves from the premises prior to the effective date for termination of his tenancy and defaults in payment of rent, or if the tenant is removed for failure to pay rent or any other breach of a lease, the landlord may recover rent and damages except amounts which he could mitigate in accordance with this section, unless he has expressly agreed to accept a surrender of the premises and end the tenant's liability. Except as the context may indicate otherwise, this section applies to the liability of a tenant</p>	

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
	<p>under a lease, a periodic tenant or an assignee of either.</p> <p>2. Measure of recovery. In any claim against a tenant for rent and damages, or for either, the amount of recovery shall be reduced by the net rent obtainable by reasonable efforts to rerent the premises. "Reasonable efforts" means those steps which the landlord would have taken to rent the premises if they had been vacated in due course, provided that those steps are in accordance with local rental practice for similar properties. In the absence of proof that greater net rent is obtainable by reasonable efforts to rerent the premises, the tenant shall be credited with rent actually received under a rerental agreement minus expenses incurred as a reasonable incident of acts under subsection 4, including a fair proportion of any cost of remodeling or other capital improvements. In any case, the landlord may recover, in addition to rent and other elements of damage, all reasonable expenses of listing and advertising incurred in rerenting and attempting to rerent, except as taken into account in computing the net rent. If the landlord has used the premises as part of reasonable efforts to rerent, under subsection 4, paragraph C, the tenant shall be credited with the reasonable value of the use of the premises, which shall be presumed to be equal to the rent recoverable from the defendant unless the landlord proves otherwise. If the landlord has other similar premises for rent and receives an offer from a prospective tenant not obtained by the defendant, it shall be reasonable for the landlord to rent the other premises for his own account in preference to those vacated by the defaulting tenant.</p> <p>3. Burden of proof. The landlord must allege and prove that he has made efforts to comply with this section. The tenant has the burden of proving that the efforts of the landlord were not reasonable, that the landlord's refusal of</p>	

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Uniform Residential Landlord and Tenant Act	Related Provision in Current Maine Law	Comments
	<p>any offer to rent the premises or a part of the premises was not reasonable, that any terms and conditions upon which the landlord has in fact re-rented were not reasonable and that any temporary use by the landlord was not part of reasonable efforts to mitigate in accordance with subsection 4, paragraph C. The tenant shall also have the burden of proving the amount that could have been obtained by reasonable efforts to mitigate by re-renting.</p> <p>4. Acts privileged in mitigation of rent or damages. The following acts by the landlord shall not defeat his right to recover rent and damages and shall not constitute an acceptance of surrender of the premises:</p> <p>A. Entry, with or without notice, for the purpose of inspecting, preserving, repairing, remodeling and showing the premises;</p> <p>B. Re-renting the premises or a part of the premises, with or without notice, with rent applied against the damages caused by the original tenant and in reduction of rent accruing under the original lease;</p> <p>C. Use of the premises by the landlord until such time as re-renting at a reasonable rent is practical, not to exceed one year, if the landlord gives prompt written notice to the tenant that the landlord is using the premises pursuant to this section and that he will credit the tenant with the reasonable value of the use of the premises to the landlord for such a period; and</p> <p>D. Any other act which is reasonably subject to interpretation as being in mitigation of rent or damages and which does not unequivocally demonstrate an intent to release the defaulting tenant.</p>	
<p>§ 4.202. [Failure to Maintain]</p> <p>If there is noncompliance by the tenant with Section 3.101 materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning, and the</p>		<ul style="list-style-type: none"> Recognizes alternative for landlord to seek repairs for noncompliance of tenant

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

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<p>tenant fails to comply as promptly as conditions require in case of emergency or within [14] days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit the itemized bill for the actual and reasonable cost or the fair and reasonable value thereof as rent on the next date periodic rent is due, or if the rental agreement has terminated, for immediate payment.</p>		
<p>§ 4.203. [Remedies for Absence, Nonuse and Abandonment]</p> <p>(a) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence [in excess of [7] days] pursuant to Section 3.104 and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant</p> <p>(b) During any absence of the tenant in excess of [7] days, the landlord may enter the dwelling unit at times reasonably necessary</p> <p>(c) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, it terminates as of the date of the new tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month-to-month or week-to-week, the term of the rental agreement for this purpose is deemed to be a month or a week, as the case may be.</p>		

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

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<p>§ 4.204. [Waiver of Landlord's Right to Terminate]</p> <p>Acceptance of rent with knowledge of a default by the tenant or acceptance of performance by him that varies from the terms of the rental agreement constitutes a waiver of the landlord's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.</p>		
<p>§ 4.205. [Landlord Liens; Distress for Rent]</p> <p>(a) A lien or security interest on behalf of the landlord in the tenant's household goods is not enforceable unless perfected before the effective date of this Act.</p> <p>(b) Distraint for rent is abolished.</p>		
<p>§ 4.206. [Remedy after Termination]</p> <p>If the rental agreement is terminated, the landlord has 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 4.201(c).</p>		
<p>§ 4.207. [Recovery of Possession Limited]</p> <p>A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful 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.</p>		
<p>§ 4.301. [Periodic Tenancy; Holdover Remedies]</p> <p>(a) The landlord or the tenant may terminate a week-to-week</p>	<p>§6002. Tenancy at will; buildings on land of another</p>	<ul style="list-style-type: none"> • Provisions for termination of tenancy

Comparison of Uniform Residential Landlord and Tenant Act with Current Maine Law

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<p>tenancy by a written notice given to the other at least [10] days before the termination date specified in the notice</p> <p>(b) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least [60] days before the periodic rental date specified in the notice.</p> <p>(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if the tenant's holdover is willful and not in good faith the landlord may also recover an amount no more than [3] month's periodic rent or [threefold] the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, Section 1.401(d) applies.</p>	<p>Tenancies at will must be terminated by either party by a minimum of 30 days' notice, except as provided in subsection 2, in writing for that purpose given to the other party, but if the landlord or the landlord's agent has made at least 3 good faith efforts to serve the tenant, that service may be accomplished by both mailing the notice by first class mail to the tenant's last known address and by leaving the notice at the tenant's last and usual place of abode. In cases when the tenant has paid rent through the date when a 30-day notice would expire, the notice must expire on or after the date through which the rent has been paid. Either party may waive in writing the 30 days' notice at the time the notice is given, and at no other time prior to the giving of the notice. A termination based on a 30-day notice is not affected by the receipt of money, whether previously owed or for current use and occupation, until the date a writ of possession is issued against the tenant during the period of actual occupancy after receipt of the notice. When the tenancy is terminated, the tenant is liable to the process of forcible entry and detainer without further notice and without proof of any relation of landlord and tenant unless the tenant has paid, after service of the notice, rent that accrued after the termination of the tenancy. These provisions apply to tenancies of buildings erected on land of another party. Termination of the tenancy is deemed to occur at the expiration of the time fixed in the notice. A 30-day notice under this paragraph and a 7-day notice under subsection 2 may be combined in one notice to the tenant.</p>	<ul style="list-style-type: none"> Uniform law provides for at least 60 day notice of termination of month-to-month tenancy ---Maine law permits 30 day notice
<p>§ 4.302. [Landlord and Tenant Remedies for Abuse of Access]</p> <p>(a) 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</p>		

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<p>actual damages and reasonable attorney's fees.</p> <p>(b) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages [not less than an amount equal to [1] month's rent] and reasonable attorney's fees.</p>		
<p>§ 5.101. [Retaliatory Conduct Prohibited]</p> <p>(a) 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:</p> <p>(1) 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; or</p> <p>(2) the tenant has complained to the landlord of a violation under Section 2.104; or</p> <p>(3) the tenant has organized or become a member of a tenant's union or similar organization.</p> <p>(b) If the landlord acts in violation of subsection (a), the tenant is entitled to the remedies provided in Section 4.107 and has a defense in any retaliatory action against him for possession. In an action by or against the tenant, evidence of a complaint within [1] year before 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</p>	<p>§ 6001, subsections 3 and 4:</p> <p>3. Presumption of retaliation. In any action of forcible entry and detainer there shall be a presumption that the action was commenced in retaliation against the tenant if, within 6 months prior to the commencement of the action, the tenant has:</p> <p>A. Asserted his rights pursuant to section 6021;</p> <p>B. Complained as an individual, or a complaint has been made in that individual's behalf, in good faith, of conditions affecting that individual's dwelling unit which may constitute a violation of a building, housing, sanitary or other code, ordinance, regulation or statute, presently or hereafter adopted, to a body charged with enforcement of that code, ordinance, regulation or statute, or such a body has filed a notice or complaint of such a violation;</p> <p>C. Complained in writing or made a written request, in good faith, to the landlord or the landlord's agent to make repairs on the premises as required by any applicable building, housing or sanitary code, or by section 6021, or as required by the rental agreement between the parties; or</p> <p>D.</p>	<ul style="list-style-type: none"> • Similar provisions except that uniform law presumption of retaliation looks back 1 year rather than 6 months

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<p>increase or diminution of services. "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.</p> <p>(c) Notwithstanding subsections (a) and (b), a landlord may bring an action for possession if:</p> <p>(1) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of his family, or other person on the premises with his consent; or</p> <p>(2) the tenant is in default in rent; or</p> <p>(3) 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.</p> <p>(d) The maintenance of an action under subsection (c) does not release the landlord from liability under Section 4.01(b).</p>	<p>No writ of possession may issue in the absence of rebuttal of the presumption of retaliation.</p> <p>4. Membership in tenants' organization. No writ of possession may issue when the tenant proves that the action of forcible entry and detainer was commenced in retaliation for the tenant's membership in an organization concerned with landlord-tenant relationships.</p>	

Appendix C: Presentation Materials

Appendix C: Presentation Materials

Court Alternative Dispute Resolution Service



Court Alternative Dispute Resolution Service (CADRES)
Administrative Office of the Courts – Office of Court ADR
P.O. Box 4820, Portland, ME 04112-4820

Diane E. Kenty, Director
Telephone: (207) 822-0719
Fax: (207) 822-0781
diane.kenty@maine.gov

REPORT TO JOINT STANDING COMMITTEE ON JUDICIARY ON MEDIATION OF FORCIBLE ENTRY AND DETAINER DISPUTES

January 14, 2009

The 123rd Maine State Legislature enacted An Act to Establish a Mediation Process for Landlord-tenant Disputes, PL 2007, Chapter 246 (the “Act”).

The Act established the authority and requirements for mediation in Forcible Entry and Detainer (“FED”) actions regarding residential tenancies, including mobile home evictions. The Act took effect on January 1, 2008.

Subsection 4 of the Act specifies that the Court Alternative Dispute Resolution Service (“CADRES”), a program of the Maine Judicial Branch established in 4 MRSA § 18-B, shall submit a report “about the efficiency and use of the residential tenancy mediation program” no later than January 15, 2009.

Background and Introduction

Mediation of FED cases began in January, 2008. It is conducted through CADRES, the statewide office for mediation within the Maine Judicial Branch. The mediators are independent contractors to CADRES.

Pursuant to the Act, in late 2007, CADRES established the new statewide Forcible Entry and Detainer Mediation Roster and held training sessions for the mediators who would serve on the roster. All mediators must meet the specific requirements for inclusion on the roster, which are as follows:

- A. A combination of 50 hours of training and experience, which shall include a minimum of:*
 - 1. At least 20 hours of mediation process training involving lectures, role plays, and mediation theory, with at least 8 hours completed within two years of application;*
 - 2. At least 15 hours of experience as a mediator or co-mediator; and*

Appendix C: Presentation Materials

3. *At least 3 hours of training or experience in the substance of Maine landlord-tenant law.*
- B. *A minimum, annual level of continuing professional education and development of 8 hours in either mediation process training, the substance of landlord-tenant law or standards of ethical conduct in mediation is required to remain active on this Roster.¹*

At present, there are 44 mediators on the statewide FED Mediation Roster. New mediators are added to various CADRES mediation rosters, including this roster, twice yearly. It is anticipated that more mediators will be added to the FED Mediation Roster in 2009.

Procedure for Mediation

Mediation takes place at the courthouse. At the time a docket of FED cases is scheduled, a mediator is assigned to appear for that docket. If any cases are referred to mediation from the courtroom, the mediator is available to mediate “on the spot.” As a result, mediation does not cause delay or postpone the hearing date.

The judge decides from the bench whether to refer a particular case to mediation. Generally, the judge inquires whether the parties and counsel, if any, wish to try mediation. Mediation could also be scheduled at a different time in advance of the hearing date, if the parties wished and requested mediation in advance. A mediator is available at court on the hearing day to mediate multiple cases, as needed.

In some courts, the docket of FED cases is held on the same morning or afternoon as the Small Claims docket. In such instances, one mediator is available at the courthouse for both types of cases.

A mediator is not sent to every single FED docket at every court. In some courts, there are very few FED cases. If requested, however, a mediator can be scheduled at any FED docket. In addition, the Summons form used in FED cases has been revised to notify parties that the option of mediation is available.

After an FED case is mediated, the mediator completes a Report of Completed Mediation Session form (see copy attached). If the case is resolved, and parties have signed a written agreement, the judge will enter an order incorporating the agreement. Thus, all agreements have the force and effect of a court order. If the case is not resolved in mediation, the judge holds a hearing. Mediation does not alter a party’s right to a hearing.

As authorized by the Act, mediation is paid for by a “surcharge” of \$10 added to the filing fee for an FED action. The mediator is paid a flat fee of \$60 to appear for the FED docket and to mediate any and all cases referred to mediation from the courtroom.

¹ These roster requirements, which appear as Appendix H to the CADRES Operational Rules, were adopted in September, 2007. Appendix H also specifies that the Director may recommend a waiver of a particular criterion for a particular applicant.

Appendix C: Presentation Materials

Mediation Usage

As with any new program, mediation in FED cases started slowly, as parties and attorneys were introduced to the idea. At the outset, mediation in this type of case was also new to judges. The volume of mediation in 2008 was modest, but the resolution rate in cases that were mediated was very high.

For 2008, our records to date show that 349 FED cases were mediated.² Of those, 278 cases, or 80%, were resolved in mediation. A total of 66 cases, or 19%, were unresolved at mediation. The remaining 1% of cases were either partially resolved (3 cases) or unfinished (2 cases) in mediation.

Efficiency

The process of mediation is designed to offer efficiency to the litigants and to the courts. First, it helps parties save time and money by providing a quicker route to resolution. If parties achieve agreement in mediation, they do not have to take the time for a trial and, if represented, are able to avoid legal fees for a trial. Mediation also offers parties the opportunity to make their own decisions and craft creative solutions, if desired. Moreover, mediation is efficient for the court. If parties are able to resolve their dispute with a mediator, they do not require a judge's attention. Judges are able to focus on the cases that truly demand judicial intervention. For all of these reasons, mediation is either optional or required in the Maine courts many types of court cases: Family Matters, Small Claims, land use and environmental cases, and general civil and commercial litigation in District Court and Superior Court.

As noted, mediation in FED cases through CADRES took place at the courthouse on the day of hearing. The parties did not make an extra trip to the courthouse, and their hearing dates were not delayed. When they settled their case at mediation, parties did not have to proceed to trial. If they have retained attorneys, they do not incur attorneys' fees for a trial. Additionally, if payment is agreed upon at mediation, landlords may have a greater chance of collecting the funds from a tenant. If a tenant agrees on a date of departure, there is a greater probability that the tenant will leave at that time.

The FED caseload has steadily increased over the last 5 years. From FY07 to FY08 alone, the number of filings increased by 3.6%. Given the current economic climate, it is expected that FED filings will continue to increase in FY09. Additional tools such as mediation are essential to address this rising caseload.

All of the FED cases resolved at mediation in the past year reduced the "bench time" required. If the average length time for a trial is estimated at just 20 minutes, the resolution of FED cases through mediation saved 125 hours of trial time in the first year. As judges, attorneys and litigants become more familiar with mediation and elect to use it more often, even greater efficiencies can be achieved for parties, attorneys and the courts.

² These figures are not final for the calendar year 2008. Additional cases may have been mediated in December for which reports were not yet received.

Appendix C: Presentation Materials

Conclusion

Mediation in FED cases was successfully commenced in 2008. It is anticipated that the volume of mediation will increase in 2009. Mediation is a tool that can help to achieve greater efficiency in the eviction process for parties, attorneys and the courts.

Respectfully Submitted,

Diane E. Kenty

Appendix C: Presentation Materials

**COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE
REPORT OF COMPLETED SESSION
FORCIBLE ENTRY AND DETAINER**

District Court: _____ Docket No. _____
Plaintiff: _____ Plaintiff's Attorney: _____
Defendant: _____ Defendant's Attorney: _____

1. **CASE TYPE:** Forcible Entry and Detainer: Apartment House Mobile Home

2. **MEDIATION SESSION:** First Second

3. **DISPOSITION:**

UNRESOLVED:

The parties request a hearing.

The parties jointly request a continuance until (date) _____.

RESOLVED: (Check all that apply.)

Writ of Possession to issue in seven calendar days after today.

Writ of Possession to issue on (date) _____.

Agreement for continuance until (date) _____ and case will be dismissed on or before that date, provided that the defendant vacates the property.

Agreement for continuance until (date) _____ and case will be dismissed on or before that date, provided that the conditions set forth in the agreement below are met.

OTHER: _____

The parties agree as follows:

IF THE CASE IS RESOLVED, THE PARTIES CONSENT TO ENTRY OF THIS AGREEMENT AS A COURT ORDER WITHOUT FURTHER ACTION.

Agreed by: _____

Plaintiff

Defendant

Plaintiff's Attorney

Defendant's Attorney

Mediator: _____

Date: _____

Appendix C: Presentation Materials

STATE OF MAINE

DISTRICT COURT

Location _____

Docket No. _____

Plaintiff

v.

**SUMMONS, FORCIBLE
ENTRY AND DETAINER**

Defendant
_____ Address

The Plaintiff has begun a forcible entry and detainer action against you in the District Court, which holds sessions at (street address) _____, in the Town/City of _____, County of _____, Maine by which the plaintiff seeks possession of the following real estate or personal property: _____

If you wish to oppose this action, you or your attorney must appear before the District Court, on _____ at _____ (am)(pm). The address of the Court is:

Name and address of court:

If you claim that you own the property, or that some person other than the plaintiff owns the property and you possess or occupy it with the owner's permission, you or your attorney **MUST SERVE A WRITTEN ANSWER** so stating to the court at the above address before the date and time set forth above. You must give a copy of the Answer to the Plaintiff.

The court offers parties an opportunity to be personally involved in resolving disputes through the process of mediation. You may have the option of mediation before your hearing. If you would like to request mediation, please contact the clerk of court in advance to determine if a mediator will be available or can be arranged on the hearing date.

IMPORTANT WARNING

IF YOU FAIL TO APPEAR AT THE COURT AT THE ABOVE STATED TIME, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU IN YOUR ABSENCE GIVING POSSESSION OF THE PROPERTY TO THE PLAINTIFF. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO APPEAR AT THE REQUIRED TIME.

If you believe you have a defense to the Complaint, you may wish to talk to a lawyer. If you feel you cannot afford to pay a fee to a lawyer, you may ask the clerk of court for information as to places where you may seek legal assistance.

(Seal of Court)

Date: _____

(Attorney for) Plaintiff
_____ Address

Clerk

Telephone

CV-034, Rev. 021909.2

Appendix C: Presentation Materials

STATE OF MAINE

County of _____, ss.

On _____ (date), I served the Complaint and Summons upon Defendant _____
by delivering a copy of same at the following
address: _____

- to the above-named Defendant in hand.
- to _____ (name), a person of suitable age and discretion who was then residing at Defendant's usual residence.
- to _____ (name), who is authorized to receive service for Defendant.
- by (describe other manner of service):

Costs of Service:

Service: \$ _____
Travel \$ _____
Postage \$ _____
Other \$ _____

Total \$ _____

Signature

Agency

also state the following: "If you pay the amount of rent due as of the date of this notice before this notice expires, then this notice as it applies to rent arrearage is void." For all residential tenancies at will, a termination notice issued on the ground of rent arrearage must also state: "After this notice expires, if you pay all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually paid by the landlord before the writ of possession issues at the completion of the eviction process, then your tenancy will be reinstated." If the notice states an incorrect rent arrearage the notice can not be held invalid if the landlord can show the error was unintentional.

3. Breach of warranty of habitability as an affirmative defense. In an action brought by a landlord to terminate a rental agreement on the ground that the tenant is in arrears in the payment of rent, the tenant may raise as a defense any alleged violation of the implied warranty and covenant of habitability, provided that the landlord or the landlord's agent has received actual or constructive notice of the alleged violation, and has unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition and the condition was not caused by the tenant or another person acting under the tenant's control. Upon finding that the dwelling unit is not fit for human habitation, the court shall permit the tenant either to terminate the rental agreement without prejudice or to reaffirm the rental agreement, with the court assessing against the tenant an amount equal to the reduced fair rental value of the property for the period during which rent is owed. The reduced amount of rent thus owed must be paid on a pro rata basis, unless the parties agree otherwise, and payments become due at the same intervals as rent for the current rental period. The landlord may not charge the tenant for the full rental value of the property until such time as it is fit for human habitation.

R.S.1954, c. 122, § 2; 1971, c. 322, §§ 2, 3; 1971, c. 544, §§ 46-A, 47; 1977, c. 441; 1979, c. 232; 1979, c. 298; 1981, c. 65; 1981, c. 428, §§ 2 to 4; 1983, c. 398; 1989, c. 284; 1993, c. 202, § 1; 1993, c. 211, § 2; 1995, c. 208, § 1; 1999, c. 248, §§ 1, 2; 2003, c. 296, § 1.

122 M.R.S.A. § 4301 et seq.

§ 6003. Jurisdiction

The District Court shall have jurisdiction of cases of forcible entry and detainer.

The court shall schedule and hold the hearing as soon as practicable, but no later than 10 days after the return day except that the court may grant a continuance for good cause shown. Any defendant requesting a recorded hearing shall file a written answer enumerating all known defenses on or before the return day. R.S.1954, c. 122, § 3; 1955, c. 301; 1959, c. 42, § 2; 1963, c. 402, § 197; 1981, c. 428, § 5; 1989, c. 452, § 1; 1997, c. 151, § 1.

§ 6004. Commencement of action

The process of forcible entry and detainer shall be commenced and service made in the same manner as other civil actions. When the plaintiff lives out of the State and a recognizance is required of him, any person may recognize in his behalf and shall be personally liable.

R.S.1954, c. 122, § 4; 1959, c. 317, § 263.

§ 6004-A. Mediation

The court may, in any residential tenancy under this subchapter, at any time refer the parties to mediation on any issue.

1. Mediated agreement. An agreement reached by the parties through mediation must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

2. No agreement; good faith effort required. When agreement through mediation is not reached on an issue, the court shall determine that the parties made a good faith effort to mediate the issue before proceeding with a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, may dismiss the action or a part of the action, may render a decision or judgment by default, may assess attorney's fees and costs or may impose any other sanction that is appropriate in the circumstances.

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Ch. 709

ENTRY AND DETAINER

14 § 6008

3. Mediation not ordered; consent. The court may not order mediation in cases in which no mediator is available or mediation would delay any hearing in the matter, unless the parties consent to a delay in the proceedings to allow mediation to take place.

4. Mediators provided. The Court Alternative Dispute Resolution Service, established in Title 4, section 18-B, shall provide mediators for mediations under this section.

5. Rules; fees. The Supreme Judicial Court may adopt rules of procedure for actions under this chapter.

2007, c. 246, § 2, eff. Jan. 1, 2008.

§ 6005. Writ of possession; service

When the defendant is defaulted or fails to show sufficient cause, judgment must be rendered against the defendant by the District Court for possession of the premises. Seven calendar days after the judgment is entered, the court shall issue the writ of possession to remove the defendant. The writ may be served by a sheriff or a constable. If at least 3 good faith efforts on 3 different days have been made to serve the defendant, service may be accomplished by both mailing the notice by first-class mail to the defendant's last known address and leaving the writ of possession at the defendant's last and usual place of abode. A writ of possession may not issue in any case in which the ground for termination of the tenancy at will was rent arrearage and the defendant paid the amount necessary to reinstate the tenancy as provided by section 6002.

An additional writ of possession may be issued by the clerk at the request of the plaintiff after issuance of the first writ.

When a writ of possession has been served on the defendant by a constable or sheriff, and the defendant fails to remove himself or his possessions within 48 hours of service by the constable or sheriff, the defendant is deemed a trespasser without right and the defendant's goods and property are considered by law to be abandoned and subject to section 6013.

R.S.1954, c. 122, § 5; 1979, c. 327, § 1; 1981, c. 428, § 6; 1989, c. 452, § 2; 1995, c. 208, § 2; 1997, c. 151, § 2; 1997, c. 336, § 1; 1997, c. 683, § A-6, eff. April 3, 1998; 1999, c. 248, § 3.

§§ 6006, 6007. Repealed. Laws 1995, c. 448, § 1

§ 6008. Appeal

1. Right to appeal. Either party may appeal on questions of law from a judgment to the Superior Court as in other civil actions. Either party may appeal on any issue triable by right by a jury to a trial de novo in the Superior Court as provided in this section. The time for filing an appeal of the judgment of the District Court expires upon the issuance of the writ of possession pursuant to section 6005 or 30 days from the time the judgment is entered, whichever occurs first.

2. Appeal by defendant; record; stay. When the defendant appeals, the defendant shall pay to the plaintiff or, if there is a dispute about the rent, to the District Court, any unpaid portion of the current month's rent or the rent arrearage, whichever is less. The District Court shall promptly transmit the record and any such payments to the Superior Court without waiting for the preparation of a transcript of recorded testimony. The Superior Court may stay the issuance of a writ of possession pending disposition of the appeal.

A. The Superior Court shall condition the granting and continuation of the stay on the defendant's payment of rent for the premises as required by this subsection at the time of appeal and on payment of any rent that has accrued since the filing of the appeal to the plaintiff or, if there is a dispute about the rent, into an escrow account to be administered by the clerk of the Superior Court. Upon application of either party, the Superior Court may authorize payments from the escrow account for appropriate expenses related to the premises. The appeal decision or an agreement of the parties must provide for the disposition of the escrowed rent.

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RULE 80D

MAINE RULES OF CIVIL PROCEDURE

procedure in forcible entry and detainer actions in the District Court and on appeal to the Superior Court and the Law Court, except as otherwise provided in this rule or by statute.

(b) **Summons.** The summons in forcible entry and detainer actions shall bear the signature or facsimile signature of the judge or the clerk, contain the name and address of the court and the names of the parties, be directed to the defendant, state the day when the action is returnable, which shall be not less than 7 days from the date of service of the summons; and shall notify the defendant that in case of defendant's failure to appear and state a defense on the return day, judgment by default will be rendered against the defendant for possession of the premises. The summons shall also notify the defendant that if the return day is on a holiday, the defendant shall appear and state any defense on the day following the holiday.

(c) **Complaint.** The complaint for forcible entry and detainer shall be filed no later than one day before the date of the hearing.

(d) **Defendant's Pleading.** If the defendant claims title in defendant's name or in another person under whom the defendant claims the premises, shall assert such claim by answer filed on or before the return day, and further proceedings in the actions shall be as provided by law. Otherwise the defendant may appear and defend without filing a responsive pleading.

(e) **Time of Hearing.**

(1) **Hearing Date.** All forcible entry and detainer actions shall be in order for trial on the return day.

(2) **Mediation.** At the time set for hearing, the court may refer the parties to mediation pursuant to the process established by Rule 92(f) of these rules. Every settlement resulting from mediation shall be presented to the court in writing for approval as a court order, and the court shall approve reasonable settlements. An approved settlement shall have the force and effect of a judgment and may not be appealed. If no mediator is available, or if mediation efforts fail or mediation proves inappropriate, the court shall hear the matter without undue delay.

(f) **Appeal.**

(1) **Appeal on Questions of Law.** Either party may appeal to the Superior Court and the Law Court on questions of law as in other civil actions.

(2) **Appeal by Jury Trial De Novo.**

(A) **Notice of Appeal and Demand for Jury Trial.** Either party may appeal to the Superior Court by jury trial de novo on any issue so triable of right by filing a notice of appeal as provided in Rule 76D. A party who seeks a jury trial de novo shall include in the notice of appeal a written demand for jury trial and shall file with the notice an affidavit or affidavits meeting the requirements of Rule 56(e) and setting forth specific facts showing that there is a genuine issue of material fact as to which there is a right to trial by jury. Failure to make demand for jury trial with accompanying affidavit or affidavits constitutes a waiver of the right to jury trial, and the appeal shall be on questions of law only, as provided in paragraph (1) of this subdivision.

(B) **Preparation and Transmission of the Record.** The record on appeal shall be prepared in accordance with Rule 76F. The clerk of the division shall transmit the record to the Superior Court within five days of the filing of the notice of appeal, without waiting for a transcript. The clerk of the Superior Court shall docket the appeal on receipt of the record thus transmitted. If a transcript is subsequently received by the clerk of the District Court, it shall be transmitted to the Superior Court immediately and shall be incorporated in the record on appeal by the clerk of the Superior Court.

(3) **Same: Determination on Affidavits.** The appellant may, within ten days after the mailing of the clerk's notice of the docketing of the appeal in the Superior Court, file a counter affidavit or affidavits meeting the requirements of Rule 56(e), together with a brief statement of the grounds of any cross appeal for which notice was timely filed. The court may upon its own motion, or the motion of either party, order that the transcript or relevant portions thereof be incorporated in the record on appeal prior to the court's review of the affidavits and record under this paragraph. The court shall review the affidavits of both parties and the record on appeal, including any transcript or portions thereof ordered to be incorporated as provided in this paragraph, and shall determine whether the appellant's affidavits are adequate and, if so, whether there is a genuine issue of

Bed Bugs: Fact or Fiction?

When most people think of bed bugs, they think of the goodnight cliché "Don't let the bed bugs bite." In reality, these pests do in fact exist.

Bed bugs are small, brownish-red colored insects that can cause significant problems if not taken care of. They feed on the blood of humans and animals, however can survive up to a year without a "blood meal." The name bed bug comes from their habit to live in bed mattresses, and feed on bed occupants at night.

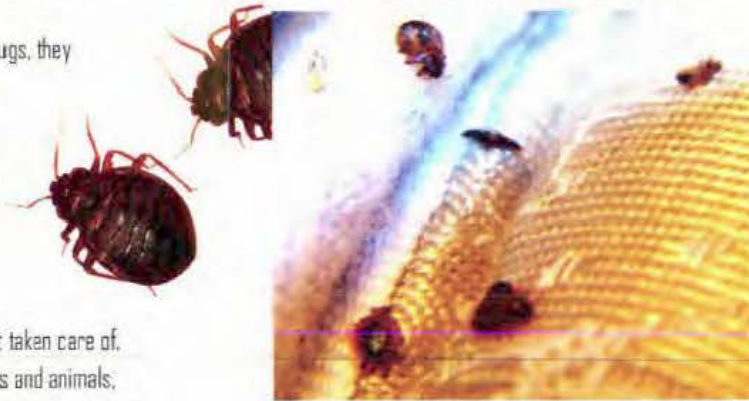
Where Do They Come From?

Bed bugs are present in all countries and on every continent. There was a significant lowering of bed bug infestations in the developed world during the second half of the twentieth century. Recently that trend has been reversed.

Bed bug infestations can start from various sources. Bed bugs are easily transported into buildings on furniture or other personal belongings.



Bed Bug Identification



THE SIZE OF A BED BUG COMPARED TO A PENNY.



A BED BUG NYMPH

A BED BUG ADULT AFTER A BLOOD MEAL



Adult bed bugs are brown to reddish-brown, oval-shaped, flattened, and about 3/16 to 3/8 inch long. Their flat shape enables them to readily hide in cracks and crevices. The body becomes more elongated, swollen, and dark red after a blood meal.

Bed Bug Signs

- Reddish-brown dots on linens
- Spots on mattresses
- Blood spots and droppings
- Red, itchy welts

Where They Live

- Mattresses, linens, upholstery
- Furniture crevices
- Behind Wood Trim
- Cracks and Crevices
- Behind Wallpaper or Picture Frames
- Luggage



What You Should Do

If you think you have bed bugs, contact a pest professional immediately. Atlantic Pest Solutions will identify and inspect the area, and put together a treatment plan suited to meet your needs. We have several resources available to educate, identify, and solve the problem.

Your Guide To **BED BUGS**



COMPLETELY REVISED AND UPDATED

About the Author...

Dr. Michael F. Potter is a professor and urban entomologist at the University of Kentucky. He spends much of his time working with bed bugs and educating people about them. He received his B.S. degree in entomology from Cornell University, and his M.S. and Ph.D. in entomology with a specialization in integrated pest management from the University of Arizona. Before joining the University of Kentucky in 1991, Potter worked in both the pest management and agricultural industry.



Understanding **AND CONTROL**

After vanishing for a half century, bed bugs are back with a vengeance. Use this hand-out to educate employees and customers before doing battle.

BY MICHAEL F. POTTER

Most householders and business owners of this generation have never seen a bed bug. Until recently, they also were a rarity among pest management professionals. Bed bug infestations were common in the United States before World War II. But with improvements in hygiene, and especially the widespread use of DDT during the 1940s and '50s, the bugs all but vanished. The pests remained prevalent, however, in other regions of the world including Asia, Africa, and Eastern Europe. In recent years, bed bugs have also made a comeback in the U.S. They are increasingly being encountered in homes, apartments, hotels, motels, health care facilities, dormitories, shelters, schools, and modes of transport. Other places where bed bugs sometimes appear include movie theaters, laundries/dry cleaners, furniture rental outlets, and



Adult bed bugs, young nymphs and eggs. Photo was taken just after feeding.

PCT Media Group

This hand-out was published by PCT magazine, a trade magazine that is distributed monthly to structural pest management professionals throughout the United States. PCT magazine is published by GIE Media, Richfield, Ohio.



Your Guide To **BED BUGS**

BITES & CONCERNS

Bed bugs usually bite people at night while they are sleeping. They feed by piercing the skin with an elongated beak through which they withdraw blood. Engorgement takes about three to 10 minutes, yet the person seldom knows they are being bitten. Bed bugs normally do not reside on people like head or body lice — immediately after feeding they crawl off and reside elsewhere to digest their meal. Symptoms after being bitten vary with the individual. Many develop an itchy red welt or localized swelling within a day or so of the bite. Others have little or no reaction, and in some people the reaction is delayed. Unlike flea bites that occur mainly around the ankles, bed bugs feed on any skin exposed while sleeping (face, neck, shoulders, back, arms, legs, etc.) The welts and itching are often wrongly attributed to other causes, such as mosquitoes. For these reasons, infestations may go a long time unnoticed, and can become quite large before being detected. The likelihood of bed bugs increases if the affected individual has been traveling, or had acquired used beds or furnishings before symptoms started to appear. Bed bugs also are suspect if you wake up with itchy bites you did not have when you went to sleep. Conversely, it is important to recog-



nize that not all bites or bite-like reactions are due to bed bugs. Confirmation requires finding and identifying the bugs themselves, which often requires the help of a professional.

A common concern with bed bugs is whether they transmit diseases. Although bed bugs can harbor pathogens in and on their bodies, transmission to humans is considered unlikely. Their medical significance is chiefly limited to the itching and inflammation from their bites. Antihistamines and corticosteroids may be prescribed to reduce allergic reactions, and antiseptic or antibiotic ointments to prevent infection. Though not known to carry diseases, bed bugs can severely reduce quality of life by causing discomfort, sleeplessness, anxiety, and embarrassment.

(Left) A bed bug initiating feeding. (Above) Engorged bed bugs finishing their meal. Disease transmission by bed bugs is considered unlikely.

Your Guide To **BED BUGS**

Bed bugs are active mainly at night. During the daytime, they prefer to hide close to where people sleep. Their flattened bodies enable them to fit into tiny crevices — especially those associated with mattresses, box springs, bed frames and headboards.

office buildings. Immigration and international travel have undoubtedly contributed to the resurgence of bed bugs in the U.S. Changes in modern pest control practice — and less effective bed bug pesticides — are other factors suspected for the recurrence.

DESCRIPTION AND HABITS. Bed bugs are small, brownish, flattened insects that feed solely on the blood of animals. The common bed bug, *Cimex lectularius*, is the species most adapted to living with humans. It has done so since ancient times. Bed bugs are mentioned in medieval European texts and in classical Greek writings back to the time of Aristotle. Other bed bug species prefer to feed on wild hosts, especially bats and birds.

Adult bed bugs are about 3/16-inch long and reddish-brown, with oval, flattened bodies (see photo, below right). They are sometimes mistaken for ticks or cock roaches. The immatures (nymphs) resemble the adults, but are smaller and lighter in color. Bed bugs do not fly, but can move rapidly over floors, walls, ceilings and other surfaces. Female bed bugs lay their eggs in secluded areas, depositing up to five a day and 500 during a lifetime. The eggs are tiny, whitish, and hard to see on most surfaces without magnification (individual eggs are about the size of a dust speck). When first laid, the eggs are sticky, causing them to adhere to substrates. Newly hatched nymphs are straw-colored and no bigger than a pinhead. As they grow, they molt (shed their skin) five times before reaching maturity. A blood meal is needed between each successive molt. Under favorable conditions (70-80°F), the bugs can complete development in as little as a month, producing three or more generations per year. Cooler temperatures or limited access to blood extends the development time. Bed bugs are resilient. Nymphs can survive months without feeding and the adults for more than a year. Infestations therefore are unlikely to diminish by leaving premises unoccupied. Although *C. lectularius* prefers feeding

on humans, it will also bite other warm-blooded animals, including dogs, cats, birds and rodents.

Bed bugs are active mainly at night. During the daytime, they prefer to hide close to where people sleep. Their flattened bodies enable them to fit into tiny crevices — especially those associated with mattresses, box springs, bed frames and headboards. Bed bugs do not have nests like ants or bees, but do tend to congregate in habitual hiding places. Characteristically, these areas are marked by dark spotting and staining, which is the dried excrement of the bugs. Also present will be eggs and eggshells; molted skins of maturing nymphs and the bugs themselves. Another telltale though less frequent sign is rusty or reddish blood smears on bed sheets or mattresses from crushing an engorged bed bug. Heavy infestations may have a “buggy” smell, but the odor is seldom apparent and should not be relied upon for detection.

Bed bugs prefer to hide close to where they feed. However, if necessary, they will crawl several feet to obtain a blood meal. Initial infestations tend to be around beds, but the bugs eventually may become scattered throughout the bedroom, occupying any crevice or protected location. They also may spread to adjacent rooms or apartments.

HOW INFESTATIONS BEGIN. It often seems that bed bugs arise from nowhere. The bugs are efficient hitchhikers



(Right) An adult bed bug is slightly smaller than an apple seed.

Your Guide To **BED BUGS**



Bed bugs often congregate along the seams of mattresses.



and are usually transported in luggage, clothing, beds, furniture, and other items. This is a particular problem for hotels, motels and apartments, where turnover of occupants is constant. Bed bugs are small, cryptic and agile, escaping detection after crawling into suitcases, boxes and belongings. The eggs are especially tiny and are usually overlooked. Acquiring secondhand beds, couches and furniture is another way that the bugs are transported into previously non-infested dwellings. Bed bugs also can be carried in on a person's clothing or shoes, resulting in an infestation.

Once bed bugs are introduced, they often spread throughout a building. The bugs can travel from room to room or floor to floor either by crawling or via a person. Unlike cockroaches that feed on filth, the level of cleanliness has little to do with most bed bug infestations. Pristine homes, hotels and apartments have plenty of hiding places and an abundance of warm-blooded hosts. Thus,

they are almost as vulnerable to infestation as are places of squalor.

When bed bug-like insects are found, it's important to consider whether bats, swallows, chimney swifts, pigeons or other wild hosts are involved. Although similar in appearance, species of bed bugs that normally feed on bats and birds can be differentiated from those that prefer humans. Entomologists and knowledgeable pest control firms can make this determination.

WHERE THEY HIDE. Bed bugs can live in almost any crevice or protected location. The most common place to find them is the bed. Bed bugs often hide within seams, tufts and crevices of the mattress, box spring, bed frame and headboard. A thorough inspection requires dismantling the bed, and standing the components on edge so that upper and lower surfaces can be examined. Things to look for are the bugs themselves, and the light-brown, molted skins of the nymphs. Dark spots of dried bed bug excrement are often present along mattress seams or wherever

the bugs have resided. Box springs afford many places for bed bugs to hide, especially underneath where the fabric is stapled to the wooden frame. Oftentimes the underlying gauze dust cover must be removed to gain access for inspection and possible treatment. Successful treatment of mattresses and box springs is difficult, however, and infested ones may need to be discarded or encased in a protective cover. Cracks and crevices of bed frames should be examined, especially if the frame is wood. (Bed bugs have an affinity for wood and fabric more so than metal or plastic). Headboards secured to walls should also be removed and inspected. In hotels and motels, the area behind the headboard is often the first place that the bugs become established. Bed bugs also hide among items stored under beds.

Many areas besides beds, however, can harbor bed bugs. Upholstered chairs and sofas should be examined above and beneath, especially seams, tufts, skirts and crevices. Sofas can be major bed bug hotspots when used for sleeping. Like beds, they can be difficult to treat and may need to be discarded. Nightstands and dressers should be emptied and examined inside and out, then tipped over to inspect the woodwork underneath. Oftentimes the bugs will be hiding in cracks, corners, and recesses. Other common places to find bed bugs include:

Once bed bugs are introduced, they often spread throughout a building. The bugs can travel from room to room or floor to floor either by crawling or via a person.

Your Guide To **BED BUGS**

along and under the edge of wall-to-wall carpeting (especially behind beds and furniture); cracks in wood molding; ceiling-wall junctures; behind wall-mounted picture frames, mirrors, switch plates and outlets; under loose wallpaper; amongst clothing and clutter stored in closets; and inside clocks, phones, televisions and smoke detectors.

Bed bugs tend to congregate in certain areas, but it is common to find a single bug or some eggs scattered here and there. Persistence and a bright flashlight are requisites for success. A thorough inspection and treatment may take up to several hours.

CONTROLLING INFESTATIONS. Bed bugs are challenging pests to control. Since they can hide in so many places, treatments must be thorough and elimination is not always a certainty. In most cases, it will be prudent to enlist the services of a professional. Experienced pest control firms know where to look for bed bugs, and have an assortment of management tools at their disposal.

Owners and occupants have an important role and will need to assist the professional. Affording access for inspection and treatment is crucial, and excess clutter will have to be

removed. Belongings strewn about rooms afford many places for bed bugs to hide, and impedes inspection and treatment. Some pest control firms want furniture moved away from walls and mattresses and box springs stood on edge before they arrive; others prefer to inspect first and move these items themselves. Since bed bugs can disperse throughout a building, it often will be necessary to inspect adjoining rooms and apartments.

Infested and infestation-prone bedding and garments will need to be bagged and laundered (320°F minimum) since these items cannot be treated with insecticides. Another option is to place clothing, toys, shoes, backpacks, etc., in a clothes dryer set at medium to high heat for 10 to 20 minutes. This will kill all bed bug life stages and can be done alone or in conjunction with laundering. Items which cannot be put in a washer or dryer can sometimes be de-infested by wrapping in plastic and placing them outdoors in a hot, sunny location for at least a day. If this method is attempted, packing fewer items per bag makes it harder for the bugs to find cooler places to hide.



Bed bugs are often found within the seams, tufts and folds of couches, as well as on the underside of box springs and along the seams of mattresses. The blackish spots are excrement.

Bed Bug Fact Sheet

Your Guide To **BED BUGS**

Monitoring with a thermometer is prudent, with a target internal temperature of at least 120°F. Bed bugs also will succumb to cold temperatures below 32°F, but the freezing temperatures must be maintained for several days. Consequently, throughout much of the country, heating tends to be a faster, more reliable option than chilling. Attempts to rid an entire dwelling of bed bugs by raising or lowering the thermostat will be unsuccessful, although some companies are having success using supplemental heaters.

General housecleaning measures, such as vacuuming floors and surfaces, seldom reaches the places where bed bugs hide. Targeted vacuuming of infested harborages, however, can help remove some of the bugs before treatment with insecticides. Bed bugs and especially the eggs can be difficult to dislodge. Optimum results will be

achieved by moving and scraping the end of the suction wand along infested areas such as seams and fabric folds of beds and sofas, and the perimeter edge of wall-to-wall carpets. Afterward, dispose of the vacuum contents in a sealed trash bag. Some pest control firms also employ commercial steamers or rapid freezing equipment to treat areas where bed bugs are found or suspected. Used correctly, they kill both bugs and eggs on contact. Neither vacuuming nor steaming, however, affords residual protection against bed bugs which may have been missed.

At times it may be necessary to throw out infested items, especially beds and upholstered furniture. Knowledgeable pest control firms are able to advise clients on what can stay and what should go. When infested items are discarded, bagging or wrapping them prevents dislodgement of bugs en route to the Dumpster®.

THROW OUT THE BED

Eliminating bed bugs from beds can be challenging. If there are holes or tears in the fabric, the bugs and eggs may be inside, as well as outside. There also are restrictions on how beds can be treated with pesticides. For these reasons, companies sometimes recommend that beds be discarded, especially when heavily infested or in poor condition. Another option is to encase both the mattress and box spring in a protective cover, available through retail outlets or pest control firms. Once the cover is installed and zipped shut, any bugs which happen to be inside are entombed and eventually will die. Encasements also help protect



newly purchased beds, and make it easier to spot and destroy any bugs residing on the outer surface during subsequent services. Encasements will not, however, keep bed bugs from crawling onto a bed and biting a sleeping person. Some companies treat seams, tufts, and crevices of bed components with insecticides, but they usually will not spray the entire mattress surface. They also will not spray bed sheets, blankets or clothing, which should be laundered. Vacuuming and steaming further help to eliminate bugs and eggs from beds, but afford no residual protection and may not kill bed bugs hidden inside the box spring or mattress. Fumigation is another way to de-infest beds and hard-to-treat items, but the procedure is not always available. In extreme cases, entire buildings have been fumigated for bed bugs. The service is costly though, and involves covering the building in a tarp and injecting a lethal gas. Some companies also deinfest such items with specialized heating equipment.

Discarded mattresses and sofas are likely sources of bed bugs. Bringing them indoors is a risky practice.

Your Guide To **BED BUGS**



(Right) Bed bugs often hide along the edges of carpeting. A pest management professional performing an inspection. (Above) A close up of bed bug eggs, nymphs and adults.


While the aforementioned measures are helpful, insecticides are important for bed bug elimination. Professionals treat using a variety of low-odor sprays, dusts and aerosols. Baits designed to control ants and cockroaches are ineffective. Application entails treating all areas where the bugs are discovered or tend to crawl or hide. This may take hours of effort and follow-up visits are usually required.

Some bed bug species are parasites of bats or birds, and may bite people if the wild hosts are no longer available. If bat bugs or bird bugs are involved, roosting and nesting sites should be the primary focus of treatment and the animals excluded from the building.

PREVENTING INFESTATIONS. Avoiding problems with bed bugs is most challenging in apartments, hotels and other places where there are ongoing opportunities for the bugs to be introduced. Preventative inspection by tenants, in-house personnel, or pest control firms is the best way to uncover infestations in their initial stages when they are easiest to control. Household owners should be vigilant when acquiring used furnishings, especially beds and couches. Curbside items should be avoided, and secondhand articles should be examined closely before being brought into the home, and perhaps laundered or placed in a dryer.

Concerned travelers may want to get in the habit of checking their bed for signs of bed bugs, a common

practice in the past. This would entail examining the bed sheets and upper and lower seams of the mattress and box spring, especially along the head of the bed. Some professionals also suggest removal and examination behind the headboard, a frequent hiding place for the bugs in hotel rooms. Headboards are heavy and cumbersome, however, and untrained persons should not attempt removal themselves. If bed bugs are discovered, travelers can request another room, preferably in another area of the building. Concerned travelers may also want to elevate suitcases off the floor on a luggage stand, tabletop or other hard surface. Inspecting or vacuuming luggage upon arriving home is less useful since it's hard to spot bed bugs inside a suitcase.

The incidence of bed bugs in the United States is increasing to the point where vigilance by all is a prudent practice. Familiarity can help to avoid infestation, or at least prompt earlier intervention by a professional. 

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For More Information . . .

Pest management professionals are encouraged to use this brochure as a hand-out to customers who have questions about treating for bed bugs. For additional quantities, contact PCT magazine at 890/456-0707.

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New Jersey Bed Bug Law

NEW JERSEY STATUTE: GROUNDS FOR LEGAL EVICTION

2A:18-61.1 Grounds for removal of tenants.

2. No lessee or tenant or the assigns, under-tenants or legal representatives of such lessee or tenant may be removed by the Superior Court from any house, building, mobile home or land in a mobile home park or tenement leased for residential purposes, other than (1) owner-occupied premises with not more than two rental units or a hotel, motel or other guest house or part thereof rented to a transient guest or seasonal tenant; (2) a dwelling unit which is held in trust on behalf of a member of the immediate family of the person or persons establishing the trust, provided that the member of the immediate family on whose behalf the trust is established permanently occupies the unit; and (3) a dwelling unit which is permanently occupied by a member of the immediate family of the owner of that unit, provided, however, that exception (2) or (3) shall apply only in cases in which the member of the immediate family has a developmental disability, except upon establishment of one of the following grounds as good cause:

a. The person fails to pay rent due and owing under the lease whether the same be oral or written; provided that, for the purposes of this section, any portion of rent unpaid by a tenant to a landlord but utilized by the tenant to continue utility service to the rental premises after receiving notice from an electric, gas, water or sewer public utility that such service was in danger of discontinuance based on nonpayment by the landlord, shall not be deemed to be unpaid rent.

b. The person has continued to be, after written notice to cease, so disorderly as to destroy the peace and quiet of the occupants or other tenants living in said house or neighborhood.

c. The person has willfully or by reason of gross negligence caused or allowed destruction, damage or injury to the premises.

d. The person has continued, after written notice to cease, to substantially violate or breach any of the landlord's rules and regulations governing said premises, provided such rules and regulations are reasonable and have been accepted in writing by the tenant or made a part of the lease at the beginning of the lease term.

e. (1) The person has continued, after written notice to cease, to substantially violate or breach any of the covenants or agreements contained in the lease for the premises where a right of reentry is reserved to the landlord in the lease for a violation of such covenant or agreement, provided that such covenant or agreement is reasonable and was contained in the lease at the beginning of the lease term.

(2) In public housing under the control of a public housing authority or redevelopment agency, the person has substantially violated or breached any of the covenants or agreements contained in the lease for the premises pertaining to illegal uses of

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controlled dangerous substances, or other illegal activities, whether or not a right of reentry is reserved to the landlord in the lease for a violation of such covenant or agreement, provided that such covenant or agreement conforms to federal guidelines regarding such lease provisions and was contained in the lease at the beginning of the lease term.

f. The person has failed to pay rent after a valid notice to quit and notice of increase of said rent, provided the increase in rent is not unconscionable and complies with any and all other laws or municipal ordinances governing rent increases.

g. The landlord or owner (1) seeks to permanently board up or demolish the premises because he has been cited by local or State housing inspectors for substantial violations affecting the health and safety of tenants and it is economically unfeasible for the owner to eliminate the violations; (2) seeks to comply with local or State housing inspectors who have cited him for substantial violations affecting the health and safety of tenants and it is unfeasible to so comply without removing the tenant; simultaneously with service of notice of **eviction** pursuant to this clause, the landlord shall notify the Department of Community Affairs of the intention to institute proceedings and shall provide the department with such other information as it may require pursuant to rules and regulations. The department shall inform all parties and the court of its view with respect to the feasibility of compliance without removal of the tenant and may in its discretion appear and present evidence; (3) seeks to correct an illegal occupancy because he has been cited by local or State housing inspectors or zoning officers and it is unfeasible to correct such illegal occupancy without removing the tenant; or (4) is a governmental agency which seeks to permanently retire the premises from the rental market pursuant to a redevelopment or land clearance plan in a blighted area. In those cases where the tenant is being removed for any reason specified in this subsection, no warrant for possession shall be issued until P.L.1967, c.79 (C.52:31B-1 et seq.) and P.L.1971, c.362 (C.20:4-1 et seq.) have been complied with.

h. The owner seeks to retire permanently the residential building or the mobile home park from residential use or use as a mobile home park, provided this subsection shall not apply to circumstances covered under subsection g. of this section.

i. The landlord or owner proposes, at the termination of a lease, reasonable changes of substance in the terms and conditions of the lease, including specifically any change in the term thereof, which the tenant, after written notice, refuses to accept; provided that in cases where a tenant has received a notice of termination pursuant to subsection g. of section 3 of P.L.1974, c.49 (C.2A:18-61.2), or has a protected tenancy status pursuant to section 9 of the "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981, c.226 (C.2A:18-61.30), or pursuant to the "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), the landlord or owner shall have the burden of proving that any change in the terms and conditions of the lease, rental or regulations both is reasonable and does not substantially reduce the rights and privileges to which the tenant was entitled prior to the conversion.

j. The person, after written notice to cease, has habitually and without legal justification failed to pay rent which is due and owing.

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k. The landlord or owner of the building or mobile home park is converting from the rental market to a condominium, cooperative or fee simple ownership of two or more dwelling units or park sites, except as hereinafter provided in subsection l. of this section. Where the tenant is being removed pursuant to this subsection, no warrant for possession shall be issued until this act has been complied with. No action for possession shall be brought pursuant to this subsection against a senior citizen tenant or disabled tenant with protected tenancy status pursuant to the "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981, c.226 (C.2A:18-61.22 et al.), or against a qualified tenant under the "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), as long as the agency has not terminated the protected tenancy status or the protected tenancy period has not expired.

l. (1) The owner of a building or mobile home park, which is constructed as or being converted to a condominium, cooperative or fee simple ownership, seeks to evict a tenant or sublessee whose initial tenancy began after the master deed, agreement establishing the cooperative or subdivision plat was recorded, because the owner has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing. However, no action shall be brought against a tenant under paragraph (1) of this subsection unless the tenant was given a statement in accordance with section 6 of P.L.1975, c.311 (C.2A:18-61.9);

(2) The owner of three or less condominium or cooperative units seeks to evict a tenant whose initial tenancy began by rental from an owner of three or less units after the master deed or agreement establishing the cooperative was recorded, because the owner seeks to personally occupy the unit, or has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing;

(3) The owner of a building of three residential units or less seeks to personally occupy a unit, or has contracted to sell the residential unit to a buyer who wishes to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing.

m. The landlord or owner conditioned the tenancy upon and in consideration for the tenant's employment by the landlord or owner as superintendent, janitor or in some other capacity and such employment is being terminated.

n. The person has been convicted of or pleaded guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al. involving the use, possession, manufacture, dispensing or distribution of a controlled dangerous substance, controlled dangerous substance analog or drug paraphernalia within the meaning of that act within or upon the leased premises or the building or complex of buildings and land appurtenant thereto, or the mobile home park, in which those premises are located, and has not in connection with his sentence for that offense either (1) successfully completed or (2) been admitted to and continued upon probation while completing, a drug rehabilitation program pursuant to N.J.S.2C:35-14; or, being the tenant or lessee of such leased premises, knowingly harbors or harbored therein a person who has been so convicted or has so pleaded, or otherwise permits or permitted such a person to

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occupy those premises for residential purposes, whether continuously or intermittently, except that this subsection shall not apply to a person harboring or permitting a juvenile to occupy the premises if the juvenile has been adjudicated delinquent upon the basis of an act which if committed by an adult would constitute the offense of use or possession under the said act. No action for removal may be brought pursuant to this subsection more than two years after the date of the adjudication or conviction or more than two years after the person's release from incarceration whichever is the later.

o. The person has been convicted of or pleaded guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault, or terroristic threats against the landlord, a member of the landlord's family or an employee of the landlord; or, being the tenant or lessee of such leased premises, knowingly harbors or harbored therein a person who has been so convicted or has so pleaded, or otherwise permits or permitted such a person to occupy those premises for residential purposes, whether continuously or intermittently. No action for removal may be brought pursuant to this subsection more than two years after the adjudication or conviction or more than two years after the person's release from incarceration whichever is the later.

p. The person has been found, by a preponderance of the evidence, liable in a civil action for removal commenced under this act for an offense under N.J.S.2C:20-1 et al. involving theft of property located on the leased premises from the landlord, the leased premises or other tenants residing in the leased premises, or N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault or terroristic threats against the landlord, a member of the landlord's family or an employee of the landlord, or under the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al., involving the use, possession, manufacture, dispensing or distribution of a controlled dangerous substance, controlled dangerous substance analog or drug paraphernalia within the meaning of that act within or upon the leased premises or the building or complex of buildings and land appurtenant thereto, or the mobile home park, in which those premises are located, and has not in connection with his sentence for that offense either (1) successfully completed or (2) been admitted to and continued upon probation while completing a drug rehabilitation program pursuant to N.J.S.2C:35-14; or, being the tenant or lessee of such leased premises, knowingly harbors or harbored therein a person who committed such an offense, or otherwise permits or permitted such a person to occupy those premises for residential purposes, whether continuously or intermittently, except that this subsection shall not apply to a person who harbors or permits a juvenile to occupy the premises if the juvenile has been adjudicated delinquent upon the basis of an act which if committed by an adult would constitute the offense of use or possession under the said "Comprehensive Drug Reform Act of 1987."

q. The person has been convicted of or pleaded guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under N.J.S.2C:20-1 et al. involving theft of property from the landlord, the leased premises or other tenants residing in the same building or complex; or, being the tenant or lessee of such leased premises, knowingly harbors therein a person who has been so convicted or has so pleaded, or otherwise permits such a person to occupy those premises for residential purposes, whether continuously or intermittently.

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For purposes of this section, (1) "developmental disability" means any disability which is defined as such pursuant to section 3 of P.L.1977, c.82 (C.30:6D-3); (2) "member of the immediate family" means a person's spouse, parent, child or sibling, or a spouse, parent, child or sibling of any of them; and (3) "permanently" occupies or occupied means that the occupant maintains no other domicile at which the occupant votes, pays rent or property taxes or at which rent or property taxes are paid on the occupant's behalf.

L.1974,c.49,s.2; amended 1975, c.311, s.1; 1981, c.8, s.1; 1981, c.226, s.13; 1989, c.294, s.1;1991, c.91, s.68; 1991, c.307; 1991, c.509, s.19; 1993, c.342, s.1; 1995, c.269; 1996, c.131; 1997, c.228, s.1; 2000, c.113, s.3.

Source: New Jersey State Legislature Statutes online database.

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Appendix D:
Proposals Agreed To

**LANDLORD TENANT WORKING GROUP:
DRAFT PROPOSED LEGISLATION:
Unanimous Recommendations for Statutory Changes**

Sec. 1. 14 MRSA §6001 is amended to read:

14 §6001. Availability of remedy

1. Persons against whom process may be maintained. Process of forcible entry and detainer may be maintained against a disseisor who has not acquired any claim by possession and improvement; against a tenant holding under a written lease or contract or person holding under such a tenant; against a tenant where the occupancy of the premises is incidental to the employment of a tenant; at the expiration or forfeiture of the term, without notice, if commenced within 7 days from the expiration or forfeiture of the term; against a tenant at will, whose tenancy has been terminated as provided in section 6002; and against mobile home owners and tenants pursuant to Title 10, chapter 951, subchapter VI. When there are multiple occupants of an apartment or residence, the process of forcible entry and detainer is effective against all occupants if the plaintiff names as parties "all other occupants" together with all adult individuals whose names appear on the lease or rental agreement for the premises or whose tenancy the plaintiff has acknowledged by acceptance of rent or otherwise.

1-A. Foreclosure. A tenancy in a building in which a foreclosure action brought pursuant to either section 6203-A or 6321 is pending or in which a foreclosure judgment has been entered, a bona fide tenancy may only be terminated pursuant to the provisions of sections 701-704, Title VII of Pub. Law 111-22, the federal Protecting Tenants at Foreclosure Act of 2009.

2. Persons who may not maintain process. The process of forcible entry and detainer may not be maintained against a tenant by a 3rd party lessee, grantee, assignee or donee of the tenant's premises, unless a tenant at will has received notice of termination in accordance with section 6002 by either the grantor or the grantee of the conveyance.

3. Presumption of retaliation. In any action of forcible entry and detainer there shall be a rebuttable presumption that the action was commenced in retaliation against the tenant if, within 6 months prior to the commencement of the action, the tenant has:

- A. Asserted his rights pursuant to section 6021;
- B. Complained as an individual, or a complaint has been made in that individual's behalf, in good faith, of conditions affecting that individual's dwelling unit which may constitute a violation of a building, housing, sanitary or other code, ordinance, regulation or statute, presently or hereafter adopted, to a body charged with enforcement of that code, ordinance, regulation or statute, or such a body has filed a notice or complaint of such a violation;
- C. Complained in writing or made a written request, in good faith, to the landlord or the landlord's agent to make repairs on the premises as required by any applicable building,

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housing or sanitary code, or by section 6021, or as required by the rental agreement between the parties; or

D.

E. . Filed, in good faith, a housing complaint with the Maine Human Rights Commission or filed, in good faith, a fair housing complaint with The United States Department of Housing & Urban Development concerning acts affecting that individual's tenancy.

No writ of possession may issue in the absence of rebuttal of the presumption of retaliation.

4. Membership in tenants' organization. No writ of possession may issue when the tenant proves that the action of forcible entry and detainer was commenced in retaliation for the tenant's membership in an organization concerned with landlord-tenant relationships.

5. Affirmative defense. A tenant may raise the affirmative defense of failure of the landlord to provide the tenant with a reasonable accommodation pursuant to Title 5, section 4551, et seq. or the federal Fair Housing Act, 42 U.S.C. Section 3601 et seq. If the court determines that the landlord has a duty to offer a reasonable accommodation and has failed to do so, then the court shall deny the forcible entry and detainer and not grant possession to the landlord. If, however, the court determines that the landlord is otherwise entitled to possession and either has no duty to offer a reasonable accommodation or has, in fact, offered a reasonable accommodation, then the court shall grant the forcible entry and detainer.

Sec. 2. 14 MRSA §6002, first paragraph is amended to read:

§6002. Tenancy at will; buildings on land of another

Tenancies at will must be terminated by either party by a minimum of 30 days' notice, except as provided in subsection 2, in writing for that purpose given to the other party, but if the landlord or the landlord's agent has made at least 3 good faith efforts to serve the tenant, that service may be accomplished by both mailing the notice by first class mail to the tenant's last known address and by leaving the notice at the tenant's last and usual place of abode. In cases when the tenant has paid rent through the date when a 30-day notice would expire, the notice must expire on or after the date through which the rent has been paid. Either party may waive in writing the 30 days' notice at the time the notice is given, and at no other time prior to the giving of the notice. A termination based on a 30-day notice is not affected by the receipt of money, whether previously owed or for current use and occupation, until the date a writ of possession is issued against the tenant during the period of actual occupancy after receipt of the notice. When the tenancy is terminated, the tenant is liable to the process of forcible entry and detainer without further notice and without proof of any relation of landlord and tenant unless the tenant has paid, after service of the notice, rent that accrued after the termination of the tenancy. These provisions apply to tenancies of buildings erected on land of another party. Termination of the tenancy is deemed to occur at the expiration of the time fixed in the notice. A 30-day notice under this paragraph and a 7-day notice under subsection 2 may be combined in one notice to the tenant.

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All notices to terminate shall advise the tenant that the tenant has the right to contest the termination in court. Failure to include this language in the notice to terminate shall not be grounds to dismiss a forcible entry and detainer action except that if the landlord fails to include this language in a notice to terminate, and the tenant does not appear at the court hearing scheduled in any forcible entry and detainer arising from said notice to terminate, the landlord's failure to include the above language in the notice to terminate shall constitute sufficient grounds to set aside any default judgment entered against the tenant for failure to appear at the court hearing. This provision shall not limit the right of any tenant to raise as a defense in any action for forcible entry and detainer the landlord's failure to include language in the notice to terminate as required by any lease agreement or any federal or state statutes or regulations affecting the tenancy.

Sec. 3. 14 MRSA §6010-A, subsection 1 is amended to read:

1. Scope of section. If a tenant unjustifiably moves from the premises prior to the effective date for termination of his tenancy and defaults in payment of rent, or if the tenant is removed for failure to pay rent or any other breach of a lease or tenancy at will agreement, the landlord may recover rent and damages except amounts which he could mitigate in accordance with this section, unless he has expressly agreed to accept a surrender of the premises and end the tenant's liability. Except as the context may indicate otherwise, this section applies to the liability of a tenant under a lease or tenancy at will agreement, ~~a periodic tenant~~ or an assignee of either.

Sec. 4. 14 MRSA §6010-A, subsection 4 is amended to read:

4. Acts privileged in mitigation of rent or damages. The following acts by the landlord shall not defeat his right to recover rent and damages and shall not constitute an acceptance of surrender of the premises:

- A. Entry, with or without notice, for the purpose of inspecting, preserving, repairing, remodeling and showing the premises;
- B. Rentering the premises or a part of the premises, with or without notice, with rent applied against the damages caused by the original tenant and in reduction of rent accruing under the original lease or tenancy at will agreement;
- C. Use of the premises by the landlord until such time as reentering at a reasonable rent is practical, not to exceed one year, if the landlord gives prompt written notice to the tenant that the landlord is using the premises pursuant to this section and that he will credit the tenant with the reasonable value of the use of the premises to the landlord for such a period; and
- D. Any other act which is reasonably subject to interpretation as being in mitigation of rent or damages and which does not unequivocally demonstrate an intent to release the defaulting tenant.

Sec. 5. 14 MRSA §6013 is amended to read:

§6013. Property unclaimed by tenant

Any personal property with a total value of \$750 or more that remains in the rental unit after the issuance of a writ of possession or that is abandoned or unclaimed by a tenant

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following the tenant's vacating the rental unit must be disposed of ~~according to Title 33, chapter 41~~ as follows.

1. The landlord shall place in storage in a safe, dry, secured location any personal property with a total value of less than \$750 that is abandoned or unclaimed by a tenant following the tenant's vacating the rental unit.
2. The landlord shall send written notice by first class mail with proof of mailing to the last known address of the tenant concerning the landlord's intent to dispose of the unclaimed property. The notice must include an itemized list of the items and containers of items of property unclaimed and advise the tenant that if the tenant does not respond to the notice within 14 days the landlord may dispose of the property as set forth in subsection 5.
3. If the tenant claims the property within 14 days after the notice is sent, the landlord shall release the personal property to the tenant and may not condition release of the personal property to the tenant upon payment of any fee or any other amount that may be owed to the landlord by the tenant.
4. If the tenant responds to the notice sent pursuant to subsection 2, the landlord shall continue to store the property for at least 40 24 days after the landlord sends to the tenant the notice described in subsection 2 the tenant's response to allow the tenant time to take possession of the property.
5. If the tenant does not claim the personal property within 14 days after the notice described in subsection 2 is mailed, the ~~The~~ landlord may condition the release of the property to the tenant upon the tenant's payment of all rental arrearages, damages and costs of storage. If the property remains unclaimed after the ~~44th~~ 24th day after notice described in subsection 2 has been sent or after the 10th day after the tenant claims the property, the landlord may sell the property for a reasonable fair market price and apply all proceeds to rental arrearages, damages and costs of storage and sale. All remaining balances must then be forwarded to the Treasurer of State.

Sec. 5. 14 MRSA §6023 is amended to read:

§6023. Agency

Any person authorized to enter into a residential ~~rental agreement~~ lease or tenancy at will on behalf of the owner or owners of the premises shall be deemed to be the owner's agent for purposes of service of process and receiving and receipting for notices and demands.

Sec. 6. 14 MRSA §6024 is amended to read:

§6024. Utilities in common areas

No landlord may enter into a lease or tenancy at will for offer to lease a dwelling unit in a multi-unit residential building where the expense of furnishing electricity, heat or any other utility to the common areas or other area not within the unit is the sole responsibility of the tenant in that unit, unless both parties to the lease or tenancy at will have agreed in writing that the tenant will pay for such costs in return for a stated reduction in rent or other specified fair consideration that approximates the actual cost of electricity providing utilities to the common areas. "Common areas" include, but are not limited to, hallways, stairwells, basements, attics, storage areas, fuel furnaces or water heaters used in common with other

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tenants. Except as provided in this section, a written or oral waiver of this requirement is against public policy and is void. Any person in violation of this section is liable to the ~~lessee~~ tenant for actual damages or \$~~400-250~~, whichever is greater, and reasonable attorneys' fees and costs. In any action brought pursuant to this section, there is a rebuttable presumption that the landlord is aware that the tenant has been furnishing utility service to common areas or other units. If the landlord rebuts this presumption, the landlord is required to comply with this section but is only liable to the tenant for actual damages suffered by the tenant.

Sec. 7. 14 MRSA §6024-A is amended to read:

§6024-A. Landlord failure to pay for utility service

1. If a landlord fails to pay for utility service in the name of the landlord, the tenant, in accordance with Title 35-A, section 706, may pay for the utility service and deduct the amount paid from the rent due to the landlord.

2. In addition to the remedies set forth in subsection 1, upon a finding that a violation of this section has occurred, the court shall award the following. The tenant is entitled to recover actual damages in the amount actually paid for utilities by the tenant or \$100, whichever is greater, together with the aggregate amount of costs and expenses reasonably incurred in connection with the action. The court may also award a reasonable amount of attorney's fees.

In any action brought pursuant to subsection 2, there is a rebuttable presumption that the landlord knowingly failed to pay for the utility service. If the landlord rebuts this presumption, the landlord is required to comply with this section but is only liable to the tenant for actual damages suffered by the tenant.

Sec. 8. 14 MRSA §6026, subsection 1 is amended to read:

§6026. Dangerous conditions requiring minor repairs

1. **Prohibition of dangerous conditions.** No landlord who enters into a lease or tenancy at will ~~renting~~ ~~leasing~~ premises for human habitation may maintain or permit to exist on those premises any condition which endangers or materially impairs the health or safety of the tenants.

Sec. 9. 14 MRSA §6026, subsection 5 is amended to read:

5. **Waiver.** A provision in a lease or tenancy at will, ~~whether oral or written~~, in which the tenant waives either his rights under this section or the duty of the landlord to maintain the premises in compliance with the standards of fitness specified in this section or any other duly promulgated ordinance or regulation is void, except that a written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration is binding on the tenant and the landlord.

Sec. 10. 14 MRSA §6026, subsection 10 is enacted to read:

10. Foreclosure. For tenancies in buildings in which a foreclosure action brought pursuant to section 6203-A or 6321 has been filed and is currently pending, or in which a foreclosure judgment has been entered, if the landlord or other successor in interest fails to maintain the premises in compliance with the standards in subsection 1, a tenant may assert

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their rights pursuant to this section without regard to the cost of compliance limitations set forth in subsection 2. A tenant who asserts their rights under this subsection and who thereafter seeks assistance pursuant to Title 22, sections 4301 to 4326 may not have any amounts expended under this subsection counted as income pursuant to Title 22, section 4301, subsection 7.

Sec. 11. 14 MRSA §6026-A is amended to read:

§6026-A. Municipal intervention to provide basic necessities

In accordance with the procedures provided in this section, the municipal officers of any town or city or their designee may provide for basic necessities ~~the delivery of heating fuel~~ and any ~~associated heating system~~ repair activities to ensure the continued habitability of any premises leased for human habitation. For the purposes of this section, “basic necessities” means those services, including but not limited to, maintenance, repairs and utilities, that a landlord or tenant are otherwise responsible to provide under the terms of a lease, tenancy at will or applicable law.

1. Leased premises must be in immediate need of basic necessities or pose a serious threat to human safety or health. The leased premises must be in need of basic necessities ~~out of heating fuel or nearly out of heating fuel~~ such that the municipal officers or their designee can make a finding that an imminent threat to the continued habitability of the premises exists.

2. Attempt to contact landlord. The municipal officers or their designee must document a good faith attempt to contact the landlord of the premises under subsection 1 regarding:

- A. The municipality's determination of the threat to habitability;
- B. The municipality's intention to provide for basic necessities ~~the delivery of heating fuel~~;
- C. The municipality's intention to subsequently recover the municipality's direct and administrative costs from the landlord; and
- D. The landlord's ability to avert the municipality's actions by causing the ~~delivery~~ provision of adequate supplies of heating fuel ~~basic necessities~~ by a time certain.

This communication to the landlord must be either in person, by telephone or by certified mail as may be warranted considering the degree or imminence of the threat.

3. Municipality may provide for basic necessities. If the landlord cannot be contacted in a timely manner or if the landlord does not cause the ~~delivery~~ provision of adequate supplies of heating fuel ~~basic necessities~~ by a deadline identified by the municipal officers or their designee, the municipality may provide for ~~the basic necessities~~ ~~delivery of an adequate supply of heating fuel~~ and whatever attendant activities may be necessary to ensure the proper functioning of the leased premises ~~premises' heating system~~.

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4. Lien. The municipality has a lien against the landlord of the leased premises for the amount of money spent by the municipality to provide for basic necessities ~~the adequate supply of heating fuel~~ and attendant activities pursuant to this section, as well as all reasonably related administrative costs pursuant to subsection 3.

5. Filing of notice of lien; interest; costs. The municipal officers or their designee shall file a notice of the lien with the register of deeds of the county in which the property is located within 30 days of providing for the provision of basic necessities ~~delivery of heating fuel~~. That filing secures the municipality's lien interest for an amount equal to the costs recoverable pursuant to this section. Not less than 10 days prior to the filing, the municipal officers or their designee shall send notification of the proposed action by certified mail, return receipt requested, to the owner of the real estate and any record holder of the mortgage. The lien notification must contain the title, address and telephone number of the municipal official or officers who authorized the provision of basic necessities ~~heating fuel~~, an itemized list of the costs to be recovered by lien and the provisions of this subsection regarding interest rates and costs. The lien is effective until enforced by an action for equitable relief or until discharged. Interest on the amount of money secured by the lien may be charged by the municipality at a rate determined by the municipal officers but in no event may the rate exceed the maximum rate of interest allowed by the Treasurer of State pursuant to Title 36, section 186. Interest accrues from and including the date the lien is filed. The costs of securing and enforcing the lien are recoverable upon enforcement.

Sec. 12. 14 MRSA §6030 is amended to read:

§6030. Unfair rental agreements

1. Illegal waiver of rights. It is an unfair and deceptive trade practice in violation of Title 5, section 207 for a landlord to require a tenant to enter into a ~~rental agreement~~ lease or tenancy at will agreement for a dwelling unit, as defined in section 6021, in which the tenant agrees to a ~~lease or rule~~ provision that has the effect of waiving a tenant right established in chapter 709, this chapter and chapter 710-A. This subsection does not apply when the law specifically allows the tenant to waive a statutory right during negotiations with the landlord.

2. Unenforceable provisions. The following ~~rental lease or tenancy at will agreement~~ or rule provisions for a dwelling unit, as defined in section 6021, are specifically declared to be unenforceable and in violation of Title 5, section 207:

- A. Any provision that absolves the landlord from liability for the negligence of the landlord or the landlord's agent;
- B. Any provision that requires the tenant to pay the landlord's legal fees in enforcing the ~~rental lease or tenancy at will agreement~~;
- C. Any provision that requires the tenant to give a lien upon the tenant's property for the amount of any rent or other sums due the landlord; and
- D. Any provision that requires the tenant to acknowledge that the provisions of the ~~rental lease or tenancy at will agreement~~, including tenant rules, are fair and reasonable.

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3. Exception. Notwithstanding subsection 2, paragraph B, a ~~rental lease or tenancy at will agreement~~ or rule provision that provides for the award of attorney's fees to the prevailing party after a contested hearing to enforce the ~~rental lease or tenancy at will agreement~~ in cases of wanton disregard of the terms of the ~~rental lease or tenancy at will agreement~~ is not in violation of Title 5, section 207 and is enforceable.

Sec. 13. 14 MRSA §6030-B is amended to read:

§6030-B. Environmental lead hazards

1. Environmental lead hazard disclosure. A landlord or other ~~lessor~~ person who enters into a lease or tenancy at will agreement for residential property shall provide to potential tenants and lessees a residential real property disclosure statement that includes, but is not limited to, information about the presence or prior removal of lead-based paint in accordance with Title 22, section 1328.

2. Application. The landlord or ~~lessor~~ other person who enters into a lease or tenancy at will agreement shall provide the residential real property disclosure statement under subsection 1 when a structure that is part of the real property was built prior to 1978.

3. Notification of repairs. A landlord or ~~other lessor~~ other person who enters into a lease or tenancy at will agreement for residential property who undertakes, or who engages someone else to undertake, any repair, renovation or remodeling activity in a residential building built before 1978 that includes one or more units that are rented for human habitation shall give notice of the activity and the risk of an environmental lead hazard pursuant to this subsection.

A. Notice must be given at least 30 days before the activity is commenced by:

- (1) Posting a sign on the building's exterior entry doors; and
- (2) A notice sent by certified mail to every unit in the building.

B. Notwithstanding paragraph A, notice may be given less than 30 days before the activity is commenced by:

- (1) Posting a sign on the building's exterior entry doors; and
- (2) Obtaining from one adult tenant of each unit in the building a written waiver of the 30-day notice requirement and a written acknowledgment of receipt of notice for the particular activity.

C. The waiver of the 30-day notice requirement pursuant to paragraph B must be in plain language, immediately precede the signature of the adult tenant, be printed in no

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less than 12-point boldface type and be in the following form or in a substantially similar form:

NOTICE: YOU ARE WAIVING YOUR RIGHT UNDER STATE LAW TO RECEIVE 30 DAYS' NOTICE PRIOR TO ANY REPAIR, RENOVATION OR REMODELING ACTIVITY TO A RESIDENCE BUILT BEFORE 1978. RESIDENCES BUILT BEFORE 1978 MAY CONTAIN LEAD PAINT SUFFICIENT TO POISON CHILDREN AND SOMETIMES ADULTS. WORKERS PERFORMING RENOVATIONS OR REPAIRS IN HOUSING BUILT BEFORE 1978 SHOULD USE LEAD-SAFE WORK PRACTICES THAT MINIMIZE AND CONTAIN LEAD DUST AND SHOULD CLEAN THE WORK AREA THOROUGHLY TO PREVENT LEAD POISONING.

D. For purposes of this subsection, "repair, renovation or remodeling activity" means the repair, reconstruction, restoration, replacement, sanding or removal of any structural part of a residence that may disturb a surface coated with lead-based paint.

E. For purposes of this subsection, "environmental lead hazard" means any condition that may cause exposure to lead from lead-contaminated dust or lead-based paint.

F. Emergency repairs are exempt from the notification provisions of this subsection. For purposes of this paragraph, "emergency repairs" means repair, renovation or remodeling activities that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard or threatens equipment or property with significant damage.

G. A person who violates this subsection commits a civil violation for which a fine of up to \$500 per violation may be assessed. This paragraph is enforceable in either District Court or Superior Court.

H. This subsection may not be construed to limit a tenant's rights, a landlord's duties or any other provisions under section 6026 or Title 22, chapter 252.

Sec. 14. 14 MRSA §6030-C is amended to read:

§6030-C. Residential energy efficiency disclosure statement

1. Energy efficiency disclosure. A landlord or other ~~lessor or~~ person who enters into a lease or tenancy at will agreement for residential property that will be used by a tenant or lessee as a primary residence shall provide to potential tenants or lessees a residential energy efficiency disclosure statement in accordance with Title 35-A, section 10006, subsection 1 that includes, but is not limited to, information about the energy efficiency of the property.

2. Provision of statement. A landlord or other ~~lessor or~~ person who enters into a lease or tenancy at will agreement shall provide the residential energy efficiency disclosure statement required under subsection 1 in accordance with this subsection. The landlord or ~~lessor or~~ other person who enters into a lease or tenancy at will agreement shall provide the statement to any person who requests the statement in person and shall post the statement in a prominent location in a property that is being offered for rent or lease. Before a tenant or lessee enters into a contract or pays a deposit to rent or lease a property, the landlord or ~~lessor or~~ other person who enters into a lease or tenancy at will agreement shall provide the statement to the tenant or lessee, obtain the tenant's or lessee's signature on the statement

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and sign the statement. The landlord or ~~lessor~~ other person who enters into a lease or tenancy at will agreement shall retain the signed statement for a minimum of 7 years.

Sec. 15 . 14 MRSA §6030-D is amended to read:

§6030-D. Radon testing

1. Testing. By 2012 and every 10 years thereafter, a landlord or other ~~lessor~~ person who enters into a lease or tenancy at will agreement for ~~of~~ a residential building shall have the air of the residential building tested for the presence of radon. A test required to be performed under this section must be conducted by a person registered with the Department of Health and Human Services pursuant to Title 22, chapter 165.

2. Notification. A landlord or other ~~lessor~~ of a person who enters into a lease or tenancy at will agreement for a residential building shall provide written notice to a tenant or potential tenant regarding the presence of radon in the building, including the date and results of the most recent test conducted under subsection 1, and the risk associated with radon. The department shall prepare a standard disclosure statement form for landlords and other lessors of real property to use to disclose to a tenant or potential tenant information concerning radon. The form must include an acknowledgment that the tenant or potential tenant has received the disclosure statement required by this subsection. The department shall post and maintain the forms required by this subsection on its publicly accessible website in a format that is easily downloaded.

3. Mitigation. When the test of a residential building under subsection 1 reveals a level of radon of 4.0 picocuries per liter of air or above, the landlord or other ~~lessor~~ person who enters into a lease or tenancy at will agreement for ~~of~~ that building shall, within 6 months, mitigate the level of radon in the residential building until it is reduced to a level below 4.0 picocuries per liter of air. If a landlord or other ~~lessor~~ of person who enters into a lease or tenancy at will agreement for a residential building is required to obtain a permit under a local or municipal ordinance, mitigation must occur within 6 months after obtaining any necessary permit. Mitigation services must be provided by a person registered with the Department of Health and Human Services pursuant to Title 22, chapter 165. After mitigation has been performed pursuant to this subsection to reduce the level of radon, the landlord or other ~~lessor~~ person who enters into a lease or tenancy at will agreement for ~~of~~ the residential building shall provide written notice to tenants that radon levels have been mitigated.

4. Penalty. A person who violates this section commits a civil violation for which a fine of not more than \$250 per violation may be assessed.

Sec. 16. 14 MRSA §6031, subsection 2 is amended to read:

2. Security deposit. "Security deposit" means any advance or deposit, regardless of its denomination, of money, the primary function of which is to secure the performance of a ~~rental~~ lease or tenancy at will agreement for residential premises or any part thereof.

Sec. 17. 14 MRSA §6031, subsection 3 is amended to read:

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3. Surety bond. "Surety bond" means a bond purchased by a tenant in lieu of making a security deposit when the function of the bond is to secure the performance of a rental lease or tenancy at will agreement for residential premises or any part of residential premises.

Sec. 18. 14 MRSA §6032 is amended to read:

§6032. Maximum security deposit

No ~~lessor lease or tenancy at will agreement for~~ of a dwelling intended for human habitation shall require a security deposit equivalent to more than the rent for 2 months.

Sec. 19. 14 MRSA §6036 is amended to read:

§6036. Waiver of provisions

Any provision, whether oral or written, in or pertaining to a rental lease or tenancy at will agreement whereby any provision of this chapter for the benefit of a tenant or members of its household is waived shall be deemed to be against public policy and shall be void.

Sec. 20. 14 MRSA §6038 is amended to read:

§6038. Treatment of security deposit

1. During the term of a tenancy, a security deposit given to a landlord as part of a residential rental agreement may not be treated as an asset to be commingled with the assets of the landlord or any other entity or person. All security deposits received after October 1, 1979 must be held in an account of a bank or other financial institution under terms that place the security deposit beyond the claim of creditors of the landlord or any other entity or person, including a foreclosing mortgagee or trustee in bankruptcy, and that provide for transfer of the security deposit to a subsequent owner of the dwelling unit or to the tenant in accordance with section 6035. Upon the transfer of the dwelling unit, the new owner shall assume all responsibility for maintaining and returning to tenants all security deposits accounted for and transferred pursuant to section 6035. Upon request by a 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 the tenants. A landlord may use a single escrow account to hold security deposits from tenants residing in separate buildings if the buildings are owned by different entities as long as the different entities are substantially controlled or owned by a single landlord.

2. Remedies. Upon a finding that a violation of this section has occurred, the tenant is entitled to recover actual damages, \$500 or the equivalent of 1 month rent, whichever is greater, together with the aggregate amount of costs and expenses reasonably incurred in connection with the action. The court may also award a reasonable amount for attorneys' fees.

3. Application. The provisions of subsection 2 apply to all security deposits collected by a landlord after June 1, 2010. As of October 1, 2010, the provisions of subsection 2 apply to all security deposits held by or on behalf of a landlord.

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Proposed Bed Bug Legislation:

1. Landlord Responsibilities to Treat Bed Bug Infestation

- A. Upon written or oral notice from the tenant the landlord shall within five (5) days conduct an inspection of the unit for bed bugs.
- B. Upon a determination that an infestation of bed bugs does exist, the landlord shall within ten (10) days start the process of controlling the bed bug infestation in the dwelling unit.
- C. A landlord must take reasonable measures to effectively identify and treat the bed bug infestation as determined by a Maine licensed and certified pest control agent. The landlord must employ a individual or company who carries a current license, insurance and is certified by the Maine Board of Pesticides Control as a pest control agent to promptly treat the bed bug infestation
- D. Prior to renting any unit, a landlord must disclose if any adjacent unit(s) are currently infested with or are being treated for bed bugs. Upon request, a landlord must disclose the last date when the unit sought to be rented or any adjacent unit were inspected and that the rental unit and adjacent units were found to be free of any bed bug infestation as of that date.
- E. A landlord may not offer for rent any dwelling unit that the landlord knows or suspects is infested with bed bugs.

2. Responsibilities of Tenant.

- A. A tenant must promptly notify a landlord when the tenant knows or suspects an infestation of bed bugs.
- B. Upon reasonable notice, as set forth at 14 M.R.S.A. § 6025, a tenant must grant the landlord of the rental unit, their agent or the landlord's pest control company and its employees, access to the unit for purposes of an inspection for or the control of the infestation of bed bugs. The inspection may include a visual inspection and manual inspection of the tenant's personal belongings, limited to bedding and upholstered furniture. In addition, inspection of any other items deemed reasonable by the pest control company to be inspected may be inspected only by the staff of the pest control company. If bed bugs are found in the unit or an adjoining unit, additional access may be required.
- C. Upon notice, a tenant must comply with reasonable measures to eliminate and/or control for bed bug infestation as set forth by the landlord and the professional pest control company retained by the landlord to treat the bed bugs. The tenant's

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unreasonable failure to completely comply with the pest control protocol shall result in the tenant being financially responsible for all pest control treatments of the unit arising from the tenant's failure.

D. A landlord must offer to make reasonable assistance, including financial assistance, available to a tenant who is not able to comply with requested bed bug inspection or control measures. A landlord after first disclosing what the charge may be, may charge the tenant a reasonable amount for any such assistance, subject to a reasonable repayment schedule, not to exceed 6 months, except if otherwise agreed to by the parties.

3. Remedies

A. A landlord who fails to comply with the provisions of this section shall constitute a finding that the landlord has unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy a condition that endangers or materially impairs the health or safety of a tenant pursuant to 14 M.R.S.A. § 6021(3).

B. A landlord who fails to comply with the provisions of this section will be liable for a penalty of \$250 or actual damages, whichever is greater, plus reasonable attorney's fees.

C. A landlord may commence an action in accordance with 14 M.R.S.A. § 6030-A and obtain relief against a tenant who fails to: provide reasonable access; comply with reasonable requests for inspection or treatment as set forth in this section; or otherwise unreasonably fails to comply with reasonable bed bug control measures. For the purpose of 14 M.R.S.A. § 6030-A and this section, if a court finds that a tenant has unreasonably failed to comply with this section, a court may issue a temporary and permanent order pursuant to 14 M.R.S.A. § 4654 to carry out the provisions of this Act, including but not limited to: granting the landlord access to the premises for the purposes set forth in this statute, granting the landlord the right to engage in bed bug control measures and requiring the tenant to comply with specified bed bug control measures or assessing the tenant with costs and damages related to the tenant's non-compliance. Any order granting the landlord access to the premises must be served upon the tenant at least 24 hours prior to entering the premises

D. In any action of forcible entry and detainer there shall be a presumption that the action was commenced in retaliation against the tenant if, within 6 months prior to the commencement of the action, the tenant has asserted his rights pursuant to this section unless the landlord rebuts the defense.

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Sec. 1. 14 MRSA § 6021, subsection 8 is enacted to read:

8. Responsibility of mortgagee to maintain premises in the event of an action for foreclosure. The responsibility of a mortgagee to maintain premises is as follows.

A. Upon commencement of a foreclosure proceeding by nonjudicial process pursuant to section 6203-A, the mortgagor and mortgagee are jointly liable for maintenance and repair of the premises in accordance with this section. If the mortgagor fails to maintain the premises as required by the implied warranty of fitness for human habitation as established in this section, then the mortgagee shall ensure that the property remains in compliance. If either the mortgagor or mortgagee fails to maintain the premises as required by the implied warranty of fitness for human habitation, then a tenant may petition any court of competent jurisdiction for said relief. In any such action brought by the tenant, the court in its discretion may establish an escrow account into which the tenant may make escrow payments and the court may distribute the funds as necessary to maintain the property pursuant to this section. The court may also direct that payment be made to the mortgagee and direct the mortgagee to expend such funds as are necessary to maintain the premises as required by this section.

B. Upon commencement of a foreclosure proceeding by judicial process pursuant to section 6321, the mortgagor and mortgagee are jointly liable for maintenance and repair of the premises in accordance with this section. If the mortgagor fails to maintain the premises as required by the implied warranty of fitness for human habitation as established in this section, then the mortgagee shall ensure that the property remains in compliance. If either the mortgagor or mortgagee fails to maintain the premises as required by the implied warranty of fitness for human habitation, then a tenant may petition any court of competent jurisdiction for said relief. In any such action brought by the tenant, the court in its discretion may establish an escrow account into which the tenant may make escrow payments and the court may distribute the funds as necessary to maintain the property pursuant to this section. The court may also direct that payment be made to the mortgagee and direct the mortgagee to expend such funds as are necessary to maintain the premises as required by this section.

